NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 477 OF 2018

1. MINAKSHI CHOUDHARY
W/O SANDEEP CHOUDHARY R/O HOUSE NO. 1102, IVORY COURT I, ESSEL TOWER, M.G.ROAD,
GURGAON .....Complainant(s)

Versus

1. M/S. RAHEJA DEVELOPERS LIMITED
THROUGH ITS DIRECTORS/AUTHORISED REPRESENTATIVE REGD. OFFICE AT: W4D 204/5, KESHAV KUNJ, CARIPPA MARG, WESTERN AVENUE, SAINIK FARM,
NEW DELHI-110062 .....Opp.Party(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE COMPLAINANT : MR NAVEEN SHEOKHAND, MR ANAND PRAKASH
MR DEEPAK JAGLAN, ADVOCATES

FOR THE OPP. PARTY : MR SIDDHARTH BANTHIA, ADVOCATE

Dated : 01 January 2024

ORDER

1. This complaint under section 21 of the Consumer Protection Act, 1986 (in short, 'the Act') has been filed alleging deficiency in service and unfair trade practice in respect of a flat booked by the complainant in a project promoted and executed by the opposite party namely viz., 'Raheja Revanta' in Sector 78, Gurgaon.

2. The facts of the case in brief are that the complainant booked an apartment on 17.05.2012 against an initial deposit of Rs.43,34,884/- in the said project. A floor buyer's agreement (in short, 'the Agreement') was also executed between the parties on 17.05.2012 as per which Apartment no.A-091 ad-measuring 2168.85 sq ft was allotted to the complainant for a total sale consideration of Rs.1,33,58,446/- excluding service taxes and registration. The complainant made deposits of payment amounting to Rs.1,16,03,737/- on various dates between 08.11.2011 to 26.06.2016 in 16 installments. The opposite party has not handed over the possession of the said flat despite undertaking in the Agreement vide Clause 4.2 that possession of the unit would be given within 36 months. It is submitted that the said agreement was a one sided and prepared document presented by the opposite party and that the complainant did not have the opportunity to amend the same. The opposite party has also not paid compensation for the delay in possession as per Clause 4.2 of the Agreement. The complainant is before this Commission with the prayer to (a) refund the entire amount paid against the cost of the apartment no. A -091; (b) to pay interest @ 18% per annum on the amount paid from the date of deposit till refund of the

entire amount; (c) to pay compensation of Rs.5.00 lakh for causing financial risk, hardship, mental agony, harassment and emotional disturbance to the complainant; (d) pay Rs.75,000/- as litigation expenses; (e) pay compensation under section 14 (HB) on account of unfair trade practice; (f) to dispense filing of the certified copies/ true typed/ fair copies of the annexure; and (g) any other relief as deemed fit and proper under the facts and circumstances of the present case.

3. The complaint was resisted by way of reply by the opposite party denying the averments of the complainants. It was stated that the project had been launched after all necessary and requisite permissions/ sanctions from the competent authority including licence by the Director General, Town and Country Planning, Haryana under Haryana Development and Regulation of Urban Areas Act, 1975 and the Rules framed thereunder. Preliminary objections were taken that at the time of launch of booking and execution of the Agreement the applicants/ complainants had been categorically informed about the terms and conditions of the allotment. It was stated that the application form in Clause 1 had stated that applicant was applying with full knowledge and subject to all laws, notification and rules and that the licence for the Group Housing Project had been issued and the building plans sanctioned by the DG, Town and Country Planning, Haryana. It was also stated that in Clause 21 of the Agreement the period of 36/48 months plus grace period of six months for handing over possession was from the date of the execution of the agreement and was subject to the providing of the necessary infrastructure in the Sector by the Government, and, that if for any other reasons, there was delay the opposite party would be liable to pay compensation @ Rs.7/- per sq ft of the super area per month for the entire period of such delay. It was also stated that Clause 22 of the Application Form and Clause 4.3 of the Agreement to Sell also states that this project site may not have the infrastructure in place either on the date of booking or at the time of handing over of the possession as the same was to be provided/ developed by the Government or its nominated agency which was beyond the control of the opposite party and therefore, the allottees shall not be entitled to any compensation for the delay/ non provision of infrastructure facilities and/ or consequent delay in handing over the possession of the apartment in question. It was contended that in view of the Dwarka Expressway being entangled in legal issues of land acquisition before the Punjab and Haryana High Court, the Government/ Government agency failed to provide the basic infrastructure such as road, sewerage, water and electricity supply despite the fact that EDC, IDC and other social infrastructure such as public transport, Government hospitals, schools and colleges, community and religious buildings, street and traffic lights was also not developed. Shifting of overhead high tension electricity lines passing through the middle of the project and disputes with the contractors had also delayed the project. These problems continue till today and therefore, the period of handing over the possession cannot be commuted by ignoring these facts. The Punjab and Haryana High Court in CWP no. 20032 of 2008, ***Sunil Singh vs Ministry of Environment and Forests and Others***, banned the use of underground water and sand mining for construction purpose and therefore, the opposite party had to be dependent on the supply of the water through tankers. This was aggravated by default in payment by the allottees and non-availability of necessary infrastructure such as road in the sector in question. The delivery of possession estimated at the inception of the project was not the essence of the contract since the likely delay in possession had been indicated in the Agreement. It is contended that the delay itself

cannot, therefore be termed as deficiency in service or unfair trade practice on the grounds of non-offer of possession or compensation. It was further argued that the complaint was not sustainable under the Consumer Protection Act, 1986 but was a civil dispute which could be agitated before the Competent Authority under the contractual provisions. It was contended that the complaint was barred by limitation under Section 24 A of the Act since the Agreement was executed on 17.05.2012 and the present complaint was filed in 2018. It is also stated that the allegations were contractual in nature and that as held by the Hon'ble Supreme Court in the case of ***Bharti Knitting Co., vs DH World-wide Courier*** (1996) 4 SCC 704, a person signing the document containing certain contractual documents was bound by such contractual terms and that no claim can be raised. It was also contended that the allegations of the complainant related to an Agreement to Sell and no 'service' had been rendered within the meaning of section 2 (1) (o) of the Act and that the Hon'ble Supreme Court in ***Bangalore Development Authority vs Syndicate Bank*** (2007) 6 SCC 711 had held that a dispute in respect of an Agreement to Sell a plot does not relate to rendering of any 'service' under the Act. It was contended that only after completion of the construction, could a conveyance deed be executed and therefore such an Agreement does not involve rendering of 'service'. Reliance was also placed on ***Magus Construction Pvt. Ltd., vs UOI*** (2008)(15 VST 17 (Gauhati) and it was argued that since the complaint relates to refund of amount paid, it can only be adjudicated by a Civil Court after detailed evidence. The opposite party also contended that there was no unfair trade practice under section 2 (1) (r) of the Act in the absence of any allegation regarding the alleged services with reference to the grievances made. Therefore, the complaint did not fall under the summary jurisdiction of the CP Act, 1986.

9. It was further contended that the relief of interest was not permissible under the Act and that compensation under section 14 (1) (d) of the Act could only be awarded if loss due to negligence was established. It was averred that the complainant was not a 'consumer' under section 2 (1) (d) of the Act as the complainant did not disclose the purpose for which the unit had been purchased and since the complainant had admitted to have taken loan from the ICICI Bank, the issue of refund could not be decided in the absence of Bank being a party to the present complain. On merits, it was contended that the complaint was without basis since the advertisement floated by the opposite party for sale of the flat was not binding in nature and that the agreement dated 18.07.2012 was executed by the complainant after fully understanding the terms and conditions and that payments were made in accordance with the agreement and schedule of payment. No dispute had been raised within the statutory period of 2 years as contemplated under section 24 A of the Act and therefore, the complaint was barred by limitation.

10. It was further contended that as per Clause 4.2 of the Agreement, the opposite party had only undertaken to endeavor to give possession of the unit in respect of the independent floor to the purchaser in 36 months and 48 months in respect of Surya Tower from the date of execution of the Agreement, and that it was subject to the provisioning of necessary infrastructure, such as road, sewerage, water by the Government and subject to *force majeure* conditions or any Government/ Regulatory Authority's action, inaction or omission and reasons beyond the control of the seller/ opposite part. It was denied that the complainant had been forced to sign

the agreement without understanding its contents and that it was executed under duress. The period for handing over the possession of 36 months is stated to have been indicated tentatively as it was subject to *force majeure* circumstances and the time spent by the opposite party in obtaining the infrastructure facilities from the Government authorities. It was stated that the construction of the project was at an advanced stage that possession would be offered as per the Agreement. It was contended that the period for handing over possession had not expired and therefore, no compensation was payable to the complainant. It was denied that the opposite party had imposed unfair terms on the complainant such as additional charges for parking or had charged 18% interest for delay on payment as against compensation of Rs.7/- per sq ft was provided. It was stated that this Commission lacked jurisdiction and the issue of the complainant seeking compensation under section 14 (1) (h) (b) of the Act does not arise.

11. Parties led their evidence. I have heard the learned counsel for the parties and have carefully perused the documents on record.

12. Learned counsel for the complainant has submitted that the entire payment of Rs.1,33,58,446/- towards the sale consideration had been made by the complainant by June 2016. Despite assurance by the opposite party that possession would be given within 36 months as per the Agreement to Sell dated 17.05.2012 with grace period of six months i.e., by 17.11.2015, the opposite party has failed to offer the possession. It was argued that the complaint was not barred by limitation as contended by the opposite party, since, in view of there not being an offer of possession, the cause of action was a continuing cause as held by this Commission in ***Mehnga Singh Khera and Ors vs Unitech Ltd.,*** in CC no. 1395 of 2017. It was also contended that the opposite party has failed to pay compensation due for the delay under Clause 4.2 of the Agreement. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd., vs Govindan Raghavan,*** II (2009) CPJ 34 (SC) which had laid down that the terms of a contract will not be final and binding if it was shown that the flat purchaser had no option but to sign on the dotted line on a contract framed by the builder. It had been held that incorporation of one sided Clause in such an Agreement constitutes unfair trade practice as per Section 2 (r) of the Act, since it adopts an unfair practice for the purpose of selling the flats. In the instant case, it was contended that the Agreement was framed by the opposite party which the complainant had no occasion to alter and was required to sign the same in view of having paid a considerable amount towards the sale consideration. As regards the contention of the opposite party that no service had been rendered within the meaning of Section 2 (1) (o) of the Act, the complainant submitted that the opposite party was engaged in the occupation of selling flat/ plots/ villas etc. It has relied on the judgment of the Hon'ble Supreme Court in the case of ***Narne Construction P Ltd., etc., vs Union of India and Ors.,*** AIR 2012 SC 2369 which held that housing construction and building activities come under the definition of 'service' as per Section 2 (1) (o) of the Act and therefore, this contention of the opposite party was not valid. With regard to the contention of the opposite party that unfair trade practice cannot be alleged since the allegation did not relate to promoting of sale or service, the complainant submitted that Clause 3.7 providing for penalty @ 18% for delayed payment of instalments towards the purchase of the flat by the complainants was indicative of an unfairly loaded contract. It was, therefore, contended that the imposing of unreasonable

charges or obligations had put the complainant at a disadvantage and was clearly established, in view of the fact that the opposite party's obligation for delay was only compensation of Rs.7/- per sq ft per month for deficiency in service in delay or unfair trade practice. With regard to the contention of the opposite party that the compensation under section 14 (1) (d) of the Act would be payable only if loss was due to negligence being established, the complainant relied upon the law laid down by the Hon'ble Supreme Court in ***Wg Cdr Arifur Rahman Khan and Ors., vs DLF Southern Homes Pvt. Ltd.,*** 2020 SCC Online SC 667 and as held in ***Govindan Raghavan*** (supra) that the terms of the Agreement authored by the developer does not ensure a level platform between the developer and the flat purchaser and is not an even bargain. Reliance was placed on the law laid down by the Hon'ble Supreme Court in these judgments that failure of the developer to comply with the contractual obligation to provide the flat within the contractually stipulated period was deficiency in service and given the one-sided nature of Apartment Buyer's Agreement, the jurisdiction of the consumer *fora* to award reasonable compensation to direct removal of deficiency in service was upheld.

13. As for the complainant not being a 'consumer' it was contended by the complainants that the opposite party had not discharged the burden of proof cast on it to prove the same in view of the judgment of this Commission in ***Kavita Ahuja vs Shipra Estate Ltd. and Jaikrishan Estate Developers Pvt. Ltd. and Ors.,*** I (2016) CPJ 31 (NC). The merely fact of the complainant having booked three flats it was contended, did not establish commercial purpose according to the complainant and therefore, the complainant could not be ousted on this ground.

14. As regards delay in handing over the possession, the complainant argued that the project had been promoted on the basis of the terms of the sanctioned plan from the DG, TCP, Haryana. It is the complainant's case that the opposite party did not inform that the project fell within the New Master Plan. Therefore, it was for the opposite party to provide the infrastructure at the project site since it had charged a premium for amenities and infrastructure at the said site. It was also stated that there was no litigation with respect to the land in question on which the project was to be developed. It was submitted that the opposite party cannot take shelter behind its own mistake and that if there were so many issues related to the project, it should not have accepted the deposits from the complainants for the project. It was, therefore, contended that the complaint be allowed.

15. Learned counsel for the opposite party essentially argued as per his reply. It was submitted that a claim for compensation under section 14 (1) (d) of the Act was payable only, if negligence on the part of the opposite party was established and the loss or injury was also established on account of this negligence. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Consumer Unity and Trust Society Jaipur vs Chairman and Managing Director, Bank of Baroda, Calcutta and Another*** (1995) 2 SCC 150. It was contended that the burden of proof lay on the complainant as per Section 101 of the Indian Evidence Act, 1872.

16. It was argued at length that the delay was on account of failure on the party of the HUDA and GMDA in failing to discharge their statutory obligations and it was contended that these entities needed to be impleaded as a necessary and proper parties. In support of this contention, it was stated that under the Haryana Development and Regulation of Urban Areas Act, 1975, it

is the HUDA which is required to carry out external development works for which purpose External Development Charges (EDC) were deposited by the opposite party after allottees, including the complainant, paid the respective proportionate share. Under the Gurugram Metropolitan Development Authority Act, 2017, liability of executing the infrastructural development work was stated to lie with the GMDA for which the opposite party had deposited the IDC Charges to DTCP on 17.08.2011 and 31.12.2013. It was argued that both the application form and Apartment Buyer's Agreement had included the clause stating that the site of the project may not have the requisite infrastructure in place at the time of handing over the possession, since it was to be developed by the relevant Government nominated agency and that this was beyond the control of the opposite party and that the purchasre shall not claim compensation for the delay due to non-provision of such infrastructure facilities or consequent delays in handing over the possession of the unit. It was also stated that non-availability of necessary infrastructure facilities such as road, water, power and sewer lines would constitute *force majeure* reasons. Accordingly, it was argued that since the same has not been made available even as on date, delay is not attributable to the opposite party and therefore, the negligence alleged cannot be attributed to the opposite party for its liability to pay the compensation under section 14 of the Act.

17. The rival contentions of the learned counsel for the parties have been considered in details in the light of their submissions and the material on record.

18. The preliminary objections of the opposite party with regard to the complainant not being a 'consumer' under section 2 (1) (d) of the Act, the complaint being barred under limitation under section 24 A and the opposite party not being under any contractual obligation for a service under section 2 (1) (o) of the Act are addressed at the outset. The complainant has argued that the onus of proving that she was not a 'consumer' lay on the opposite party in the light of the judgment in ***Kavita Ahuja*** (supra). It is also relevant to note that this Commission in ***Sai Everest Developers vs Harbans Singh Kohli,*** 2015 SCC Online NCDRC 1895 dated 21.07.2015 had also held that "the opposite party should establish by way of documentary evidence that the complainants dealing in real estate or in the purchase of sale of the subject property for the purpose of making profits". In the instant case, there is no such evidence filed by the opposite party to establish the case that the unit was purchased for the purpose of resale. This argument of the opposite party, therefore, cannot be upheld.

19. The contention that the complaint is barred by limitation under section 24 A of the Act since the Agreement was executed on 17.05.2012 and the present complaint was filed in 2018 has been considered. It is not denied by the opposite party that the project has not been completed. It is also not denied that an offer of possession had been made to the complainant. Rather, it is the opposite party's contention that the project has remained incomplete due to a variety of reasons which qualify as *force majeure* circumstances. In view of the admission that the project is incomplete and that no offer of possession has been made so far, this case falls squarely under the ratio of the Hon'ble Supreme Court in ***Meerut Development Authority vs Mukesh Kumar Gupta*** IV (2012) CPJ 12 decided on 09.05.2012 which laid down that "failure to deliver possession of the plot, constitutes recurrent / continuing cause of action". In view of the fact that no offer of possession has been made by the opposite party, it cannot seek to argue

that the complaint is barred by limitation, since the cause of action is a continuing one under which the complainant is entitled to seek its remedies under the Act. Therefore, this contention of the opposite party is found to be without merit.

20. The contention of the opposite party that there was no promise of 'service' under the section 2 (1) (o) of the Act since only an Agreement to Sell had been executed which did not constitute a 'service' has been considered in the light of the submissions of the complainant that the opposite party is a registered builder engaged in the business of construction and selling of residential units. The opposite party has not controverted this contention by way of any evidence to prove that it had merely executed the Agreement to sell a plot. It is rather its defence that the project was named 'Raheja Revanta' which was being executed by it was liable to be delayed on account of various reasons which it had sought to attribute to delays on part of certain Government entities. Allotment letter of the Agreement to Sell, including the allotment of unit no. A - 091 in this project to the complainant, was clearly against a sale consideration against which the opposite party also received payments by way of installments. Therefore, the contention of the opposite party that it was not a 'service' provider is both specious and fallacious. This argument of the opposite party cannot be sustained and is accordingly rejected.

21. The contention of the learned counsel for the opposite party that this Commission lacks jurisdiction since the issue in this complaint related only to refund of the deposited money by the complainant and was, therefore, the subject matter for a civil court has also been considered. The settled law in this regard as laid down by the Hon'ble Supreme Court in ***M/s Imperia Structures Ltd. Vs. Anil Patni & Anr.,*** (2020) 10 SCC 783 decided on 02.11.2020 is that "*remedies under the Consumer Protection Act were in addition to the remedies available under special statutes".* It is also relevant to note that section 3 of the Act specifically provides that "*the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force".* It has also been held by this Commission in ***Aftab Singh vs Emaar MGF Land Ltd. and Anr.,*** in CC no. 701 or 2015 decided on 13.07.2017 which was upheld by the Hon'ble Supreme Court '*that arbitrator clause in the buyer's agreement does not bar the jurisdiction of the Consumer Fora'*. Therefore, the contention that this Commission lacks jurisdiction in a contractual matter cannot be sustained.

22. Counsel for the opposite party has also relied upon Clause 4.2 of the agreement to argue that the period of 36 months mentioned therein for handing over the possession was tentative and only meant to be an endeavour since it was subject to *force majeure* circumstances. It is contended that the time frame being only indicative, compensation for the alleged delay under section 14 (1) (h) does not arise. The *force majeure* conditions mentioned in the agreement essentially relate to providing of infrastructure facilities such as roads/ sewerage/ water and other infrastructure such as schools and hospital by the Government or its nominee agencies such as HUDA and GMDA with whom the EDC and IDC charges had been deposited by the opposite party and that in view of the same not having been provided on account of reasons not known to the opposite party but including legal issues relating to land acquisition for the Dwarka Expressway were covered by way of an order of 'stay' by the Punjab and Haryana High Court. It is argued that these reasons which were beyond the control of the opposite party and negligence could not be attributed to under section 14(1)(d). The complainant has also

contended that the complainant had not impleaded either HUDA/ GMDA in these proceedings to which they were necessary and proper parties.

23. From the record, it is evident that at the time of promoting its project for residential group housing opposite party had relied upon the licence it had obtained from DG, TCP, Haryana under the provisions of the relevant Act and it had lured the buyer to invest in its project on the promise that the residential units would be completed within a period of 36 months, with six months of grace period. While it had also mentioned in the allotment letter and the Agreement to Sell that there may be certain short fall in the infrastructure which was to be provided by the agencies of the Government, beyond its control, however, during the course of execution of the project, despite having the knowledge of various legal issues relating to land acquisition and the progress of the infrastructure development facilities, the opposite party did not stop accepting deposits or intimate the facts to the complainant with regard to legal and other issues. By not doing so, it continued to convey the impression that the project was proceeding on track and, in fact, given the complainants no indication for any ground for concern. The contention that the complainant had been warned and informed that the project may be delayed on account of the responsibility for infrastructure creation lying with the Government/ Government nominated agencies cannot be entirely appreciated since these clauses only convey that the opposite party would not be responsible for the absence of infrastructure in the sector which was not to be executed by it. The issue on which the complainant has alleged deficiency in service is the non-completion of the flat booked and the lack of an offer of possession.

24. As on date, there is admittedly no offer of possession and the opposite party has admitted that the project is still under execution. Even on date there, is no indication when this project is likely to be completed. The opposite party has also not brought on record any evidence to indicate, how the lack of infrastructure cited by it affected this project and whether it undertook any mitigative steps to overcome the same. In the absence of any evidence being brought on record, merely a bald assertion that the project was delayed due to in action by the Government or its statutory organisations and that the complaint should not be considered since the complainant had not impleaded such organisations in this complaint, cannot, by any stretch of imagination, be considered to be tenable. It is well known that the developers/ colonisers undertake to execute projects at the location indicated in the licence issued to them. The responsibility of completion of the project remains that of builder and it cannot seek to transfer this responsibility to Government entities with whom the buyer has no privity of contract. The contention of the opposite party, therefore, that the complaint be dismissed for non-joinder of parties cannot be sustained and the same must be rejected. Instead of making submissions with regard to lack of progress in the project on hand, the opposite party's attempt to shift the blame on other entities cannot be considered and is deprecated in the strongest terms.

25. From the facts of this case, it is manifest that the complainant has been seeking compensation on account of delay in handing over of a residential unit which was booked by him with the opposite party on 17.05.2012. Considering the promised period of construction of 36 months plus six months grace period, the delay of more than three years, since the promised date of possession was 17.05.2015. The Hon'ble Supreme Court has laid down in ***Kolkata West***

International City Pvt. Ltd. Vs Devasis Rudra II (2019) CPJ 29 SC decided on 25.03.3021 as under:

> "…….It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29.03.2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by SCDRC and by the NCDRC for refund of moneys were justified."

In ***Fortune Infrastructure Vs Trevor D' Lima*** (2018) 5 SCC 442 also the Hon'ble Supreme Court laid down that:

> *'a buyer cannot be expected to wait indefinitely for possession and in a case of an unreasonable delay in offering possession, the consumer cannot be compelled to accept possession at a belated stage and is entitled to seek refund of the amount paid with compensation'.*

26. In the instant case, the delay of more than three years is certainly inordinate as held by the Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan,*** CA No. 12238 of 2018 decided on 02.04.2019. The complainant is therefore, entitled to seek refund with compensation in respect of the amount deposited by it with the opposite party.

27. It has also been held in the case of ***Supertech Ltd. Vs. Rajni Goyal***, (2019) 17 SCC 681 that delay in offer of possession amounts to deficiency in service when there is no default with regard to the payment of installment on the part of the allottee/ home buyer. In the instant case, it is not the case of the opposite party that the complainant had defaulted in making the requisite payment towards the unit in question. It has also been held by the Hon'ble Supreme Court in the case of ***Central Inland Water Transport Corporation vs Brojo Nath Ganguli*** (1986) 3 SCC 156 that in terms of Article 14 of the Constitution, courts should "*strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract entered into between parties who are not equal in bargaining power"*. The Hon'ble Apex Court also laid down that:

> *"*A term of contract will not be final and binding if, it is shown that the flat purchasers had no operation but to sign on the dotted line, on a contract framed by the builder……. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 ® of the Consumer Protection Act, 1986 since it adopts unfair methods for the purpose of selling the flats by the builder".

In the instant case, the opposite party is clearly liable on both the counts in view of the foregoing reasons.

28. The opposite party has clearly defaulted in its contractual obligations of completing the project, to obtain the occupancy certificate, offer possession of the flat within the time stipulated in the Agreement [or within a reasonable period thereafter]. The complainant cannot therefore, be compelled to take the possession of the said flat. The Hon'ble Supreme Court in ***M/s BPTP Anr., vs Sanjay Rastogi***, Civil Appeal no. 1001 -1002 of 2021 decided on 04.12.2021 has held that under such a circumstance, the complainant is entitled to full refund with interest.

29. The Hon'ble Supreme Court has also held that in ***Experion Developers Pvt. Ltd. Vs Sushma Ashok Shiroor****, C.A. No. 6044 of 2019 decided on 07.04.2022 that the interest payable on the amount deposited must be both restitutionary and compensatory and in* ***DLF Homes Panchkula Pvt. Ltd., vs D S Dhanda*** (2020) 16 SCC 318, that interest on refund should be payable from the date of deposit.

30. As per the aforesaid discussion, I am of the considered view that this complaint is liable to succeed. In view of the discussions above, the consumer complaint is partly allowed with the following directions:

i. The opposite party is directed to refund the entire amount of Rs.1,16,03,737/- deposited by the complainant along with compensation @ 9% per annum from the respective dates within eight weeks of this order;
ii. Failure to make payment within this period shall render the opposite party liable to repayment with interest @ 12% per annum till realisation; and
iii. Opposite party shall also pay the complainant litigation cost of Rs.50,000/-.

All pending IAs, if any, stand disposed of by this order.

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SUBHASH CHANDRA
PRESIDING MEMBER