

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1462 OF 2017

1. MOHINDER SINGH PANESAR & ANR.

S/O. LT. SANT SINGH, R/O. 121 LANGLEY ROAD, SLOUGH
SL3, 7DZ BERKSHIRE,

U.K.

2. MRS. SURJEET KAUR PANESAR,

S/O. MOHINDER SINGH PANESAR, R/O. 121 LANGLEY
ROAD, SLOUGH SL3, 7DZ BERKSHIRE,

U.K.

.....Complainant(s)

Versus

1. DLF HOME DEVELOPERS LIMITED,

THROUGH ITS CHAIRMAN/M.D./DIRECTOR/AUTHORISED
REPRESENTATIVE, SHOPPING MALL, 3RD FLOOR, ARJUN
MARG, DLF CITY PHASE I,

GURGAON

HARYANA-122002

2. DLF UNIVERSAL LTD.

(DLF HOME DEVELOPERS LTD.) THROUGH ITS
MANAGING DIRECTOR/DIRECTOR/AUTHORIZED
REPRESENTATIVE, SCO NO. 190-191-192, SECTOR 8-C,
CHANDIGARH-160009

3. ASLO AT:-DLF HOMES DEVELOPERS LIMITED

THROUGH ITS MANAGING DIRECTOR/AUTHORIZED
REPRESENTATIVE, SCO NO.190-191-192, SECTOR 8-C
CHANDIGARH,-160009

.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI,PRESIDENT

FOR THE COMPLAINANT :

APPEARED AT THE TIME OF ARGUMENTS:

FOR THE COMPLAINANTS : MR. DEEPAK AGGARWAL,
ADVOCATE

WITH COMPLAINANT NO. 1

FOR THE OPP. PARTY :

APPEARED AT THE TIME OF ARGUMENTS:

MR. PRAVIN BAHADUR, ADVOCATE

MR. PRABHAT RANJAN, ADVOCATE

MR. DROUHN GARG, ADVOCATE

MR. ANKIT SAMLTI, ADVOCATE

MR. ASHRAV BHATIA, ADVOCATE

MS. SEEMA SUNDD, ADVOCATE

MS. GAURI DESAI, ADVOCATE

Dated : 01 January 2024

ORDER

JUSTICE A.P. SAHI, PRESIDENT

1. This is a Complaint with regard to a flat booked by the Complainants stated to be measuring 1926 sq. ft. in Hyde Park Estate, New Chandigarh, Mullanpur, Punjab developed by the Opposite Party. An application was moved on 30.09.2014 and alongwith the application, an amount of Rs. 6 lakhs was tendered by the Complainants in lieu whereof, an allotment letter dated 01.10.2014 was issued by the Opposite Party. This booking offer was pursuant to the application that was filled-up by the Complainants, copy whereof has been filed alongwith the written reply of the Opposite Parties and has been signed by both the applicants.
2. The said application form recites that the appropriate permission under the Punjab Apartments and Property Regulation Act has been obtained and the building plan has been approved by the competent authority. The Opposite Party has also brought on record the partial Completion Certificate dated 10.09.2014, which is on record.
3. The Complainants have pointed out that clause 11(a) of the Agreement indicates the completion of the construction within 30 months from the date of the application. The availability of the Occupation Certificate was also mentioned as a condition in the said clause for offering possession.
4. The Occupation Certificate was issued on 29.04.2016 that has been filed on record alongwith evidence of the Opposite Party, which remains undisputed.
5. According to the Complainants, the Opposite Party was to furnish an agreement within a very short time, but the copy of the said Agreement was tendered vide letter dated 15.07.2015.
6. The said Agreement form was filled-up on 15.07.2015 and signed on 04.12.2015. Copy of the Agreement is on record, which also refers to the application moved by the Complainants and the booking amount of Rs. 6 lakhs. There is no dispute that the said agreement was signed against a basic sale price of Rs. 86,50,740/- and the total price payable alongwith other payments to the tune of Rs. 96,06,748/-.
7. The payments according to the Complainants were made and the due date of offering of physical possession was 29.03.2017.
8. The Complainants allege that they had paid a sum of Rs. 1,15,72,678.25 paise. A letter of possession was then tendered on 30.01.2017. This letter has been filed as Annexure C6 to the complaint which recites that the Complainants were offered possession as the Completion Certificate for the Hyde Park Estate had been received.
9. The Complainant states that on receipt of this letter of possession, in response thereto, he came to India from United Kingdom to inspect the premises and then respond to the letter of possession. He arrived on 17.05.2017 and visited the site and the constructed premises. During the said inspection, the Complainant found several deficiencies in the flat offered and he detailed the said deficiencies in the shape of his observations that were jotted on a Customer Detail Form provided to him by the Maintenance Contractor of the Opposite Party namely M/s. J.L.L.

10. Since the deficiencies according to the Complainants were such that the flat was almost inhabitable, he filed the instant Complaint on 22.05.2017 before this Commission, praying for refund of the amount. The Complaint was entertained. The Complainant was called upon to furnish a report of the qualified Architect or Civil Engineer supported by an affidavit, reporting the defects in the flat that had been offered to the Complainants. This Order was passed on 07.07.2017, which is extracted herein under:

“The complainants are directed to file report of the qualified architect/civil engineer supported by an affidavit and reporting the defects, if any, in the flat which the opposite party has offered to them.

Re-notify on 17.11.2017.”

11. According to the Complainant and which is also on record, a report was tendered, prepared by one Mr. H. G. Ahluwalia, Civil Engineer, which is dated 16.11.2017.

12. This report enlists 24 items of deficiencies including the snags, which were mentioned by the Complainant in the Customer Observation report dated 17.05.2017, referred to herein above. The deficiencies are extracted herein under:

| Sr. No. | Customer Observation dated 17.05.2017 | Submissions / Opinion |
|---------|--|----------------------------|
| 1. | Cracks in living area near Aluminium door of whole of Switch Board | Existing |
| 2. | CP fitting pending in all Bathrooms | Not yet provided |
| 3. | Looking mirror to be replaced in Front Bed Room Bathroom | Provided |
| 4. | Crack in front Balcony | Existing |
| 5. | Crack in Master Bed Room Wall near door | Pending |
| 6. | Water Closet cleaning work pending | Pending |
| 7. | Water Closet repair work pending | Pending |
| 8. | Wall tile broken in Rear Bathroom | Pending |
| 9. | Looking Mirror Broken / Master Bed Room Bathroom | Provided |
| 10. | Aluminium window of Master Bed Room alignment issue | Not rectified |
| 11. | Aluminium door alignment issue of Master Bed Room | Not rectified |
| 12. | Hinges in door to be cleaned of all doors | Not cleaned |
| 13. | Wooden doors paint of Master Bed Room to be done | Pending |
| 14. | Aluminium window in lobby area to be aligned properly | Pending, Not yet rectified |
| 15. | Aluminium window in Rear Bed Room to be | Not yet rectified |

| | | |
|-----|---|--|
| | aligned properly | |
| 16. | Rear Bed Room looking mirror to be replaced | Not Replaced |
| 17. | Wall tile broken in Rear Bed Room near window | Not Replaced |
| 18. | Switch plate in utility Room missing | Not Replaced |
| 19. | Wooden floor finishing work pending | Poor finishing work and that too is pending |
| 20. | Main door polish and filling to be done | Pending |
| 21. | Gap L/W all door and floor | Pending |
| 22. | Graying in floor tiles to be done | Partly done but floor tiles not properly laid and uneven |
| 23. | Cleaning to be done in whole floors | Pending |
| 24. | Silicon filling to be done in whole floor | Poor finishing work |

13. After having perused the said report, which was brought on record, this Commission passed the following Order issuing notice on 17.11.2017:

The report of the Civil Engineer brought by the complainants is taken on record. Heard.

Admitted, subject to just exceptions.

The complainants are directed to file an amended memo of parties impleading DLF Home Developers Ltd. as the sole OP though more than one addresses of the OP can be given.

Thereafter, issue notice in terms of Section 13(1) of the Consumer Protection Act to the aforesaid OP for 07.03.2018, directing it to give its version of the case within a period of 30 days from the date of receipt of the notice.

14. The written version was accepted by the Commission on costs on 02.08.2018, the matter proceeded for exchange of affidavits.
15. In the paragraphs in reply to the merits of the Complaint, the fact of the Complainant having visited on 17.05.2017 is admitted in paragraph nos. 15 to 17 thereof. The said reply, even though filed in 2018, did not contain any averment regarding the report of the Civil Engineer as filed by the Complainant in terms of the order of the Commission.
16. The Civil Engineer, Mr. H. G. Ahluwalia also filed his affidavit on 01.08.2022 before this Commission after serving the copy of the same on the learned Counsel for the Opposite Party alongwith photographs stated to be of the same building.

17. It is to be noted that in the Order dated 10.02.2020, the Bench hearing the matter indicated that the report which had been earlier filed in 2017 by Mr. Ahluwalia was missing and the Office was directed to place it on file. Certain photographs were tendered by the Complainant, which are dated 06.02.2020 and have been mentioned in the Ordersheet dated 10.02.2020. The Complainant was directed to bring the said photographs also on record. The Order dated 10.02.2020 is extracted herein under:

From a perusal of the Order dated 17.11.2017, we find that the Report of the Civil Engineer was filed by the Complainants and was taken on Record. However, the Report is not on the file.

The Office is directed to trace the Report and place it on Record. If for some reason, the Office is not in a position to trace out the said Report, learned Counsel for the Complainants is given liberty to file a true copy of the said Report, along with an Affidavit, after giving advance copy to the learned Counsel for the Opposite Party.

In the meantime, learned Counsel for the Complainants may file the photographs taken on 06.02.2020, along with an Affidavit, within two weeks, after giving advance copy to the learned Counsel for the Opposite Party.

Learned Counsel for the Opposite Party may file the Report dated 09.02.2018 of the Local Commissioner (Mr. Vimal Kumar Sharma, Architect, Chandigarh Housing Board, Chandigarh) within two weeks, after giving advance copy to the learned Counsel for the Complainants.

Both the parties are at liberty to file the reply to the respective Applications, which may be filed by either of the parties, within two weeks thereafter.

The learned Counsel for the Opposite Party submitted that matters relating to the same Project have been decided by Mr. Justice V.K. Jain. We, therefore, feel it appropriate that this matter be also heard and decided by Mr. Justice V.K. Jain. Therefore, list for final hearing before Hon'ble Mr. Justice V.K. Jain on 21.04.2020.

It is made clear that on the next date the matter shall not be adjourned on any ground whatsoever.

18. The Opposite Parties also brought on record the report of the Architect dated 09.02.2018, which was in relation to the other matters pending before the Commission in Appeals regarding development in the same area, but for different blocks. This has been brought on record on 05.01.2023.

19. The contest between the parties was held up on account of the intervening Covid pandemic period and the documents filed by the Opposite Party of the Architect / Local Commission

was accepted on record vide Order dated 21.02.2023. The case came up ultimately for proceeding with the hearing on 22.11.2023 when the following Order was passed:

Heard learned Counsel for the Complainants who has advanced his submissions stating that the booking of the flat was made on 30.09.2014 and it was a construction linked plan. The agreement had to be signed within a short time of the application but it came to be tendered later on and it was signed on 04.12.2015. The contention is that the Complainants made the payments which continued and according to the terms of the agreement the possession had to be offered within 30 months which period according to the date of the application arrived on 30.03.2017. The contention is that prior to this date a letter of possession was dispatched to the Complainants which is dated 30.01.2017 and which according to the Complainants was only an offer of paper possession as the constructions were neither completed nor the documents in support for handing over legal possession were available. The said letter dated 30.01.2017 according to the learned Counsel for the Complainants incorrectly and erroneously mentioned the availability of a completion certificate.

The submission is that the Complainant arrived in India, as he is an NRI from England and after having noted the deficiencies on 17.05.2017 tendered a list of the deficiencies that were according to the Complainants existing as a result whereof the flat was not in a habitable position.

According to the Complainants nothing was responded to and therefore the Complainant was compelled to file this complaint which was instituted on 22.05.2017.

On entertaining the complaint there is an order made by the Commission on 07.07.2017 calling upon the Complainants to file a report of a qualified architect/ civil engineer supported by an affidavit for supporting the defect if any in the flat which has been offered to him.

Learned Counsel submits that the said report was obtained from a civil engineer dated 16.11.2017 and according to the order sheets on record the said report was taken on record on 17.11.2017 itself and the complaint was admitted where after notices were issued.

The said report later on became untraceable and after the Opposite Party had filed their written version and the affidavits had been exchanged the matter proceeded where after liberty was given on 10.02.2020 to bring the copy of the said report on record with an advance copy to the Opposite Party. The report was finally accepted on record vide order dated 21.02.2023.

Learned Counsel for the Complainants submits that the said report has not been objected to or questioned by the Opposite Party till date. Learned Counsel relying on the said report as well as other photographs appended thereto and the aforesaid facts submits

that there has been a clear default on the part of the Opposite Party and therefore the claim of refund deserves to be accepted.

Pointing out to the order of this Commission in the case of *Vineet Kumar and Another versus DLF Universal Limited and Anr. reported in 2019 SCC online NCDRC 9*, he submits that the facts of the present case are distinguishable and flat in question was not subject matter of assessment in the aforesaid decision, hence the learned Counsel attempted to distinguish the said judgment on its application on the facts of the present case.

He further submits that apart from this, and relying on paragraph 26 of the said judgment he contends that the circumstances of the Complainants are altogether altered and in such a situation there is nothing on record to indicate that the claim of the Complainants does not satisfy the test of the judgments that apply in such cases or of the provisions of the Consumer Protection Act, 1986. He therefore submits that the complaint deserves to be allowed.

Mr. Pravin Bahadur, learned Counsel for the Opposite Party contends that there are certain facts which need to be noticed at the outset and were not pointed out during the course of submissions, namely, that a partial completion certificate was already in hand with the Opposite Party on 10.09.2014. Further, there was no objection to the signing of the agreement on account of any delay by the Complainant and the agreement was signed voluntarily. The partial completion certificate as well as the occupation certificate were available with the Opposite Party on 29.04.2016. It is thereafter that an offer of possession was tendered on 30.01.2017 which is the letter that stands admitted to have been received by the Complainants. He then submits that after having received the offer partial payments were made on 22.03.2017 by the Complainants. Subsequently, on 17.05.2017 the Complainants indicated certain deficiencies which according to him are very minor deficiencies that could be rectified within no time. Yet the present complaint surprisingly enough was filed immediately after five days on 22.05.2017 without waiting for the removal of the defects or further progress in handing over the actual possession of the flats.

He further submits that the payments due had also not been made in its entirety and consequently the filing of the complaint in a hurried manner categorically indicates that it was the Complainants who did not want to continue with the completion of the transaction and there was no default on the part of the answering Opposite Party.

The extent of payments as sought to be refunded by the Complainants is being disputed as the amount stated in the prayer clause is not exactly the payments which according to the Opposite Party had been received.

The arguments could not conclude today. As agreed between the learned Counsels for both the Parties list on 08.12.2023 at 2.00 p.m. Other submissions being raised by Mr. Pravin Bahadur shall also be elaborated on the next date.

20. Counsel for the Complainants urged that the Complainant had made all payments except for a minor sum as alleged by the Opposite Party, but inspite of having made substantial payments towards the agreement, the handing over of possession was delayed and when the same was inspected, huge deficiencies were noticed and the same were pointed out as noted above. The contention is that the delay in offering possession is established that too even of an incomplete premises, the deficiencies wherein rendered the premises inhabitable.
21. It has further been pointed out that the report of the Civil Engineer and Local Commission in respect of another case, which has been filed by the Opposite Party is of no avail in as much as the present premises or structure was nowhere in consideration or was even reported about in the said document, hence they cannot be read as evidence for the present purpose.
22. Learned Counsel for the Opposite Party urged that this is not a case where refund should be ordered in as much as there was timely offer of possession and there was a default in the final payments by the Complainants. In such circumstances, relying on the reports that have been tendered by the Opposite Party as mentioned above as well as the decision of the case in *Vineet Kumar & Anr. Vs. DLF Universal Limited & Anr.*, 2019 SCC Online NCDRC 9, the contention is that in the absence of any deficiency or any unfair trade practice, the Complaint should not be allowed on the mere asking of the Complainants, who want to convert this dispute into a suit for recovery for the amount already paid without there being any default in possession or the required documents in relation thereto. It is urged that the offer of possession was made well within time before the expiry of the completion period and the Complainant having failed to properly respond, suddenly decided to back-out from the deal for his own personal reasons, which are neither a change of circumstance, compelling him to do so and is a voluntary step taken by the Complainant, which disentitles him from seeking any refund. The contention raised is that the Complainants would be entitled for physical possession on the payment of the balance amount as the flat is ready for possession since 2017.
23. Learned Counsel, then pointing out towards the alleged deficiencies, states that they are vague and do not amount to any real deficiency and are rather very small snags which are usually rectified before delivering possession. Learned Counsel submits that the nature of the snags pointed out could have been rectified within a very short time, which were not deficiencies at all and were snags regarding some fittings. The contention is that these snags were noticed by the Complainant on 17.05.2017 and without even waiting for any reasonable period to allow the rectification thereof, which could have been carried out within no time, the Complainants immediately came and filed this Complaint on 22.05.2022 within five days of their visit.
24. Learned Counsel submits that this conduct of the Complainant was clearly indicative of the fact that they were not interested in taking possession and there was a change of heart to move out of the terms of the contract, which they cannot be permitted to do.
25. Commenting upon the report submitted by Mr. H. G. Ahluwalia, the Civil Engineer in 2017, it is urged that the said report went missing from the record and that the Opposite

Party had not been made aware of the said report. But even assuming that the said report had been filed, it was by a person, who had submitted similar reports in respect of other flat buyers and those flat buyers had already taken possession except the Complainants. It is submitted that the building is being occupied by the flat buyers, who had booked their flats alongwith the Complainants and they are comfortably residing there for which reliance has been placed on the photographs, which have now been filed alongwith the application dated 29.11.2023, which is on record. It is urged that these photographs are the real photographs as compared to the photographs filed by the Complainants or the report of their Civil Engineer. Learned Counsel urged that the photographs filed on 06.02.2020 do not appear to be the photographs of the same premises and cannot be relied on in as much as even as on today, the said premises can be inspected through a Commissioner to be appointed by this Commission for the purpose of ascertaining the truthfulness of the allegations made by the Complainants in as much as the flat is complete and perfectly in order in all respects. The photographs, according to the learned Counsel, filed by the Complainants, do not reflect the correct picture and hence the same should not be considered at all.

26. Learned Counsel then submits that the Opposite Party had very honestly and devotedly carried out the project and offered possession in terms of the agreement between the parties, which is being violated by the Complainants by trying to move out of the Agreement on flimsy grounds. It is urged that even though the Consumer Protection Act, 1986 is for the protection of the Consumers, the builders do not deserve to be given a treatment by ordering refund in every case. Learned Counsel submits that this is one of the cases where refund is absolutely unwarranted and he submits that with regard to the same developer, the Order of this Commission in the case of Vineet Kumar (supra) deserves to be followed where also possession was directed to be handed over except in one case. It is submitted that the solitary case in which refund was directed on the ground of changed circumstances was also reviewed subsequently as the order of refund had been obtained on incorrect disclosure.
27. Thus, all flat buyers under the project had been extended possession including those in the case of Vineet Kumar (supra) and also in the set of flat buyers, who are at par with the Complainant in the present project. Mr. Pravin Bahadur, learned Counsel urged that the contention that an incorrect statement was given in the letter dated 13.01.2017 about completion certificate being available, is misplaced in as much as the said statement was vis-à-vis the partial completion certificate and he has also invited the attention of the Bench to the compilation filed on 07.12.2023 placing reliance on the notifications dated 17.11.2016 and 02.09.2014. The notification dated 17.11.2016 is about the sanction under the Punjab Apartment and Property Regulation Act, 1995 and issuance of a partial completion certificate to a housing project. He submits that the certificate of the Opposite Party is a partial completion certificate as defined in the said notification dated 02.09.2014 and he points out the distinction between a Completion Certificate and a Partial Completion Certificate with the aid of the said notification. The same is extracted herein under:

GOVERNMENT OF PUNJAB

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**(HOUSING II BRANCH)****No. 4966-CTP (Pb)/SP-458****Dated: 02.09.2014**

Whereas the development of colonies, Mega Housing Project, have been approved under the provisions of the Punjab Apartment & Property Regulation Act, 1995, Mega Housing Policy. However, the present frame work does not provide the clear procedure to issue completion or partial completion to such projects. A number of approved projects in the state are awaiting issue of completion/partial certificate which is causing hardship to promoters & residents of such projects for the maintenance & upkeep of public utilities & services.

To streamline the issue of completion/ partial completion certificate for PAPRA & Mega Projects falling outside municipal limits, its procedure and time frame etc., the detailed guide lines/procedure has been worked out which is as under:-

Completion Certificate:-

"Completion Certificate" means a Certificate issued by the Competent Authority on written request of the applicant or promoter after completion of building works including all services or utilities as provided in the sanctioned building plans in case of a building and in case of a colony under the Punjab Apartment Property Regulation Act, 1995 or the Mega Projects policy on completion of development works viz, roads, water supply, sewerage and drainage system, street lighting parks and other utilities as provided in the layout plan of the colony or project.

Provided that the economically weaker section component of the colony or project has been duly completed by the applicant or promoter as per policy of the State Government.

Provided further that the applicant or promoter has made all payments or charges to the Competent Authority and the area under roads and parks have been duly transferred to the concerned Authority by the applicant or promoter.

Partial Completion Certificate:

Partial completion for various types of projects shall mean as under;

1. Partial Completion of Land Development Projects.

May be issued, if the promoter fulfills the following conditions;

- i. The minimum area for which partial completion certificate is sought should not be less than 25 acres.
- ii. The layout of entire project area should be demarcated at site as per approved layout plan.
- iii. The construction of approach road to project and connectivity to all the public utilities and services is complete and operational.
- iv. All the public utilities and services should be operational in that part of project for which partial completion certificate is sought viz; Water supply, sewerage, Storm Water drainage, Fire Fighting Services, HT/LT Street Light, Parks etc. and outfall sewer lines should be laid upto Sewage Treatment Plant.
- v. Mandatory clearances such as Environment clearance, Fire safety, NOC from National Highway Authority in case of approach from N.H., NOC from Forest Deptt. for the entire project, should have been obtained, if applicable.
- vi. Test Certificate for commissioning of Transformers duly issued by Chief Electrical Inspector, Punjab.
- vii. NDC for upto date payments of due charges and fees from the concerned development authority for entire Project.
- viii. Proportionate construction of E.W.S Houses or transfer of land reserved for EWS to the Development Authority as per policy should be complete.
- ix. Arrangements for water harvesting system as per approved plan.

28. Thus, according to him, the Complainant was not misled and as a matter of fact, the Opposite Party had completed legal papers available with them while offering the possession to the Complainants. It is also urged that the other flat buyers have entered into possession on the strength of the same documents and therefore, the contention of the Complainants that they have been offered possession without complete documents is incorrect.

29. Learned Counsel contends that it is the Complainants, who have fallen short of their promise to make payment of the full amount and have hurriedly tried to back out of the Agreement without taking physical possession, which was promptly offered to them.

30. Having considered the submissions raised, at the very outset, the submissions raised in respect of the Order of this Commission in the case of Vineet Kumar (supra) needs to be clarified. It is undisputed that the said claim was with regard to a different set of buildings

with which the Complainants are nowhere concerned. It may be that the said constructions are in the project of the Opposite Party where survey was conducted and believing on the said survey report, the claim of refund was not allowed and directions were issued for handing over possession. Nonetheless the fact remains that the present construction was neither part of the said report or the dispute covering the present project.

31. Learned Counsel for the Opposite Party impressed upon the Bench that the entire project had been surveyed and the allegations of the infrastructure being not available was rejected. He further submits that the photographs filed on 06.02.2020 do not reflect the correct picture.
32. It is quite possible that the other external infrastructure facilities may have been available, but in the instant case, the dispute was with regard to the deficiencies of a particular flat in the building and the other amenities required for the enjoyment of the said flat. This was not subject matter of consideration in Vineet Kumar's case (supra) and hence drawing a parallel may not be appropriate as the allegations of deficiencies are neither similar nor identical. The taking over of possession by other flat owners does not, therefore, impede upon the right of the present Complainant to press their Complaint. There is yet another significant factor to note that the case of Vineet Kumar (supra) was decided when this matter was pending. In this case, a separate Order has been passed, calling upon the Complainant to file a report of the Civil Engineer before proceeding with the case. Admittedly, the said report has been filed and is on record. No attempt has been made by the Opposite Party to call upon the said Engineer for either his cross-examination or denying the deficiencies pointed out by him. To the contrary, the arguments are that the snags were minor that were pointed out on 17.05.2017 and without waiting for rectification of the same, the complaint was immediately filed within five days. Whatever is being described as snags, has been indicated by the Complainant to be major deficiencies, which render the flat inhabitable. This fact was reasserted with the production of the photographs dated 06.02.2020. There was no occasion for the Complainants to have clicked the photographs of any other building to substantiate their claim. Apparently, the design of the grills, the building and the structure do not appear to be different in the photographs tendered by either of the parties. The photographs given by the Opposite Party now in 2023 do indicate improvements being demonstrated. Mr. Pravin Bahadur contends that the photographs tendered by the Opposite Party are in respect of the same number of the flat, whereas the photographs dated 06.02.2020 does not indicate the number of the flat or the building in question. There is no reason to disbelieve the status of the flat in 2020, which photographs were neither rebutted nor objected to by the Opposite Party when they were filed in 2020 itself. The Opposite Party have nowhere alleged that the snags or the deficiencies, which were pointed out and existed in 2017 have been incorrectly described by the Complainants. The improvements, which might have been made later on and are depicted in the photographs of the Opposite Party has been filed in 2023 do not reflect the status of the flats as on the date when the inspection was carried out, that is 17.05.2017 or even thereafter in 2020. To the contrary, the snags pointed out in the customer observation slip have not been disputed. An attempt has been made to contend that the same could have rectified, but the Complainants, in haste, filed their complaint before this Commission within five days. This cannot be used as a measure to

counter the deficiencies, which did exist of whatever nature they were. There is nothing on record to indicate that the Opposite Party had, admitting the said snags, proceeded to rectify the same. The Complainants, therefore, cannot be blamed for having filed their complaint after five days after witnessing of the status of deficiencies. According to the Complainants and the photographs of 06.02.2020, the said deficiencies had worsened and cracks had appeared in the walls as well as other major defects in fittings of the completion of the flat including the toilet and the kitchen. Any improvement to the photographs in 2023, therefore, cannot amount to the denial of the status of the deficiencies existing in 2017 and again in 2020.

33. It is true that there was some confusion regarding the missing of the Civil Engineer report of 2017, but the same was again supplied in 2022 as indicated above. The same has not been contradicted and as indicated above, the deficiencies which were noted on 17.05.2017 have not been rebutted.
34. Even assuming that the external infrastructure had been completed and which would be reflected in the Order passed by this Commission in the case of Vineet Kumar (supra), the same cannot be a ground to rebut the deficiencies in the flat in question as pointed out by the Complainants.
35. The deficiencies, therefore, in the opinion of the Commission did exist and the flat was not offered in a complete state. It is undisputed that the final Completion Certificate has not been obtained or is available. It is only the partial Completion Certificate and Occupancy Certificate that was available at the time of offering possession. In the given circumstances, the contention raised on behalf of the Complainant about deficiency in service regarding the completion of the flat is clearly made out. The Complainants were not offered the flat as promised by the Opposite Party, which is evident from the facts narrated above and the findings recorded herein. This being the position, the only conclusion that can be drawn is that the Complainants are entitled for their refund.
36. At this stage, there is a clarification pointed out and which is a matter of record and has not been disputed by the parties. This is with regard to a refund of Rs. 7,48,990/- made to the Complainants through one Gurubaksh Singh. Learned Counsel for the Complainants has not denied the said refund of Rs. 7,48,990/-.
37. Learned Counsel for the Opposite Party also urged that even recently a number of e-mails were exchanged, which indicate that the Complainants were intending to settle the matter. A perusal of the said e-mails would indicate that the same may be a communication between the parties, but it does not indicate the abandonment of the claim for refund made in this Complaint. The communication, therefore, cannot be read as an intendment on the part of the Complainants to give-up their claim.
38. Accordingly, the Complaint is allowed with a direction to refund the amount of Rs. 1,15,72,678.25 minus an amount of Rs. 7,48,990/- refunded to the Complainants. The balance amount on calculation shall be refunded with 9% interest, which is the prevalent rate, as approved in several cases, by the Hon'ble Supreme Court in cases of refund.
39. So far as the award of compensation, mental agony and harassment is concerned, the Complaint was filed within five days of the inspection. The covid period did intervene in between holding up the litigation process. The Opposite party had made an offer of possession, which was within time, but as indicated above, the flat was deficient in its

completion. The Complainants are residents of United Kingdom and as per the learned Counsel for the Complainants, in view of the passage of time and the Complainant No. 1 having attained retirement in service, he does not propose to retain the property for settling in India. Consequently, keeping in view the status of the litigation remaining pending and the aforesaid facts, the Commission does not find any reason to award any amount for mental agony and harassment.

40. However, the litigation cost has to be kept in mind as the Complainant No. 1 had to travel from United Kingdom a number of times to pursue this litigation and bearing legal expenses. Consequently, a sum of Rs. 1 lakh is awarded as litigation expenses to the Complainant together with the amount of refund and interest referred to herein above.

41. The Complaint is accordingly allowed.

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A. P. SAHI
PRESIDENT