

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 2010 OF 2018

1. SATISH TALWAR

R/o House No- 1069, Sector-15/B,

Chandigarh

.....Complainant(s)

Versus

1. M/S. SATYA DEVELOPERS PRIVATE LIMITED

(Through Its Managing Director) R/o - 34, Babarlane, Bengali
Market,

New Delhi - 110001

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER
HON'BLE DR. INDER JIT SINGH, MEMBER**

For the Complainant : Mr. Salil Paul, Advocate
: Mr. Sahil Paul, Advocate

For the Opp.Party : Ms. Kaadambari, Advocate
: Ms. Ayushi Ramade, Advocate

Dated : 19 Jan 2023

ORDER

1. Heard Mr. Salil Paul, Advocate, for the complainant and Ms. Kaadambari, Advocate, for the opposite party.
2. Satish Talwar has filed above complaint, for directing opposite party to (i) refund entire amount of Rs.4066517/- with interest @12% per annum, from the date of respective deposit till the date of payment, and (ii) any other relief which is deemed fit and proper in the facts and circumstances of the case;
3. The complainant stated that M/s. Satya Developers Private Limited (the opposite party) was a company, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project and selling its unit to the prospective buyers. The opposite party launched a group housing project, in the name of "The Hermitage" at village Daulatabad, Sector-103, Gurgaon, in the year 2011 and made wide publicity of its facilities and amenities. The complainant inquired from the officials of the opposite party in January, 2014 about the period under which, possession would be handed over, who informed that possession would be handed over within three years. Believing upon the representations and promises of the opposite party, the complainant booked a flat and deposited Rs.500000/- on 13.01.2014. The opposite party issued receipt dated 22.01.2014 and allotted Unit no.T-2-604. As per demand, the complainant deposited Rs.1192506/- on 04.03.2014 and Rs.2373636/- on 21.05.2014. The opposite party executed Buyer's Agreement on 31.05.2014, in which, total sale price was mentioned as Rs.11072589. Annexure-3 provides payment plan, under which total consideration was payable in four instalments. Last instalment of Rs.7809223/- was payable on offer of possession. Clause-6.2 of the agreement provides 36 months period from start of construction with grace period of six months, for completion of the construction. Clause-6.3 of the agreement provides for delayed compensation @Rs.5/- per sq.ft. per month on super area. The period of 36 months expired in May, 2017, but the opposite party did not offer possession. In December, 2017, the complainant went to site of the project and found that the construction was not near completion. The complainant made inquiry in the office of the opposite party but they were not in position to give any satisfactory reply in respect of possession. The

opposite party issued letter dated 15.03.2018, as “intimation of possession” and demanded Rs.10347723/-, to be deposited till 14.04.2018. The complainant went to the site in March, 2018 and requested the workmen at the site for inspection of the flat, which was denied. The complainant went in the office of opposite party and expressed his desire to inspect the flat which was denied by the officials of the opposite party. The complainant then made oral request for refund of his money was not accepted. The complainant gave a legal notice dated 15.05.2018, to the opposite party, for refund of his money with interest @12% per annum. In spite of service of the notice, the opposite party did not respond. The complaint was filed on 06.09.2019, alleging unfair trade practice and deficiency in service.

4. The opposite party has filed its written reply on 03.12.2018 and contested the complaint, in which, booking of the flat on 22.01.2014, allotment of flat, execution of Buyer’s Agreement dated 31.05.2014 and deposits made by the complainant, have not been disputed. The opposite party stated that the construction was started on 31.05.2014 and completed in March, 2017. The opposite party applied for issue of “occupation certificate” on 27.03.2017. “Occupation certificate” was issued on 18.03.2018 and the opposite party offered possession to the complainant vide letter 15.03.2018 and demanded Rs.10347723/- i.e. last instalment. The complainant, instead of depositing last instalment and taking possession, started demanding for refund of his money with interest. The construction was completed within the period as provided in the agreement, however, statutory authority took about one year in issue of “occupation certificate”, which is force majeure reason. Due date of possession including grace period was November, 2017, while possession was offered on 15.03.2018, which is not an unreasonable delay. It has been denied that the construction was incomplete on the date of offer of possession. The complaint has been filed on various false and frivolous allegations and is liable to be dismissed. Preliminary objection that the complainant was not a consumer and the agreement contained an arbitration clause as such the complainant be relegated for arbitration, have been raised.

5. The complainant filed Rejoinder Reply, Affidavit of Evidence of Satish Talwar and documentary evidence. The opposite party filed Affidavit of Evidence of Savita Vashist and documentary evidence. Both the parties have filed their written submissions.

6. We have considered the arguments of the parties and examined the record. The opposite party completed the construction and applied for issue of “occupation certificate” on 27.03.2017. “Occupation certificate” was issued on 18.03.2018 and the opposite party offered possession to the complainant vide letter 15.03.2018. The complainant refused to take possession and demanded for return of his money, vide notice dated 15.05.2018, on the ground of unreasonable delay in offer of possession. Clause-6.2 of the agreement provides 36 months period from the date of commencement of construction with grace period of six months, for completion of the construction. Due date of possession including grace period was November, 2017, as such there was no unreasonable delay in offer of possession. Supreme Court in **Banglore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 442**, held that in civil construction matter, time cannot be an essence of contract. The complainant was not entitled to refuse possession, which was offered after obtaining occupation certificate and obligated to take possession as held by Supreme Court in **IREO Grace Tealtech Pvt. Ltd. Vs. Abhishek Khanna, (2021) 3 SCC 241**.

7. The complainant alleged that on the date of offer of possession, construction was not complete. But no evidence in support of his allegation has been filed. On the other hand statutory authority issued “occupation certificate”, which is prima facie proof of completion of the construction. The complainant alleged that super area has been increased. Under clause-4 of the Buyer’s Agreement, it has been mentioned that super area was tentative and liable to vary up to 10%. Increase in super area is within 10%.

8. The complainant has prayed for refund of him money. As the complainant is committing breach of contract, as such, the earnest money is liable to be forfeited under clause-5.2 of Buyer’s Agreement. Under clause-2.2 (iii) of Buyer’s Agreement, 20% of basic sale price has been mentioned as earnest money. But Supreme Court, in **Maula Bux Vs. Union of India, (1970) 1 SCR 928** and **Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136**, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of Section-74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damage. After cancellation of allotment, the flat remains with the developer as such there is hardly any actual damage. This Commission in CC/438/2019

Ramesh Malhotra Vs.EMAAR MGF Land Ltd. (decided on 29.06.2020), CC/3328/2017 Mrs. Prerana Banerjee Vs. Puri Construction Ltd. (decided on 07.02.2022) and CC/730/2017 Mr. Saurav Sanyal Vs. M/s. IREO Grace Pvt. Ltd. (decided on 13.04.2022) held that 10% of basic sale price is reasonable amount to be forfeited as “earnest money”.

ORDER

In view of the aforesaid discussions, the complaint is partly allowed. The opposite party is directed to refund entire amount deposited by the complainant with interest @9% per annum, from the date of respective deposit till the date of refund, after deducting 10% of basic sale price, within a period of two months from the date of the judgment.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER
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DR. INDER JIT SINGH
MEMBER