

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AT NEW DELHI**

**RESERVED ON: 25.05.2026
PRONOUNCED ON: 01.07.2026**

CONSUMER COMPLAINT NO. 57 OF 2023

WITH

NC/IA/14490/2023(EXEMPTION FROM FILING THE CERTIFIED COPY)
NC/IA/1602/2024(RECALLING OF ORDER) NC/IA/1603/2024(RECALLING OF
ORDER) NC/IA/2208/2024(DIRECTIONS) NC/IA/2348/2024(DIRECTIONS)
NC/IA/17639/2024(DIRECTIONS) NC/IA/1390/2025(CONDONATION OF DELAY
IN FILING THE WRITTEN STATEMENT) NC/IA/10391/2025(ADDITIONAL FACT)
NC/IA/2958/2026(DISMISSAL OF COMPLAINT) NC/IA/2960/2026
(MAINTAINABILITY OF COMPLAINT) NC/IA/2964/2026 (PLACING ADDL.
DOCUMENTS) NC/IA/5762/2026(WAIVER OF COSTS)

1. Frontier Heights Residents Welfare Association
Through : (Mention the authorized signatory)

Address :

No.79, Old Sy. No. 154/1
Peari City Layout, Avenue-08
Muttanallur Village
Sarjapura Hobli, Anekal Taluk
Bangalore Zone, 3 Anekal
Anekal-560099, Bengaluru Zone-3

Representing the Following Buyers :

1. Balaji K.S. &
Mahalakshmi G.
S/o R. Subramanian,
R/o Flat No. B-106, G.R. Sankalpa Apartment,
Sy. No. 63 & 77/2, Choodasandra Road,
Choodasandra, Bangalore-560099
2. Abhimanyu Aditya &
Suchita Suchi
R/o House No. 882, 1st Floor
9th A Cross 26th Main, HSRK Layout
Sector-1, Bengaluru-560102
3. Abhinash Dandpat &
Dipika Das
R/o Marathalli, Bangalore

4. Akash Mishra & Neha Kumari
R/o House No. H-29-1104
AWHO Sandeep Vihar
Kannamangala, Whitefield-Houskote Road
Bangalore-560067
5. Aman Bhatia & Anshul Saluja
R/o 106, DSR Crescent,
Bellandur, Bangalore
6. Amitabh Kishore & Rashmi Srivastava
R/o B-217, Mahaveer Sanctum,
7th Cross, LBS Nagar
Bangalore-560017
7. Ankit Jain
R/o C/o Mr. V. Narayan Reddy,
#2, Milk Dairy Road
Behind govt. School
Channasandra-560017
8. Anushila Brahma
R/o Flat No. 307,
Sapthagiri Swastika Building,
IAS Layout Kasavanahalli,
Bangalore-560035
9. Bappa Seet &
Subhashri Chandra
R/o A-205, Innovative Aquafront,
Doddanakundi, Bengaluru,
Karnataka-560037
10. Basavaraj Mahantappa Dhannur & Vidya V. Navi,
R/o # 13 & 14, Door No. 102,
Shrii Manjunath Swamy Prasanna,
K.M. lakshmiah Reddi Building,
1st Cross Valliyamma Layout, Kasavanahalli,
Bengaluru-560035
11. Deepak Kumar Sahoo & Suchismita Rout
R/o Flat No. A-102,
Land Capital Primero,
Off Sarjapura Road, Gunjur Road,
Bangalore-560035

12. Dhamodaran V.J.
R/o # 20A, Old Dharmaraja Kovil Street,
Thiruttani (Taluk), Thiruvallur (District),
Tamil Nadu-631209
13. Aditya Bikram Mishra & Dibya Jyoti Mishra
R/o 11B Jhola Sahi,
PO Buxi Bazar, Near Bauri Sahi Lane,
Cuttack-753001
14. Gyan Sagar & Jagriti Kashyap
R/o 48, Pakri Barawan Nawada,
Bihar-805124
15. Himangshu Lahkar & Himsikha Das
R/o E-304, Legend Ornate,
Devarachikkanahalli
Bangalore-560068
16. Irappa Hosamani & Lakshmi Havin
R/o # 178/4-5, 5th Cross,
Venkatapura Main Road,
Bangalore-560034
17. K. Raghavendra Reddy
R/o A-410, Abheel Lake View Apartment,
Serenity Layout, Kaikondrahalli,
Bengaluru-560035
18. Kajal Verma
R/o # 670, 15th Main,
22nd Cross, HSK, Sector-3
Bangalore
19. Kulpreet Kaur Mukherjee & Ankur Mukherjee
R/o A-318, Sobha Quartz,
Bellandur Green Glen Layout,
Bangalore-510103
20. Kumar Abhishek & Joohee Verma
R/o 012, New Heaven Apartment,
Doddanekundi Extn,
Bangalore-560048

21. Leeladhar Singh Senger & Rekha Tomar
R/o House No.2,
3rd Main Anaiyappa Layout,
Konena Agrahara Hal,
Post Bangalore-560017
22. Shivam Agarwal Meena Agarwal
R/o Shivangan,
Near Ram Hanuman Temple,
RTO Road Sikar, Rajasthan
23. Mohit Gupta & Sadhavi Gupta
R/o HN 147, 2nd Floor,
8th Main, 1st Cross, Koramangala 3 Block,
Koramangala, Bengaluru
24. Mrigendra Kumar
R/o Sathi Road No. 1A,
Ashok Nagar, Kankarbagh,
Patna, Bihar-800020
25. Poluru Ramprasad & Shiyamala S.
R/o B-102, Choodasandra,
Bangalore-560035
26. Prasun Banjerjee
R/o B-401, Hilife Rio,
Hadosiddapura
27. Rajiv Ranjan Priyadarshi
R/o Village Premdiha,
Post Mohaddinagar,
District Lakhisarai, PIN-811315
28. R. Rajkumar & Pranathi Rajkumar
R/o G-02, Silver Stone Apartment,
5th Cross Hanumareddy layout,
Chinnappanahalli, Bengaluru,
Karnataka-560037
29. Rameshwar Prasad Sharma & Priti Sharma
R/o B-3, Super Pramod Resi.,
7th A Cross Malleshpalya, Bangalore

30. Rasakatla Sundeep & Endla Rajya Lakshmi
R/o 28-4 12/1, Shiva Narayana Nilayam,
Caltex Area, Bellampalli,
Mancherial District, Telangana State-504251
31. Ravi Pathak & Rakhi Kumari
R/o Near Police Line,
Hamidganj, Daltonganj,
Jharkhand
32. Ravi Raj
R/o A 1-604, Snn Raj Serenity,
Suraksha Nagar, Yellenahalli,
Begur, Bengaluru, Karnataka-560068
33. Ravi Kumar Roy & Priyanka Garg
R/o A 4-602, SNN Raj Greenbay,
Electronic City, Phase-2
Bengaluru-5600100
34. Reshmi Roy
R/o 2001, Wama Ibanne,
Kasavanahalli, Bangalore
35. Rohit Sengar & Rimsy Saini
R/o 1089, 3rd Main AECS Layout,
D-Block, Kundalhalli,
Bangalore-37
36. Roopesh PM & Saarika T.
R/o Nirmal, Vilayancode (PO),
Kannur (DT), Kerala-670504
37. Sadananda Bhat & Usha Hegde
R/o No. 209, Divyajyothi Earth,
Norbert Church Road,
Kasavanahalli, Sarjapura Road,
Bangalore-560035
38. Sandeep Kumar Singh & Reepu Kumari
R/o No.001, Soundarya Pranav Apartment,
Ranka Colony, Bannerghatta Road,
Opposite Mantri Terrace, Bengaluru-560076

39. Seshadri Avula & Pooja Rai
R/o 1-194/6, Dhannupur,
V. Kota, Chittoor,
Andhra Pradesh-517424
40. Shailesh Kumar Keshri
R/o Ruebisbachstrasse 47,
Kloten Zurich
41. Siddharth Kumar Srivastava & Jyoti Srivastava
R/o No. 572, 4th Cross,
6th Main, Vijaya Bank Colony,
Off BG Road, Bangalore-560076
42. Soukendra Chakraborty & Manali Bhattacharyya
R/o Flat No. 203, Plot No.326,
Sai Krupa Apartment,
15th Cross KPCL Layout,
Kasavanahalli, Bengaluru, Karnataka-560035
43. Sravankumar Allu & Lokeshwari Gottapu
R/o 17th Cross, Pragathi Layout,
Doddanakundi, Bangalore-560037
44. Mr. Sudeep Rai B.V.
R/o Emmanuel Heights, Tower 2-A, No. 603,
Amrita Nagar, Choodasandra,
Bangalore-560099
45. Sumit Ahuja & Payal Ahuja,
R/o 111 A/84, Ground Floor
Ashok Nagar, Kanpur,
Uttar Pradesh-208012
46. Suraj Janardan Gharat
R/o Flat No. 301, Plot No.84,
7th Cross Road,
Sri Venkateshwara Layout,
Munnekolal, Bengaluru-560037
47. Tulasi Ram Thota
R/o 107, Block-A,
Ushodaya Aqua, Amrita Nagar,
Choodasandra, Bengaluru-560099

48. Varun Kumar Singh & Beena Rajaram Singh
R/o Flat No. 1106, Building VRR Fortuna,
Jantha Colony, Charmelaram,
Sarajpur Road, Bangalore-56003

49. Mr. Vikas Chandrashekhar Shresthi
R/o C-58/59, Surve Nagar,
Kalamba Road, Kolhapur,
Maharashtra-416007

50. Vikas Pathak
R/o 458, 2nd Floor, 2nd Main Road, AECS Layout,
B-Block Bangalore 560037

51. Vikrama Bhatta
R/o Flat No. 204,
Sapthagiri Sampada,
No. 317, 8th Cross, KPCL Layout, Kasavanahalli,
Sarajpur Road, Bangalore-560035

52. Vishnu Nagesh Gouda & Mrs. Veena Gouda
R/o No. 2903, c/6, Vishnu Nilaya,
C/o Nagesh K. Gouda, Port Colony,
1st Cross, Sankriwada, Karwar,
Uttara Kannada, Karnataka-581304

.... Complainants

Versus

1. M/s Frontier Shelters Pvt. Ltd.
Through : Mr. Ananda Pruthvi,
Office at : No.422, 2nd Floor,
Opposite to Goshala, 80 ft. Road
6th Block, Koramangala Bangalore – 560 095

2. Mr. Ananda Pruthvi
Managing Director
M/s Frontier Shelters Pvt. Ltd.
Address : No.422, 2nd Floor, Opposite to Goshala, 80 ft. Road
6th Block, Koramangala
Bangalore – 560 095

3. Mr. C. Anand
R/o No. 183, 18th Main 3rd Cross, 6th Block
Koramangala
Bangalore – 560 095

..... Opposite Parties

BEFORE:

**HON'BLE AVM JONNALAGADDA RAJENDRA, AVSM, VSM (Retd)
PRESIDING MEMBER**

HON'BLE DR. SADHNA SHANKER, MEMBER

For the Complainant : Mr. Chandrachur Bhattacharyya, Advocate

For the Opposite Party : Mr. Ramana M.V.V., Advocate (Through VC)
Mr. Mirander Kumar, Advocate
Mr. Abhay Choudhary, Advocate

JUDGMENT

AIR VICE MARSHAL JONNALAGADDA RAJENDRA, AVSM VSM (Retd)

1. The present Consumer Complaint has been filed against the Opposite Parties (OPs) seeking the following:

“a. Pass orders and direct the Opposite Parties to complete the construction of the apartments in all respects with all promised facilities and amenities and including the requisite Occupancy Certificate and;

b. Pass orders and direct the OPs to hand over the legal possession of the apartments to Complainants at the earliest;

c. Pass orders and direct the OPs to pay delay compensation to the Complainants @ 12% p.a. from the promised date of possession till the date of actual offer of possession after obtaining the requisite Occupancy Certificate;

d. Pass orders and direct the OPs to pay Rs. 1 lakh to each of the Complainants being represented in the present Consumer Complaint by way of punitive damages for gross deficiency in service committed by the Opposite Parties;

e. Award cost of the complaint in favour of the Complainants;

f. Pass any further order or orders which this Commission deems fit and proper in the interest of justice.”

2. Brief facts of the case, as set out in the complaint, are that this Consumer Complaint was filed by Frontier Heights Residents Welfare Association, a voluntary consumer association on behalf of 53 home buyers/allottees in the project "Frontier Heights" being developed by the Opposite Party-1 (OP) at Bengaluru. The Association is constituted to safeguard and protect the interests of the home buyers in the said project and to pursue their common grievances against the OPs. OP-1 is the developer of the project, OP-2 is its Managing Director/Chief Executive Officer responsible for the conduct of its affairs, and OP-3 is the landowner of the land on which the project is being developed and a party to the Construction Agreement and Sale Agreement executed with the flat buyers. According to the Complainants, all the home buyers represented by the Association had booked flats in the project and were aggrieved by the delay in handing over possession of their respective apartments. The project consists of five towers, namely Block 1 to 5. It is the case of the complainants that the construction commenced on 23.06.2018 and the OPs were required to complete the construction, obtain the requisite Occupancy Certificate and hand over possession of the units on or before 30.09.2019. However, even by April, 2023, the construction remained incomplete, possession of the flats had not been handed over and the Occupancy Certificate had not been obtained. The Complaint further referred to various e-mail communications issued by OP-1 to the flat buyers and contended that vide e-mail dated 13.09.2019, OP-1 informed them that it was committed to deliver up to eleven floors by 31.03.2020. Vide e-mail dated 11.03.2020, OP-1 stated that handing over of possession was expected within a few months. Thereafter, vide e-mail dated 05.12.2020, OP-1 informed them that possession was initially projected for November, 2019 and later for March, 2020. They further indicated that the OC was expected by June,

2021. Subsequent communications dated 11.06.2021, 18.08.2021 and 03.09.2021 also conveyed revised timelines regarding completion, application for OC and handover of units. The Complainants alleged that despite repeatedly revising the timelines for completion and handing over possession, the OPs failed to adhere to the same, resulting in prolonged delay. They further alleged that OPs had failed to provide several facilities and amenities promised in the project brochure and the agreements executed with the buyers. Since no effective action was taken by the OPs and possession of the flats had still not been handed over, the Complainants filed the present complaint.

3. Notice was served upon the OPs on 02.06.2023 and the OPs failed to file their Written Version within the statutory upper limit period of 45 days. Consequently, vide order dated 12.09.2023, the right of the OPs to file the Written Version was closed. An application seeking the recall of said order was considered and subsequently dismissed by this Commission on 17.11.2023.

4. The Complainants filed their evidence Affidavit and relied on the withdrawal orders of 12 complainants (Exhibit CW-1/15); chat showing the latest position of 21 complainants and status of their RERA filings (Exhibit CW-1/16); payment receipts of Mr. Balaji KS & Mahalakshmi G (Exhibit CW-1/17); payment receipts of Mr. Abhimanyu Aditya & Suchita Suchi (Exhibit CW-1/18); payment receipts of Mr. Abhinash Danpat & Dipika Das (Exhibit CW-1/19); payment receipts of Mr. Akash Mishra & Neha Kumari (Exhibit CW-1/20); payment receipts of Mr. Aman Bhatia & Anshul Saluja (Exhibit CW-1/21); payment receipts of Mr. Amitabh Kishore & Rashmi Srivastava (Exhibit CW-1/22); payment receipts of Mr. Ankit Jain (Exhibit CW-1/23); payment receipts of Anushila Brahma (Exhibit CW-1/24); payment receipts of Mr. S. Bala Kumar & Jaysri B.

(Exhibit CW-1/25); payment receipts of Mr. Bappa Seet & Subhashri Chandra (Exhibit CW-1/26); payments of Mr. Basvaraj Mahantappa Dhannur & Vidya V. Navi (Exhibit CW-1/27); payment receipts of Mr. Deepak Kumar Sahoo & Suchismita Rout (Exhibit CW-1/28); payment receipts of Mr. Devan Sivaprakasam & Suja Vasu (Exhibit CW-1/29); payment receipts of Mr. Dhamodaran V.J. (Exhibit CW-1/30); payments of Mr. Aditya Bikram Mishra & Dibya Jyoti Mishra (Exhibit CW-1/31); payments of Mr. Gyan Sagar & Jagriti Kashyap (Exhibit CW-1/32); payments of Mr. Himanghu Lahkar & Himsikha Das (Exhibit CW-1/33); payments of Mr. Irappa Hosamani & Lakshmi Havin (Exhibit CW-1/34); payments of Mr. K. Raghavendra Reddy (Exhibit CW-1/35); payments of Kajal Verma (Exhibit CW-1/36); payment receipts of Kulpreet Kaur Mukherjee & Ankur Mukherjee (Exhibit CW-1/37); payments Mr. Kumar Abhishek & Joohee Verma (Exhibit CW-1/38); payments receipts of Mr. Leeladhar Singh Senger & Rekha Tomar (Exhibit CW-1/39); payments of Mr. Shivam Agarwal & Meena Agarwal (Exhibit CW-1/40); payment receipts of Mr. Mohit Gupta & Sadhavi Gupta (Exhibit CW-1/41); payments of Mr. Mrigendra Kumar (Exhibit CW-1/42); copy of payment receipts of Mr. Poluru Ramprasad & Shiyamala S. (Exhibit CW-1/43); payments of Mr. Prasun Banerjee (Exhibit CW-1/44); payment of Mr. Rajiv Ranjuan Priyadarshi (Exhibit CW-1/45); payment receipts of Mr. R. Rajkumar & Pranathi Rajkumar (Exhibit CW-1/46); payment of Mr. Rakesh Kumar Padhiary & Bhagyashree Das (Exhibit CW-1/47); payment of Mr. Rameshwar Prasad Sharma & Priti Sharma (Exhibit CW-1/48); payment receipts of Mr. Rasakatla Sundeep & Endla Rajya Lakshmi (Exhibit CW-1/49); payments of Mr. Ravi Pathak & Rakhi Kumari (Exhibit CW-1/50); payments of Mr. Ravi Raj (Exhibit CW-1/51); payments of Mr. Ravi Kumar Roy & Priyanka Garg (Exhibit CW-1/52); payments Reshmi Roy (Exhibit CW-1/53); payments of Mr. Rohit

Sengar & Rimsy Saini (Exhibit CW-1/54); copy of payments of Mr. Roopesh P.M. & Saarika T. (Exhibit CW-1/55); payments of Mr. Sadananda Bhat & Usha Hegde (Exhibit CW-1/56); payment receipts of Mr. Sahil Rajaram Shenvi Khandeparker & Teja Avadhut Dalvi (Exhibit CW-1/57); payments of Mr. Sandeep Kumar Pradhan (Exhibit CW-1/58); copy of payments of Mr. Sandeep Kumar Singh & Reepu Kumari (Exhibit CW-1/59); payments of Mr. Seshadri Avula & Pooja Rai (Exhibit CW-1/60); payments of Mr. Shailesh Kumar Keshri (Exhibit CW-1/61); payments of Mr. Siddharth Kumar Srivastava & Jyoti Srivastava (Exhibit CW-1/62); payments of Mr. Soukendra Chakraborty & Manali Bhattacharyya (Exhibit CW-1/63); payments Mr. Sravankumar Allu & Lokeshwari Gottapu (Exhibit CW-1/64); payment receipts of Mr. Sudeep Rai BV (Exhibit CW-1/65); payment receipts of Mr. Sumit Ahuja & Payal Ahuja (Exhibit CW-1/66); payment receipts of Mr. Suraj Janardan Gharat (Exhibit CW-1/67); payments of Mr. Thirumalai Selvam G. & Veera Jerevitha S. (Exhibit CW-1/68); payment of Mr. Tulasi Ram Thota (Exhibit CW-1/69); payment receipts of Mr. Varun Kumar Singh & Beena Rajaram Singh (Exhibit CW-1/70); payment of Mr. Vikas Pathak (Exhibit CW-1/71); payments of Mr. Vikash Kumar Singh & Priyanka Thakur (Exhibit CW-1/72); payment receipts of Mr. Vikrama Bhatta (Exhibit CW-1/73); payments of Mr. Vinod P. Hanagandi & Veena P. Salunke (Exhibit CW-1/74); copy of payments of Mr. Vishnu Nagesh Gouda & Mrs. Veena Gouda (Exhibit CW-1/75); payments of Mr. Vikas C. Shreshthi (Exhibit CW-1/76); email dated 28.01.2020 sent by the OPs (Exhibit CW-1/77); Modification plan approval done on 07.09.2020 and shared by the builder to buyers on 08.09.2020 (Exhibit CW-1/78); and the cancellation email sent by thre OPs (Exhibit CW-1/79).

5. In his arguments, the learned counsel for Complainants reiterated the facts of the Complaint and contended that each of the Complainants

had executed Construction Agreements and Sale Agreements with the OPs. Referring to Clause 21-D of the Construction Agreement, it was argued that the possession of the flats was contractually promised on or before 30.09.2019. However, despite the lapse of the stipulated period, OPs failed to complete the project and hand over possession, thereby committing gross deficiency in service and breaching the contractual obligations. He further argued that the OPs repeatedly revised the possession timelines through their own communications but failed to adhere even to those extended commitments. Reliance was placed on e-mails dated 13.09.2019, 05.12.2020, 11.06.2021 and 18.08.2021, wherein OPs repeatedly projected possession by March 2020, June-July 2020, within 2-3 months thereafter, and later by January 2022 after obtaining the Occupancy Certificate. Each of these timelines was breached, demonstrating the persistent failure of OPs to complete the project and deliver possession. He argued that all OPs were jointly and severally liable, as OP-1 was the developer, OP-2 was the Managing Director and CEO responsible for its affairs and OP-3 was both the landowner and a signatory to the agreements executed with them. He argued that OP-3 was equally liable for the failure to transfer title and deliver possession within agreed timeframe. Towards compensation for delay, he relied upon the decision of this Commission in **Madhusudhan Reddy & Ors. v. VDB Whitefield Development Pvt. Ltd.**, CC/763/2020, wherein compensation in the form of interest ranging from 9% to 12% p.a. for delayed possession was awarded and the said view was subsequently upheld by the Hon'ble Supreme Court. On these grounds, the Complainants prayed that the OPs be directed to complete the construction, obtain the requisite Occupancy Certificate, hand over possession of the flats, and pay delay compensation at the rate of 12% p.a. from the promised date of possession till actual delivery.

6. On the other hand, the learned counsel for OPs argued that the complaint is not maintainable either on facts or in law. The complainant Association lacked the requisite locus standi to institute the case. The project was admittedly incomplete, possession was not handed over, and no sale deeds were executed. Consequently, there could be no residents whose welfare the Association purportedly represented. Under the Karnataka Apartment Ownership Act, 1972; the Karnataka Apartment Ownership Rules, 1974; and Circular No. RD 158 MUNOMU 2016 dated 18.03.2017, an Association of Apartment Owners could be validly constituted only after the OP executed the requisite Deeds of Declaration and apartments were transferred through registered deeds. Thus, the association was constituted prematurely and contrary to the statutory framework, rendering its actions, including the filing of the present complaint unsustainable. He argued that there was no privity of contract between the Association and OPs, since the agreements were executed individually with the respective allottees and, in the absence of specific authorizations, the Association could neither espouse their individual grievances nor seek compensation on their behalf. He argued that the registration of Association under the Karnataka Societies Registration Act did not confer any authority upon the Association to enforce individual contractual rights. On merits, he argued that the complainants are not entitled to any delay compensation. Clauses 6 & 14 of the Sale and Construction Agreements made the delivery time, subject to force majeure events, governmental restrictions, court orders, delays in approvals, shortage of materials, and other circumstances beyond the OPs control, entitling it to a reasonable extension of time. He asserted that in the instant case, Covid-19 pandemic adversely affected the project. Although OP-1 sought extension of the project registration from RERA on 19.09.2020, the extension was granted only

on 25.01.2023 after over 28 months delay, which materially impacted timely completion of the project. Further, a family dispute amongst the OPs relating to the project property led to filing of OS. No.26300/2021 and an ex parte injunction restraining alienation or encumbrance of the property, despite modification later by the Karnataka High Court, significantly hindered the progress. In addition, a criminal complaint filed by a homebuyer in FIR No.142/ 2023 and freezing of the bank accounts of OP-1 and its directors on 26.07.2023, disrupting financial operations and the construction activity. He referred to several civil suits, consumer complaints, decrees, and writ petitions which required substantial diversion of finances and resources. The combined impact of Covid-19 pandemic, delay in RERA extension, injunction orders, criminal cases, freezing of bank accounts, and multiple litigations constituted force majeure circumstances, beyond the control of OPs and materially affected completion of the project. He asserted that delays in the project were partly attributable to defaults by several purchasers in adhering to payment schedules, which adversely affected construction cash flow. The complainants could not claim relief for delays to which they had contributed. Since the complaint did not disclose the payments made by each allottee and individual rights and obligations, separate adjudication of each claim was required, rendering the collective complaint by them untenable. Further, there is an arbitration clause in the agreements and the complainants ought to have resorted to arbitration rather than this complaint. He further states that, without admitting any deficiency in service, OP-1 was willing to amicably resolve the dispute by refunding the amounts paid by the complainants along with reasonable interest.

7. In rebuttal, the learned counsel for the Complainants states that since handing over of possession is appearing inexpedient, most of the complainants seek refund in the matter with delay compensation

8. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties.

9. The main issue for consideration in the present case is whether the complaint filed by the complainant association on behalf of the allottees is maintainable. If so, whether the OPs committed any deficiency in service or resorted to unfair trade practices by failing to complete the project and hand over possession within the promised period? If so, what is the relief the complainants are entitled to?

10. The OPs objected to the maintainability of the complaint, on the grounds that, in the absence of registered sale deeds and delivery of legal possession, the complainant association lacked locus standi and privity of contract with OPs and could not espouse individual cases and grievances of the allottees collectively. It is, however, clear that the complaint has not been instituted by the association in its independent capacity, but by a voluntary consumer association on behalf of identified allottees/homebuyers, who are consumers under the Act. The facts and grievance advanced pertain to the common issue of delay in completion of the project and delivery of possession, constituting a common cause of action and giving rise to common reliefs, namely, the failure of the OPs to complete the project and hand over possession to them within the promised timeline. Therefore, we find no merit in the said objection. Further, the objection that the association could not have been formed under the Karnataka Apartment Ownership Act, 1972 and that no apartment owners' association could legally come into existence before execution of sale deeds is of little assistance to the OPs is also not tenable. The maintainability of a consumer complaint is to be tested with reference to the provisions of the Consumer Protection Act and not

solely based on the requirements governing formation of apartment owners' associations under local property laws. Even assuming that the association is yet function as an association of apartment owners under the said enactment, it would not deprive the allottees, acting through a voluntary consumer association, of their statutory right to seek redressal of consumer disputes. The substance of the case is that the identified consumers have approached this Commission through a representative body to ventilate a common grievance. Therefore, the objection regarding locus standi is rejected.

11. As regards the contention that individual rights and obligations vary from allottee to allottee and that separate adjudication is necessary is also without merit. The foundation of the present complaint is the admitted delay in completion of the project and non-delivery of possession. The grievance is common to all the represented allottees. Merely because the amounts paid by individual purchasers are at variance does not alter the nature of the principal dispute. The relief of completion of construction, obtaining of Occupancy Certificate and delivery of possession is common to all. Consequently, the collective complaint cannot be held to be untenable on this ground.

12. The OPs have also relied upon the arbitration clause contained in the agreements and argued that the complainants ought to have invoked arbitration. The contention is equally devoid of merit. It is now well settled that the remedy available under the Consumer Protection Act is an additional remedy and the existence of an arbitration clause does not bar the jurisdiction of consumer fora. The rights conferred upon consumers under the statute cannot be defeated merely because the parties have agreed upon an alternative dispute resolution process. Accordingly, the objection founded on the arbitration clause is rejected.

13. Having held the complaint to be maintainable, we now proceed to examine whether the OPs have committed deficiency in service. The material placed on record establishes that the complainants had entered into Construction Agreements and Sale Agreements with the OPs for purchase of apartments in the project "Frontier Heights". The complainants have specifically relied upon Clause 21-D of the Construction Agreement under which possession was agreed to be delivered on or before 30.09.2019. The OPs have not disputed the execution of the agreements. Rather, through various communications addressed to the allottees, they repeatedly acknowledged that possession had not been delivered within the originally stipulated period and continued to announce revised timelines. The records reveal that vide e-mail dated 13.09.2019 the OPs projected delivery up to 11 floors by 31.03.2020. Thereafter, vide communication dated 11.03.2020, possession was stated to be expected within a few months. Later, vide e-mail dated 05.12.2020, the OPs themselves acknowledged that possession had initially been projected for November 2019 and thereafter for March 2020 and further indicated that the Occupancy Certificate was expected by June 2021. Similar assurances were reiterated through communications dated 11.06.2021, 18.08.2021 and 03.09.2021. These communications clearly demonstrate that the OPs repeatedly extended the timelines for completion and possession but failed to honour even the revised commitments. Significantly, despite the original promised date of possession being 30.09.2019, the complaint filed in 2023 states that the construction of the project remained incomplete, possession had not been handed over, and the requisite Occupancy Certificate had not been obtained. The OPs have not produced any material demonstrating that the project stood completed or that valid offers of possession had been issued to the

concerned allottees. On the contrary, the OPs merely relied on various circumstances that prevented timely completion of the project. Thus, the factum of delay is not in dispute. The OPs have sought to justify the delay by relying upon force majeure circumstances including the Covid-19 pandemic, delay in grant of extension of RERA registration, injunction proceedings arising from family disputes, criminal proceedings initiated by a homebuyer, freezing of bank accounts, and pendency of various litigations. Therefore, there is no dispute with the proposition that certain extraordinary events beyond the control of a developer may justify a reasonable extension of time. The Covid-19 pandemic undoubtedly affected construction activities across the country and deserves consideration. However, the material on record reveals that the promised date of possession was 30.09.2019, several months before the outbreak of the pandemic and the imposition of lockdowns in March 2020. Thus, even before the pandemic impact, the OPs had already failed to deliver possession within the contractual period and had begun issuing revised timelines to the purchasers. Likewise, reliance placed upon the delay in grant of RERA extension does not advance the OPs case. The inability to secure regulatory approvals and extensions necessary for project completion is ordinarily a matter falling within the domain of the developer and cannot indefinitely postpone the rights of homebuyers who invested substantial sums based on contractual assurances. Similarly, the family dispute within OPs, injunction case, criminal complaints, freezing of bank accounts and multiple litigations are essentially matters connected with the affairs of OPs and cannot be foisted upon innocent purchasers who were not responsible for such circumstances. A developer undertaking a housing project is expected to maintain clear title, arrange finances, secure approvals and manage legal contingencies.

14. The contention that certain purchasers defaulted in making payments also remains unsubstantiated insofar as the present complainants are concerned. A bald allegation regarding defaults by some purchasers cannot justify a delay affecting the entire project over several years. It is also relevant that the OPs failed to file their Written Version within the statutory period prescribed under the Consumer Protection Act and their right to file the same stood closed by order dated 12.09.2023. The application seeking recall of the said order was dismissed on 17.11.2023. Consequently, the factual assertions in the complaint remained substantially unrebutted.

15. In the circumstances as deliberated above, we are satisfied that the OPs failed to complete the project and hand over possession within the agreed period and the deficiency persists as the project is not complete and no OC has been obtained till date. Such conduct clearly amounts to deficiency in service within the meaning of the Consumer Protection Act. The allottees cannot be made to wait indefinitely for possession of their homes while the developer continues to revise timelines without delivering the promised product.

16. The Hon'ble Supreme Court in the case of *M/s. Fortune Infrastructure (Now Known As M/s. Hicon Infrastructure) & Anr. Vs. Trevor D'lima & Ors., Civil Appeal No(s).3533-3534 of 2017, decided on 12.03.2018* wherein it has been held in para 15 that :

“15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to

be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to?"

17. The next step is determining the quantum of compensation to be awarded to the Complainant for deficiency in service and delay in possession or refund. In this regard, the liability of parties and tenability of multiple reliefs while making such refunds, the Hon'ble Supreme Court in ***Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, in Civil Appeal No.6044 of 2019*** decided on 07.04.2022 has held:-

"We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the Order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in DLF Homes Panchkula Pvt. Ltd. Vs. DS Dhanda and in modification of the direction issued by the Commission, we direct that the interest on the refund shall be payable from the dates of deposit. Therefore, the Appeal filed by purchaser deserves to be partly allowed. The interest shall be payable from the dates of such deposits.

At the same time, we are of the opinion that the interest of 9% granted by the Commission is fair and just and we find no reason to interfere in the appeal filed by the consumer for enhancement of interest."

18. In view of the foregoing, after due consideration of the entire facts and circumstances of the case, including the arguments advanced by the learned counsels for both the parties and the above cited precedents of the Hon'ble supreme Court, CC No. 57 of 2023 is partly allowed. Opposite Parties are directed as follows:

A. The Opposite Parties are jointly and severally directed to refund the amounts deposited by the respective complainants, along with simple interest @ 9% per annum from the date of each deposit till final payment. This payment shall be made within two months from the date of this order. In the event of default, the interest applicable shall be @ 12% per annum for such delayed period.

B. Those complainants who seek possession of respective allotted units shall notify the OP-1 within 15 days from the date of this order for handing over possession.

C. On receipt of such notice seeking possession in any form, including emails, the OPs shall jointly and severally notify the Final Statement of Accounts to the allottees as per terms of Agreements, without any penalties whatsoever, within 30 days from today. The complainants shall pay the balance due within 15 days after receipt of the payment notice.

D. The OPs are jointly and severally directed to complete the project construction in all respects, obtain OC and hand over possession of the respective flats to such complainants within a period of 180 days from the date of this order.

E. Pending handing over possession of respective units, OPs are jointly and severally directed to pay those complainants the delay compensation in the form of simple interest @ 6% per annum on the amounts deposited by each complainant from the committed date of possession i.e. 30.09.2019 till date. This payment shall be made within one month from the date of this order. In the event of default, the interest applicable shall be @ 9% per annum for the delayed period. The balance delay compensation shall be paid along with handing over of possession in the form of simple interest @ 6% per annum on the amounts deposited by each complainant. In the event of default, beyond 180 days as stated above, the rate of interest applicable shall be @ 9% per annum for such delayed period.

F. The OPs shall not create any third party interest with respect to the units allotted to the complainants, until this order is completely complied with.

G. The OPs are jointly and severally directed to pay Rs.10,000 to each of the complainants as costs of litigation.

19. The Consumer Complaint No. 57 of 2023 is disposed with above directions.

20. All pending Applications, if any, are also stand disposed of accordingly.

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**(AVM J. RAJENDRA, AVSM, VSM (Retd.)
PRESIDING MEMBER**

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**(Dr. SADHNA SHANKER)
MEMBER**

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