

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 2562 OF 2018**

1. SANGEETA AGARWAL & ANR. ....Complainant(s)  
Versus  
1. M/S. CHINTELS INDIA LTD.  
A-11, Kailash Colony,  
New Delhi-110048 .....Opp.Party(s)

**BEFORE:**

**HON'BLE MRS. JUSTICE DEEPA SHARMA,PRESIDING MEMBER  
HON'BLE MR. SUBHASH CHANDRA,MEMBER**

**For the Complainant :** Mr Nithin Chandran, Advocate with  
Ms Parul Singh and Ms Keshvi Thapar,  
Advocates

**For the Opp.Party :** Mr Nishi Ranjan Singh, Advocate with  
Mr S K Chaturvedi, Advocate

**Dated : 27 May 2022**

**ORDER**

**PER MR SUBHASH CHANDRA, MEMBER**

This is a complaint under section 12 (1) (a) dated 16.11.2018 filed by the complainants alleging deficiency in service and unfair trade practice by the opposite party (M/s Chintels India Ltd.,) and claiming refund of the money deposited towards the flat booked by them with the opposite party along with other damages.

2. The brief facts of the case are that the complainant had booked a flat on 08.08.2013 by depositing a booking amount of Rs.22,23,690/-in the project 'Chintels Serenity', Sector 109, Gurugram, Haryana, being developed by the opposite party. As per the allotment letter dated 19.08.2013 issued by the opposite party, flat no. E – 601, 6<sup>th</sup> Floor, Tower E, in the said project with super area of 2100 sq ft was allotted to the complainants at a total sale consideration of Rs.1,64,09,050/-. An Apartment Buyer's Agreement was executed between the two parties on 06.05.2014 wherein, as per clause 11 of the agreement, the possession of the flat was promised by the opposite party to the complainants after a period of 36 months with six months grace period, i.e., by 17.01.2018. The payments were to be made stage wise and by 22.07.2015 the complainants had paid Rs.1,69,96,578/- to the opposite party including the payment due "on possession". It is averred by the complainants that the possession had not been offered even on the date of filing of the instant complaint or till date while the opposite party continued to receive

payments. The inordinate delay in the completion of the project, which is without any justification, makes the opposite party liable for deficiency in service and unfair trade practice. The complainants are therefore, before us with the following prayer:

- a. Direct the opposite party for an immediate 100% refund of the total amount of Rs.1,69,96,578/- paid by the complainant along with a penal interest of 18% per annum from the date of receipt of each payments made to the opposite party;
- a. Direct the opposite party to pay compensation of Rs.5,00,000/- to the complainants for mental agony, harassment, discomfort and undue hardships caused to the complainants as a result of the above acts and omissions on the part of the opposite party;
- a. Direct the opposite party to pay a sum of Rs.1,00,000/- to the complainant's in the project 'Chintels Serenity' towards litigation costs; and
- a. That any other and further relief in favour of the complainant's as the Hon'ble Commission may deem fit and proper in the fact and circumstances of the case.

3. The opposite party has contested the complaint. In his reply, it has contended that the complainants are not 'consumers' under the ambit of section 2 (1) (d) of the Consumer Protection Act, 1986 and this is evident from the fact that they paid 50% of the payment due in one instalment against a discount which the opposite party had provided. It is therefore, contended that the complainants have booked the flat for speculative purposes. It has also been averred that the opposite party is ready and willing to give possession of the said flat. It has also been denied that time was of the essence in the Agreement or that there was an assurance of handing over of possession of the flat within the date claimed by the complainant. All other averments of the complainants have also been denied by the opposite party.

4. Parties have led their evidences by way of affidavit. We have heard the learned counsel for the parties and have perused the records carefully.

5. The fact of booking of the flat and payment of Rs.1,69,96,578/- through various instalments has not been disputed by the OP. The complainants have relied on various judgments of the Hon'ble Supreme Court as well as this Tribunal. In support of their argument that they cannot be made to wait for inordinately long periods of time to receive the possession of the flat booked after making payments and that they are entitled for refund of the money paid along with interest as compensation for mental agony and litigation cost incurred by them, complainant has relied upon the Hon'ble Supreme Court's ruling in **Kolkata West international City Pvt., Ltd., vs Devasis Rudra** in Civil Appeal no. 3182 of 2019 (decided on 25.03.2019) that:

*"It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. ....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”.*

6. In support of the averment that the Apartment Buyer Agreement was arbitrary and one-sided and constituted an unfair trade practice, they have relied upon the Hon’ble Supreme Court’s ruling in ***Pioneer Urban Land and Infrastructure vs Geetu Gidwani Verma and Anr.***, in Civil Appeal no. 12238 of 2018 (decided on 02.04.2019) that:

*“A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 08.05.2012 are ex-facie one sided, unfair and unreasonable. The in-incorporation of such one-sided clauses in an agreement constituted an unfair trade practices as per Section 2 (1) ( r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the builder”.*

7. Reliance has also been placed on Hon’ble Supreme Court’s ruling in ***Marvel Omega Builders Pvt. Ltd., and Anr., vs Shrihari Gokhale and Anr .***, Civil Appeal no. 3207-3208 of 2019 (decided on 30.07.2019) that:

*“.....even assuming that the villa is now ready for occupation (as asserted by the appellants), the delay of almost five years is a crucial factor and the bargain cannot now be imposed upon the respondents. The respondents were, therefore, justified in seeking refund of the amounts that they had deposited with reasonable interest on said deposited amount. The findings rendered by the Commission cannot therefore, be said to be incorrect or unreasonable on any count”.*

8. Complainant has also relied upon this Commission’s orders in ***Anila Jain vs Emaar MGF Land Limited*** in CC no. 2208 of 2017 (decided on 11.11.2019), based upon orders of the Hon’ble Apex Court in **Civil Appeal No. 12238 of 2018 Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan** and in **Civil Appeal No. 3182 of 2019 Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra**, wherein it was held, that:

5. *In any case, the complainant cannot be compelled to accept possession when it is offered after such a long period of say at least three years from the timeline stipulated for this purpose, in the agreement executed between the parties.*

9. Finally, it is argued by the complainants that they are entitled to compensation and damages as per ***Fortune Infrastructure and Anr., vs Trevor D’ Lima and Ors*** [(2018) 5 SCC 442] where it was held by the Hon’ble Supreme Court that:

19. *It must be noted that the law is well settled in this regard. Whenever the builder has refused to perform the contract without valid justification, the buyer is entitled for compensation as he has been deprived of price escalation of the flat. Every breach of*

*contract gives rise to an action for damages. Such amount of damages must be proved with reasonable certainty.*

**10.** On behalf of the opposite party, it has been submitted that the occupancy certificate has been obtained by the opposite party from the Town & Country Planning Department, Haryana on 12.02.2019, a copy of which has been submitted along with their affidavit in evidence. A letter for final offer of possession for apartment no.T5, 601, Chintels Serenity, Sector 109, Gurugram, Haryana dated 01.03.2019 issued to the complainants has also been filed. During arguments, the Learned Counsel for the complainants pointed out that these are misleading documents since there is no completion certificate in respect of Tower E, in which the flat in question had been allotted by the opposite party vide allotment letter dated 19.08.2013. As per the occupation certificate dated 12.02.2019 submitted by the opposite party, occupancy has been granted for Tower – 3 (Type B), Tower 4 (Type C) and Tower 5 (Type D), apart from other buildings such as EWS block, community building, shop in community building and other miscellaneous buildings. The letter for final offer of possession does not refer to flat no. 601, Tower E; instead it refers to T 5/ 601 which is claimed by the complainants to be different to Tower E in which they were allotted the flat. Opposite party has not been able to explain this. It is apparent from this document that there is no mention of Tower E in the occupation certificate filed by the opposite party. The averment of the OP that the occupation certificate has been obtained and they have offered possession on 01.03.2019 is therefore, not supported by any evidence on record and is liable to be rejected.

**11.** The opposite party has not provided any documentary evidence in support of his contention that the complainants are not ‘consumers’ under the scope of section 2 (1) (d) of the Consumer Protection Act, 1986, except relying on the fact that they paid 50% of the amount in a single instalment against a discount. In *Kavita Ahuja vs Shipra Estates – I* (2016) CPJ 31, this Commission has held that the onus of establishing that the complainant was dealing in real estate, i.e., in the purchase and sale of plots/ flats for commercial purposes to earn profits lies upon the opposite party. This has not been done in the present case. Further, in *Rajnish Bhardwaj and Ors vs M/s CHD Developers Ltd., and Ors* in CC no. 3775 of 2017 decided on 26.11.2019, this Commission has observed as under:

*“13. The first contention of the Learned Counsel for the Opposite Party that the Complainants are not “Consumers” and only “investors” is not supported by any documentary evidence. In a catena of judgments, this Commission has laid down that the onus of proof shifts to the Opposite Party to prove that the Complainant is “investor” and it is observed that the Opposite Party did not discharge their onus of proof regarding this aspect. Hence, we are of the considered view that the Complainants are “Consumers” as defined under Section 2 (1) (d) of the Consumer Protection Act, 1986”.*

**12.** The mere contention that complainants paid 50% payment upfront for a discount itself cannot be a reason to exclude the complainants from the scope of section 2 (1) (d) of the Consumer Protection Act, 1986. As the opposite party have failed to provide any evidence to prove that complainants are engaged in the business of buying and selling the real estate, their averments cannot be accepted.

**13.** It is evident from the documents on record that the complainants had been regularly paying the amounts demanded by them towards the flat booked in the project being developed by the opposite party. The opposite party has not produced any evidence of any notice to the complainant

for default. Neither on the date of filing of the complaint nor subsequently has the opposite party has made any valid offer of possession in respect of the said flat and therefore, his contention that he is ready to offer possession is liable to be rejected.

*14. The Hon'ble Supreme Court in **Kolkata West International City Pvt. Ltd., vs Devasis Rudra** in Civil Appeal no. 3182 of 2019 decided on 25.03.2019 as well as in **Pioneer Urban land and Infrastructure Ltd., vs Govindan Raghavan and connected matter** in CA no. 12238 of 2018 decided on 02.04.2019 – (2019) 5 SCC 725 , has held that flat purchasers cannot be made to wait for an indefinite period of time hoping to obtain possession and that seeking refund of amounts deposited is a valid redressal. In the present complaint, there is neither a valid occupation certificate nor can the opposite party claim to have made a proper offer of possession. Therefore, there is, merit in the complainants' averments.*

**15.** For the aforesaid reasons, we are inclined to accept the contention of the complainants and allow the complaint with the following directions:

- i. The opposite party shall refund the entire amount of Rs.1,69,96,578/- to the Complainant with 9% simple interest from the date of respective deposits till the date of payment;
- ii. The Opposite Party shall also pay Rs.50,000/- as litigation costs to the complainant; and
- iii. Payment shall be made within three months of this order. In case of default, the compensation shall be payable with a penal interest of 12% simple interest for the period of delay.

.....J  
**DEEPA SHARMA**  
**PRESIDING MEMBER**  
.....  
**SUBHASH CHANDRA**  
**MEMBER**