

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 1210 OF 2018**

1. BRAHMPUTRA WELFARE ASSOCIATION

THROUGH ITS AUTHORISED REPRESENTATIVE O/A  
1052, NEAR AMITY INTERNATIONAL SCHOO., SECTOR-  
1, VASUNDHARA,  
GHAZIABAD  
UTTAR PRADESH

.....Complainant(s)

Versus

1. UTTAR PRADESH AAWAS EVAM VIKAS PARISHAD &  
ANR.

THROUGH ITS CHAIRMAN 104, MAHATMA GANDHI  
MARG,  
LUCKNOW-226001  
UTTAR PRADESH

2. ASSTT. HOUSING COMMISSIONER, UP AWAS EVAM  
VIKAS PARISHAD

HALL NO. S/1, SECTOR 16A, VASUNDHARA COMPLEX,  
VASUNDHARA,  
GHAZIABAD-201012  
UTTAR PRADESH

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING  
MEMBER**

**HON'BLE BHARATKUMAR PANDYA, MEMBER**

FOR THE COMPLAINANT : MR. GAUTAM DAS, ADVOCATE  
MR. DHIRENDRA KUMAR JHA, ADVOCATE  
MR. C.M. GOPAL, ADVOCATE  
MR. RAJENDRA KUMAR CHAUHAN, ADVOCATE

FOR THE OPP. PARTY : MR. VISHNU SHARMA, ADVOCATE  
MS. APORNA AGARWAL, ADVOCATE

**Dated : 30 January 2024**

**ORDER**

1. Heard Mr. Gautam Das, Advocate, for the complainant and Mr. Vishnu Sharma, Advocate, for the opposite parties.

2. Brahmputra Welfare Association, a registered association of the home buyers has filed above complaint on behalf of its 109 members for setting aside final demand notice dated 16.02.2018 issued by the opposite parties to its members and directing the opposite parties to (i) to obtain 'completion certificate' and 'occupation certificate' before raising final demand; (ii) raise fair and reasonable final demand as per norms of the affordable housing scheme; (iii) consider imposition of GST as per norms; (iv) pay delay compensation in the form of

interest @18% per annum on the deposit of the home buyers, from due date of possession till the date of handing over possession; (v) pay Rs.2500000/- as compensation for mental agony and harassment; (vi) pay Rs.2500000/- as compensation for deficiency in service and unfair trade practice; (vii) pay Rs.500000/- as litigation costs; and; (viii) any other relief which is deemed fit and proper in the facts and circumstance of the case.

**3.** The complainant stated that Uttar Pradesh Awas Evam Vikas Parishad (the OP) was a statutory authority, constituted to ensure affordable houses in environmentally invigorating habitans with inclusive facilities, especially for the economically weaker section, low and middle income group and competitive price options for the other sections of the society. Basic function of the OP is to plan and develop township at affordable price to all sections of the society with inclusive facilities which include modern amenities, community services, hospitals, educational institutes, neighbourhood part and playgrounds. In order to achieve the goal endowed in the preamble, the OP floated a self-financing residential scheme namely "Brahmputra Enclave" in Siddharth Vihar Scheme, Sector-7, Ghaziabad, in the year 2013 and advertised for construction four floor building and tentative cost of the flat of constructed of the area 41.54 sq.mtrs on ground floor as Rs.13.92 lacs, first floor as Rs.11.94 lacs, second floor as Rs.11.72 lacs and third floor as Rs.11.75 lacs. As per brochure the construction had to be completed within 24 months from the issue of first demand letter and possession had to be given of the fully furnished flat with high quality earthquake resistance building, ceramic tiles on the floor, anti-skidding tiles, ceramic wall tiles, angle iron, flash door shutter, window having zed section, mosquito nets etc., lime wash colour, enamel paint on doors and Apex optima on outer wall of the building etc. Registration was opened from 11.03.2013 to 11.04.2013 and registration fee was Rs.140000/-. The allottees were selected through lucky draw held on 17.12.2013, for final registration, in which, the members of the complainant were selected. The OP issued letters dated 26.12.2013, calling upon the selected applicants to pay balance cost of the flat in 8 quarterly instalments, last date of the first instalment was 31.01.2014 and 8<sup>th</sup> instalment was 31.10.2015. The members of the complainants diligently followed the payment plan and deposited instalments on time. The OP delayed the construction of the project from its inception as, it was not possession of the land over which, construction had to be started. The OP, vide letter dated 16.12.2014, informed that due to agitation of the farmer, the construction could not be started at the proposed land. Now 640 flats would be constructed in Sector-7 and 1376 flats in Sector-10. The OP proceeded in lackadaisical manner even after start of the construction, due to which, the construction was unreasonably delayed. The members used to make inquiry, in respect of date of possession and the OP used to give vague information that the possession would be handed over on due date and if any allottee did not get possession within one year of his last deposit then money would be returned to him with interest on his demand. Sometimes, the OP informed that construction had been completed and the matter for approval of final cost was pending before the Board. Amit Kumar, one of the member, made a complaint that cost had been increased about 33%. Then Executive Engineer informed that the final cost would increase and if it increased more than 20% then allottee could take refund with interest. Joint House Commissioner, vide his letter dated 18.07.2017, informed that initially the project was delayed for one year as the construction could not be started due to agitation of the farmers, thereafter, due to election of Parliament, Legislative assembly, Nagar Panchayat and Gram Panchayat, it was further delayed for six months as its employees had been sent for election duty and thereafter again construction was stopped for two months due to farmers agitation.

Additional Housing Commissioner, vide letter dated 18.01.2018, informed that final cost has been approved by the Boards, in its 244<sup>th</sup> meeting. Thereafter, the OP issued final demand letters dated 16.02.2018, in which, cost of the flat at ground floor has been increased to Rs.1979209/- from Rs.13.92 lacs, which is more than 40% increase. The OP has also demanded GST @12% on the increased and 18% on other dues. The OP required to deposit the balance amount till 31.03.2018 and thereafter interest @13.5% per annum and holding charge @Rs.75/- per day from 01.05.2015 was payable. It came to the notice of the allottees that even at that time construction was neither complete nor had the OP obtained "completion certificate" and "occupation certificate" or in position to handover possession. GST has been imposed w.e.f. 01.07.2017, as the OP committed for handing over possession till December, 2015 as such the buyers cannot be burdened with GST and possession was delayed by the OP. The complainant filed CC/761/2018, which was dismissed as not maintainable on 11.05.2018 as at that the complainant was not registered. After getting registration of the complainant, present complaint was filed on 17.05.2018, alleging deficiency in service.

4. Uttar Pradesh Awastha Vikas Parishad (the OP) filed its written reply, in which, the material facts have not been disputed. The OP stated that "Brahmputra Enclave" in Siddharth Vihar Scheme, Sector-7, Ghaziabad was a self-financing residential scheme and not an affordable scheme for the weaker or lower-middle income group section. The land on which "Brahmputra Enclave", was proposed, had been acquired at the time of launching the project, but due to the farmer's protest against acquisition of the land, the OP could not proceed with the construction for one year. The OP, vide letter dated 16.12.2014, gave notice to all the applicants that due to agitation of the farmers, the construction could not be started at the proposed site and now 640 flats would be constructed in Sector-7 and 1376 flats in Sector-10. The applicants were given option to take refund of their money due to delay and change of the site but none of the applicant opted for refund. In the year 2014, election of Parliament, in the year 2015, election of Gram Panchayat and Nagar Panchayat and in the year 2016, election of U.P. Legislative Assembly were held. The employees of the OP used to assign election duty by Election Commission, due to which, for a period of about two months in each election, the construction work had to be stopped. Some of the applicants followed payment schedule as mentioned in the letter dated 28.12.2013 while various applicants delayed payment. As per Rule 6 of the Registration Booklet, the OP was required to allot the flat within one year of deposit of last instalment. Last instalment was payable till 31.10.2015, while lucky draw for final allotment was held on 13.03.2016. In Registration Booklet, estimated cost of the flats was mentioned, with clear stipulation that final cost would be determined after completion of the construction. The applicants were given option to take refund, in case final cost increases more than 20%. The cost of the land was charged @Rs.32000/- per sq.mtr., which was circle rate on the date of registration, which was divided in the ratio as mentioned in the Registration Booklet among four floors. The construction was completed and papers relating to final cost of the flats were approved by Superintending Engineer, Circle-7, Vasundhara, Ghaziabad, vide his letter No.1414 dated 08.05.2017. Then all the papers were forwarded for approval of the Board. Additional Housing Commissioner, vide letter dated 18.01.2018, informed that final cost had been approved by the Boards, in its 244<sup>th</sup> meeting. Then, the OP issued final demand letters dated 16.02.2018, to the allottees. As the construction was delayed for the reasons beyond the control of the OP, construction cost increased. GST has been charged as per law on the balance amount. Final demand letter dated 16.02.2018, includes 12% 'free-hold charge' as mentioned in Registration Booklet on

page -7 Clause-4. The cost of the flats of the present project cannot be compared to the cost of other project as circle rate of each project differs on the basis of location of the land. 800 allottees deposited money of final demand, got completed all the formalities of taking possession and took possession, while 1100 allottees deposited the amount of final demand and in process of taking possession. 116 allottees did not deposit the amount of final demand. The representations of the allottees against final demand was placed before the Board, who in its 245<sup>th</sup> meeting vide Case No.245/42, extended the period for deposit up to 30.09.2018, without charging any interest, considering the delay. Second option of deposit of 30% of the demand without interest till 31.07.2018 and take possession and balance amount within two years with interest in instalments. The complaint has no merit and is liable to be dismissed.

5. The complainant filed Rejoinder Reply, Affidavit of Evidence of Vikas Singh and documentary evidence. The complainant filed additional documentary evidence through IA/9279/2019. The OP filed Additional Affidavit of Evidence of Pawan Kumar Upadhyay and documentary evidence. Through Additional Affidavit, the OP filed copy of the letter dated 01.12.2018, by which, Head Quarter, vide letter dated 04.10.2018, reduced the circle rate @Rs.28000/- per sq.mtr. in place of Rs.32000/- per sq.mtr. Both the parties have filed their short synopsis of arguments.

6. We have considered the arguments of the counsel for the parties and examined the record. The complainant has filed Registration Booklet issued by the OP for the project "Brahmputra Enclave". In this booklet, it has been mentioned that eligibility for registration would be determined through lottery draw. Lottery draw was held on 17.12.2013 for registration. The OP issued letters dated 26.12.2013, calling upon the selected applicants to pay balance cost of the flat in 8 quarterly instalments, last date of the first instalment was 31.01.2014 and 8<sup>th</sup> instalment was 31.10.2015. In the booklet, the OP has mentioned that the construction of the flats was proposed to be completed within a period of 24 months from the issue of demand letter.

7. However, the OP has stated that the land on which "Brahmputra Enclave", was proposed, had been acquired at the time of launching the project, but due to the farmer's protest against acquisition of the land, the OP could not proceed with the construction for one year. The OP, vide letter dated 16.12.2014, gave notice to all the applicants that due to agitation of the farmers, the construction could not be started at the proposed site and now 640 flats would be constructed in Sector-7 and 1376 flats in Sector-10. The applicants were given option to take refund of their money due to delay and change of the site but none of the applicant opted for refund. In the year 2014, election of Parliament, in the year 2015, election of Gram Panchayat and Nagar Panchayat and in the year 2016, election of U.P. Legislative Assembly were held. The employees of the OP used to assign election duty by Election Commission, due to which, for a period of about two months in each election, the construction work had to be stopped. Due to above reasons, the construction, which was proposed to be completed till December, 2015 was completed till April, 2017. Thereafter, the papers relating to final cost of the flats were approved by Superintending Engineer, Circle-7, Vasundhara, Ghaziabad, vide his letter No.1414 dated 08.05.2017. Then all the papers were forwarded for approval of the Board. Additional Housing Commissioner, vide letter dated 18.01.2018, informed that final cost has been approved by the Boards, in its 244<sup>th</sup> meeting. Then, the OP issued final demand letters dated 16.02.2018, to the allottees, which was offer

of the possession. Supreme Court in **Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711** and **B.B. Patel Vs. DLF Universal Limited, (2022) 6 SCC 742**, held that in civil construction work, time is not an essence of the contract.

8. So far as price fixation is concerned, in Registration Booklet, estimated cost of a flat at ground floor was mentioned as Rs.13.92 lacs + 12% free-hold charge of the land of super plinth area. In final demand letter dated 16.02.2018, the price ground floor flat has been mentioned as Rs.1007154/- as construction cost, Rs.867978/- as cost of 47.73 sq.mtrs. land of super plinth area and Rs.104157/- as 12% free-hold charge. The cost was increased to Rs.483132/-, which is about 35%. The OP, vide the letter dated 01.12.2018, informed that Head Quarter, vide letter dated 04.10.2018, reduced the circle rate @Rs.28000/- per sq.mtr. in place of Rs.32000/- per sq.mtr as such the cost of land of super plinth area has now been reduced to Rs.747796/- and cost has been fur. The OP has stated that in Registration Booklet estimated cost was mentioned and not the final cost. Due to delay for the reasons beyond the control of the OP, cost of the materials and labour increased as such final cost of the flats were increased. Except the allegation that cost has been increased, the complainant has not given any material to show that cost has been increased arbitrarily. Supreme Court in **Tamil Nadu Housing Board Vs. Sea Shore Apartment's Owners Association, (2008) 3 SCC 21** and **M.P. Housing & Infrastructure Development Board Vs. B.S.S. Parihar, (2015) 14 SCC 130**, held that in self-financing scheme, fixation of price is within the domain of housing board and the court should not interfere with it.

9. So far as GST is concerned, it is statutory liability. The OP has stated that GST is being realized on balance amount. It cannot be said to be illegal. The complainant relied upon judgment of Hon'ble Single Member of this Commission in CC/1210/2018 Brahmputra Welfare Association Vs. Uttar Pradesh Awas Evam Vikas Parishad (decided on 31.08.2023), we respectfully disagree with this judgment, inasmuch as in this judgment, judgment of Supreme Court in **Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711**, escaped from notice, in which, similar circumstances, Supreme Court declined to grant any delay compensation as such it is per in curium. It is self-financing scheme, where statutory body does not earn any profit. Money deposited by the buyer along with accrued interest on it is utilised for construction of the flat. Any inflation in cost has to be borne by the allottee. Statutory authority cannot be burden to pay delay compensation. However, considering the fact that the OP, vide letter dated 01.12.2018, reduced the cost of the land of super plinth area, we direct the OP to not to charge interest for a period of two months from this letter. Interest @9% per annum shall be charged on the balance amount from February, 2019.

10. So far as arguments that at the time of issue of final demand notice dated 16.02.2018, the construction of the project was not complete and "occupation certificate" has not been obtained, is concerned, the OP is a statutory authority and constituted under Uttar Pradesh Awas Evam Vikas Adhiniyam, 1967. The project of the OP is not governed under U.P. Urban Development and Planning Act, 1973. The complainant has not been able to show that there was any statutory requirement for the OP to obtain "occupation certificate". So far as some external work is concerned, it does not affect handing over possession of a competed flat in the project. In final demand notice, time was given up to 30.04.2018 to deposit the balance amount and get the sale deed executed. In the meantime, the OP may complete the project.

Due to some external work, possession cannot be withheld. About 1900 allottees of the project have taken possession.

**O R D E R**

In view of the aforesaid discussions, the complaint is dismissed with liberty is to the members of the complainant to deposit balance amount within two months and take possession of their flat. The OP shall charge interest on balance amount @9% per annum from February, 2019 till the date of deposit.

.....J  
**RAM SURAT RAM MAURYA**  
**PRESIDING MEMBER**

.....  
**BHARATKUMAR PANDYA**  
**MEMBER**