

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,****U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/183/2020
Date of Institution	:	22.6.2020
Date of Decision	:	04/0 9/2023

Smt. Prabha Pandey D/o Sh. Puran Chand Joshi R/o A-1, Ekta Colony, Panjari, Shimla 171004 (H.P.).

... Complainant(s)

**V E R S U S**

(1) Sahara Group regd. office-Sahara India Bhawan, 1, Kapoorthala complex Aliganj, Lucknow 226024, through its Chairman & Managing Director Sh. Subrata Roy Sahara.

(2) Sahara Group, Sahara India Bhawan, 1, Kapoorthala Complex Aliganj, Lucknow 226024, through its Deputy Managing Director Sh. O.P. Srivastava.

(3) Sahara India C-2, C-3, C-4, Sector 11, Rashtriya Sahara Complex Noida (UP) 201301, through its Additional Director Sh. Prashant Kumar.

(4) Sahara India SCO No. 1110-1111, Sector 22-B, Chandigarh 1600022, through its Regional Manager.

(5) Sahara India SCO No. 1110-1111, Sector 22-B, Chandigarh 1600022, through its Sector Manager.

... Opposite Parties

**CORAM :**

**SHRI PAWANJIT SINGH  
MRS. SURJEET KAUR**

**PRESIDENT  
MEMBER**

**ARGUED BY** : Sh. J.R. Syal, Counsel for complainant  
: Sh. Ishtneet Bhatia, Counsel for OPs

**Per Pawanjit Singh, President**

1. The present consumer complaint has been filed by the complainant Smt. Prabha Pandey against the opposite parties (hereinafter referred to as the OPs). The brief facts of the case are as under :-

a. It transpires from the averments as projected in the consumer complaint that the complainant applied for transfer of Sahara City Home Units from the name of Sh. Harmail Singh and Smt. Gurvinder Kaur, the

erstwhile owner/allottee from whom complainant has purchased both the home units details. The details of the same is as under:

Sr. NO.	Date of Original Booking	Date of original transfer applied	Control No./Unit No.	Name of Seller	Name of Purchaser	Amount paid to seller (Rs.)
1.	31.12.2004	2.9.2009	23971200329	Harmail Singh	Prabha Pandey	1,35,350/-
2.	11.2.2005	9.12.2009	25511200469	Gurvinder Kaur	Prabha Pandey	2,26,050/-

After the purchase of aforesaid both the home units (hereinafter to be referred as subject home units), the complainant applied for transfer of the subject home units by completing all documents required for the transfer of the subject home units in her name and submitted with the OPs. The OPs though transferred the first unit which was in the name of Harmail Singh in the name of the complainant and certificate Annexure C-1 was also issued but the second unit which was in the name of Smt. Gurvinder Kaur was not transferred in the name of the complainant despite of fact that all the documents were handed over to the OPs. The copy of form for transfer is annexed as Annexure C-2. The complainant has been requesting the OPs repeatedly by sending request letters to transfer the home unit in question of Smt. Gurvinder Kaur in her name but nothing was done by the OPs. The complainant has already paid the entire amount to the erstwhile owners but the ownership of one unit is yet to be transferred in the name of complainant. Not only this neither the OPs have delivered the possession of the subject home units to the complainant nor have they refunded the amount which has already paid to them by the erstwhile owner to whom the complainant has already paid the entire amount. Thereafter the complainant had issued legal notice Annexure C-6 to the OPs even after that nothing has been done by the OPs. The aforesaid act amounts to deficiency in service and unfair trade practice on the part of OPs. OPs were requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.

- b. OPs resisted the consumer complaint and filed their written version, inter alia, taking preliminary objections of maintainability also that the complainant has concealed material fact. It is further alleged that de-facto complainant actually purchased the home units in question in 2009 which shows that the same was purchased with full knowledge of no development since 2004 and there is only relationship of lesser and lessee between the parties. It is further alleged that this Commission has no jurisdiction to try this complaint and this Commission is barred by limitation. On merits, the facts as stated in the preliminary objections have been re-asserted. The cause of action set up by the complainant is denied. The consumer complaint is sought to be contested.
  - c. In replication, complainant re-asserted the claim put forth in the consumer complaint and prayer has been made that the consumer complaint be allowed as prayed for.
2. In order to prove their case, parties have tendered/proved their evidence by way of respective affidavits and supporting documents.
  3. We have heard the learned counsel for the parties and also gone through the file carefully, including the written arguments.
    - i. At the very outset, it may be observed that when it is an admitted case of the parties that both the original subject home units were allotted to Harmail Singh and Gurvinder Kaur who had sold the same to the complainant and the home unit which was earlier in the name of Harmail Singh has already been transferred in the name of the complainant in the record and since the second subject home unit, which was in the name of Gurvinder Kaur has not been transferred in the name of the complainant till date and further that the subject home units have not been completed by the OPs nor possession has been offered to the complainant also that nothing has come on record that OPs have sought necessary approval from the competent authority for launching of the subject project,

- the case is reduced to a narrow compass as it is to be determined if there is unfair trade practice and deficiency of service on the part of the OPs and complainant is entitled for the relief as prayed for.
- ii. In order to prove her case the complainant has led evidence including her affidavit as well as the documents relating to the subject home unit. On the other hand OPs had failed to counter the evidence or case of the complainant.
  - iii. Perusal of Annexure C-1, clearly indicates that out of the two home units one unit has already been transferred in the name of the complainant which was earlier in the name of Harmail Singh. However at page 18 of the complaint, the certificate issued by OPs clearly indicates that the second home unit is still in the name of Smt. Gurbinder Kaur and the same has not been transferred in the name of the complainant despite of her repeated requests to the OPs made through letters as well legal notice Annexure C-4 to C-6.
  - iv. A perusal of Annexure A-2 clearly indicates that the OPs have even cleared the case of the complainant for transfer of the subject home unit in the name of the complainant but till date the certificate has not been issued by the OPs making further clear that there is deficiency in rendering service and indulgence in unfair trade practice on the part of the OPs.
  - v. The case of the complainant is further that the OPs failed to complete the subject project on the site as neither the construction work has been started by the OPs nor they have offered possession of the subject home units to the complainant even till the filing of the complaint and as the complainant has already paid entire sale consideration to the erstwhile owner who had paid the same long back to the OPs, the aforesaid act of the OPs amounts to deficiency in service and indulgence in unfair trade practice.
  - vi. Not only this, OPs have failed to clarify this Commission by leading any evidence or making any defence as to why they had received huge amount from the complainant knowing fully well that necessary clearances have not been given by the competent authority, which was otherwise obligatory on the part of the OPs to obtain all the approvals/ clearances before booking the subject flat. If the OPs chose to accept the booking without obtaining the approvals/clearances or amended clearances, they are only themselves to blame for the same as the purchaser of the subject floor/flat/plot has nothing to do with the grant of statutory approvals/clearances/amended clearances and for the said act of the OPs, complainant cannot be penalized by postponing the possession. In this regard, reference can be made to the order passed by the Hon'ble National Commission in the case of ***M/s. Narne Constructions Pvt. Ltd. Vs. Dr. Devendra Sharma & 4 Ors., Revision Petition No.4620 of 2013***, decided on 17.12.2015 and the operative part of the same reads as under :-

*“.....As far as final sanction of layout by HUDA is concerned, in my view, the petitioner cannot penalize the complainants/respondents for the delay in the aforesaid sanction since delay cannot be attributed to any act or omission on the part of the complainants/respondents. In fact, in my opinion, the petitioner should not even have accepted the booking without final sanction of the layout by HUDA. If the petitioner chose to accept booking on the basis of provisional sanction of the layout by HUDA, it is to blame to only itself for the delay, if any, on the part of the HUDA in issuing the final sanction of the layout. The purchaser of the plot, who had nothing to do with the sanction of the layout by HUDA cannot be penalized, by postponing the possession or registration of the plot and therefore any escalation in the registration charges on account of delay in final sanction of layout by HUDA must necessarily be borne by the builder and not by the allottee of the plot.....”*

- vii. It has thus been proved on record that money had been collected from the prospective buyers including the complainant, without obtaining statutory approvals/ clearances. Collecting money from the prospective buyers and selling the plots/units in the project, without obtaining the required licence/approvals/ clearances/amended clearance is an unfair trade practice on the part of the project proponent. It was so said by the Hon'ble National Commission, in a case titled as ***M/s Ittina Properties Pvt. Ltd. & 3 Ors. Vs.***

**Vidya Raghupathi & Anr.**, First Appeal No. 1787 of 2016, decided on 31.5.2018 and the relevant portion of the order reads as under:-

“.....*This Commission in **Brig. (Retd.) Kamal Sood Vs. M/s. DLF Universal Ltd., (2007) SCC Online NCDRC 28**, has observed that it is unfair trade practice on the part of the Builder to collect money from the perspective buyers without obtaining the required permission and that it is duty of the Builder to first obtain the requisite permissions and sanctions and only thereafter collect the consideration money from the purchasers.*

*It is an admitted fact that the sale deeds were executed in the year 2006 and by 2009 the completion certificate was not issued. The Occupancy Certificate was issued only on 25.09.2017 during the pendency of these Appeals before this Commission. Allotting Plots or Apartments before procuring the relevant sanctions and approvals is per se deficiency.....”*

- viii. The complainant has also relied upon the judgment of Hon’ble National Commission in the case of **Sujay Bharatiya & Anr. Vs. Unitech Reliable Projects Pvt. Ltd.**, Consumer Case No.1814 of 2017 decided on 05.07.2018 in which it was held that non delivery of possession of plots/units in a developed project by the promised date is a material violation on the part of the builder and in those cases, allottees are well within their rights to seek refund of the amount paid. The above view is further supported by the principle of law laid down by the Hon’ble Supreme Court of India in the case titled as **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan**, Civil Appeal No.12238 of 2018, decided on 02.04.2019 and also in **Fortune Infrastructure Vs. Trevor D’ Lima & Ors. (2018) 5 SCC 442**.
- ix. Recently, the Hon’ble National Commission in **Sanjiv Kumar Jain & Anr. Vs. Lodha Crown Buildmart Private Limited, II (2023) CPJ 271 (NC)** has held that inordinate delay in offer of possession, amounts to ‘deficiency in service’ and home buyer can ask for refund on this ground alone and if unreasonable delay in offer of possession is proved then it is sufficient to grant relief of refund and other grounds are not liable to be examined. The relevant headnote of the order is reproduced below for ready reference :-

*“(iii) Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d), 21(a)(i) — Housing — Booking of duplex flat — Non-delivery of possession — Deficiency in service — Inordinate delay in offer of possession, amounts to ‘deficiency in service’ and home buyer can ask for refund, on this ground alone — If unreasonable delay in offer of possession is proved then it is sufficient to grant relief of refund and other grounds are not liable to be examined — As there was unreasonable delay in offer of possession, complainants are entitled for refund of full amount under Clause 11.3 of agreement — Home buyer cannot be made to wait for possession of flat for indefinite period — Opposite party is directed to refund entire amount deposited by complainants with interest @ 9% per annum from date of respective deposit till date of payment.”*

- x. The consumer complaint is resisted by the OPs on the ground that the complainant has no cause of action, is without merit as it has come on record that the possession of the subject home units have not been offered by the OPs to the complainant, till date. In this regard, reliance can be placed on the judgments of Hon’ble Apex Court in the case of **Lata Construction & Ors. Vs. Dr. Rameshchandra Ramniklal Shah & Anr., AIR 1999 SC 380** and **Meerut Development Authority Vs. Mukesh Kumar Gupta, IV (2012) CPJ 12 (SC)** wherein it was held that when possession of the residential units is not offered, there is continuing cause of action in favour of the allottee/buyer. It has also been held by the Hon’ble National Commission in the case of **Chairman and Managing Director, Ajeet Ajay Estate and Resort Pvt. Ltd. Vs. Dinesh, R.P. No.1978 of 2017** decided on 29.3.2019 that if the amount deposited lies with the builder and it has not returned the same, there will be continuing cause of action in favour of the complainants to file the consumer complaint.
- xi. Though the OPs have also resisted the complaint on the ground that the complaint is not filed within time. It is already discussed above that the complainant has continue cause of action till date even the subject

home unit has not been transferred from the name of Gurrinder Kaur in the name of complainant and also that the possession has not been offered to the complainant despite receiving entire sale consideration. Hence, the aforesaid act of OPs amounts to deficiency in service and unfair trade practice on its part, especially when the entire case set up by the complainant in the consumer complaint as well as the evidence available on record is unrebutted by the OPs.

xii. In view of the aforesaid discussion, it is safe to hold that the complainant has successfully proved the cause of action set up in the consumer complaint and the present consumer complaint deserves to succeed.

4. In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OPs are directed as under :-

i. to refund ₹1,35,350/- plus ₹.2,26,050=₹3,61,400/- to the complainant alongwith interest @ 9% per annum from the date when the complainant applied for second unit i.e. 9.12.2009 till onwards.

ii. to pay an amount of ₹30,000/- to the complainant(s) as compensation for causing mental agony and harassment to her;

iii. to pay ₹10,000/- to the complainant/s as costs of litigation.

5. This order be complied with by the OPs within thirty days from the date of receipt of its certified copy, failing which, they shall make the payment of the amounts mentioned at Sr.No.(i) & (ii) above, with interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No.(iii) above.

6. Certified copies of this order be sent to the parties free of charge. The file be consigned.

Announced

4/09/2023

mp

**Sd/-**

**[Pawanjit Singh]**

**President  
Sd/-**

**[Surjeet Kaur]**

**Member**