

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 527 OF 2019

1. JAGRUK NAGRIK & ANR.

.....Complainant(s)

Versus

1. SHREENIWAS COTTON MILLS LTD. & ANR.

216, Shah & Nahar Ind. Estate, Dr. E. Moses Road,

WORLI,

MUMBAI-400018

2. THE LODHA GROUP

Through their MD & CEO Mr. Abhishek Lodha, Lodha

Excelus, N.M. Joshi Marg,

MAHALAXMI,

MUMBAI (MAHARASHTRA), 400011

.....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. P.V. MOORJANI, AUTHORISED REPRESENTATIVE

FOR THE OPP. PARTY : MR. RAHUL KRIPALANI, ADVOCATE

Dated : 26 June 2023

ORDER

1. Heard Mr. P.V. Moorjani, Authorised Representative, for the complainants and Mr. Rahul Kripalani, Advocate, for opposite parties.
2. Damodardas Jewellers has filed above complaint, for directing the opposite parties to (i) handover possession of Flat No.3801, East Wing, 38th floor, with 117 stories constructed building named as "World One", with all permission of the government and local bodies and pay delay compensation in the form of interest @18% per annum on its deposit from 30.09.2016 till the date of possession; or in alternative (ii) refund entire amount deposited by complainant-2 with interest @18% per annum from the date of respective deposit till the date of refund; (iii) pay Rs.5/- lacs, as compensation for mental agony and harassment; (iv) pay Rs.5/- lacs, as litigation costs; and (iv) any other relief which is deemed fit and proper in the facts of the case.
3. The complainants stated that complainant-1 was a registered voluntary consumer association and used to provide legal help to the consumers and complainant-2 was a consumer. Shreeniwas Cotton Mills Limited (now merged and incorporated as Macrotech Developers Limited) and The Lodha Group (opposite parties) were companies, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project. Opposite party-1 launched a group housing project, in the name of "World One" at Cadastral Survey Nos.443, 444, 445, 445-P & 446, Lower Parel

Division, Senapati Bapat Marg, Lower Parel, Mumbai-400013, in the year, 2010 and made wide publicity of its amenities and facilities. Opposite party-1 advertised as “The World’s Tallest Residential Tower”, “Standing Tall Amongst The World’s Most Iconic Tower”, “Paris Gave The World The Eiffel Tower”, “The Burj Khalifa Defines Dubai”, “Presenting The World Towers India’s New”, “Global Icon”, “A Sculptural Statement So Powerful, It will Transform Mumbai’s Skyline Forever”. The building was composed of three towers, uniquely curvilinear in shape. The World Towers from a stunning sculpture of glass and steel, soaring into the Mumbai sky. “World One”, the world’s tallest tower. World view and world crest, two of India’s tallest building, stand as powerful symbol of Mumbai’s unfettered aspirations and unstoppable drive, destined to dominate the city’s skyline and many more such as in their luxury brochure” etc. Mr. Umang Patani, an agent of opposite party-1 approached complainant-2 in November, 2014 and showed a lucrative coloured brochure and tempted that “World One” at Mumbai would a tallest residential building in world i.e. several levels for parking and 117 upper floors. In the brochure, various fittings were provided viz. laminated wooden flooring, sanitary fittings, faucets and cisterns, door shutters, hardware, switched, elevators, mentioning the names of the suppliers of such fitting. The agent further informed that there would be swimming pool, steam and sauna rooms. Believing upon the representations of opposite party-1, complainant-2 decided to purchase one residential flat on 01.12.2014. Complainant-2 booked a flat and deposited booking amount of Rs.1800000/- on 07.12.2014. Opposite party-1 allotted Flat No.3801, East Wing, 38th floor, carpet area 2044 sq.ft. total consideration of Rs.145728360/-. As per demand, complainant-2 paid Rs.13313197/- on 10.01.2015, 14962065/- on 14.03.2015, 7316500/- on 26.05.2015, Rs.1489235/- on 11.06.2015, Rs.617492/- on 03.07.2015, Rs.255508/- on 16.09.2015, Rs.15206502/- on 15.12.2015, Rs.1001531/- on 21.04.2016 and Rs.869543 on 02.09.2015 and Kotak Mahindra Bank paid Rs.29291400/- on 01.07.2015, Rs.10000000/- on 18.03.2016, Rs.8789107/- on 18.03.2016 and Rs.18944687/- on 22.12.2016 (total Rs.123856767/-). After deposit of four instalments, opposite party-1 executed Agreement to Sell dated 03.06.2015 in favour of complainant-2. In booking application, payment plan was “construction linked payment plan” and total amount was payable in 19 instalments, while in agreement to sell, opposite party-1 unilaterally changed payment plan as “time linked payment plan” and total amount was payable in 9 instalments. Date of offer of possession was mentioned as 30.09.2016. In order to make timely payment of the instalments, complainant-2 applied for home loan to Kotak Mahindra Bank, which sanctioned loan of Rs.102000000/- on 28.05.2015, out of which Rs.67025194/- was disbursed to opposite party-1 till 22.12.2016. After construction of 89th floor of the building, opposite party-1 stopped the construction but went on raising demands of instalments. As the construction was stopped, complainant-2 stopped payment of instalment. Opposite party-2, vide email dated 20.03.2017, informed that if payment of Rs.24401277/- is made till 27.03.2017, then interest of Rs.2606345/- would be waived. Complainant-2, vide email dated 26.03.2017, inquired that if they show permission for construction of 117 stories and start construction, it would pay Rs.2.44 crores. Opposite party-2, vide email dated 31.05.2017, informed that the application for permission to raise building above 89th floor up to 117 floor was pending before Civil Aviation Department and again asked to deposit, above amount. Opposite party-2, vide emails dated 13.06.2017 and 29.06.2017, informed that SGST and CGST would be increased from 01.07.2017 and deposit balance amount of Rs.3.60 crores till 30.06.2017, in order to save from increased tax. Complainant-2, vide email dated 29.06.2017, informed that

he would deposit balance amount if opposite party-1 agrees to pay Pre-EMI interest till the date of receiving permission from Civil Aviation Department. Opposite party-2, vide email dated 21.07.2017, informed that Delhi High Court, had directed for a survey report, in relation to permission from Civil Aviation Department and they had positive hope. Opposite party-2, vide a letter dated 13.11.2018 offered possession and demanded balance amount of Rs.45129902/-, payable till 27.11.2018. Opposite party-2 demanded Rs.40753727/- vide letter dated 28.11.2018. Complainant-2, vide letter dated 06.12.2018, sought for help of complainant-1 in the matter, who advised to file the complaint. Then this complaint was filed on 01.04.2019, alleging deficiency in service.

4. Opposite party-1 has filed its written reply on 23.02.2021, in which, booking of the flat, allotment of the flat, execution of agreement to sell and the deposits made by complainant-2, have not been disputed. The opposite party stated that the complainants earlier filed CC/132/2019, for same relief. When the complaint came up for hearing before the Bench on 01.02.2019, the case was adjourned for 08.03.2019, in order to enable the complainants to delete complainant-1 from the complaint and file an authority letter of complainant-2. The complainants did not remove above defects and the complaint was dismissed as withdrawn with liberty to file fresh complaint, after removing defects. But this complaint has been filed without removing above defects. There is misjoinder of the parties in the complaint inasmuch as complainant-1 and opposite party-2 are neither necessary nor proper parties. Complainant-2 is not properly represented and opposite party-2 was not a juristic person. "World One" was initially planned to be a tallest building in the world and the applications for NOCs/approvals were accordingly filed. Urban Planning and Development Department granted approval. However, Airport Authority of India placed restrictions on the height up to 180.89 meters, which was increased to 284.29 meter height. This news was broadly reported by print and electronic media. Opposite party-1 approached Appellate Committee, Ministry of Civil Aviation, Government of India, who in its meeting dated 26.03.2015, directed Airport Authority of India, to conduct an aeronautical survey of the site. Airport Authority of India conducted aeronautical survey of the site in June 2015 and on its basis issued fresh NOC in September, 2015 for 285.06 mtrs. height. Opposite party-1 moved an application before appellate committee to permit for an independent aeronautical survey report, which was rejected by it. The appellate committee did not accept the request of the opposite party for independent aeronautical survey, then the opposite party filed Writ Petition (C) No.2274 of 2017 before Delhi High Court. Delhi High Court vide order dated 12.04.2017 directed Airport Authority of India to refer the matter for aeronautical study by ICAO. The opposite party deposited a sum of Rs.24189326/- for the study and report of ICAO, but Airport Authority of India has not referred the matter. It is due to not granting NOC by Airport Authority of India for construction of 117th floor, the construction could not proceed after 89th floor. The booking of complainant-2 is at 38th floor. All other bookings in this building were below level of 89th floor. Complainant-2 has not suffered any loss for not constructing the building above 89th floor. All the persons, who had booked unit in the project, were aware of all the permissions granted at the time of booking application same was duly disclosed in the agreement also. The factum of objection to the height by Airport Authority of India was in public domain. The opposite party continuously trying to raise the building upto 117th floor. All the buyers were informed in respect of the stage of the construction throughout. There has been no alteration in any facility or any amenity

offered as part of the project. It is incorrect to say that the opposite party had made any false representation to complainant-2 at the time of booking. It is incorrect to say that the complainant-2 has booked the flat in the project only for the reason that it consisted of 117th floors. Complainant-2 booked the flat on 07.12.2014. At that time the order of Airport Authority of India was very much there and has widely published by print and electronic media, as such, the plea taken by complainant-2 that he was misguided by any agent in respect of 117th floor, does not appear to be correct. It is the duty of the buyers to exercise due diligence at the time of buying the property. Complainant-2 booked the flat through the broker. The flat was allotted to Complainant-2 on 13.01.2015 and agreement to sell was executed on 03.06.2015, which was registered on 12.06.2015. In Clause 6.1 of the Agreement, it has been disclosed that the building would be constructed according to the approval and/or plans, design and specifications and amendments thereto as approved by the concerned authority. The opposite party is making continuous effort to get sanction of 117th floors to the building. The building as per sanction of Airport Authority of India was completed and the competent authority issued "occupation certificate" on 29.07.2017. The opposite party offered possession vide letter dated 13.11.2018 to complainant-2. Complainant-2 is contractually obligated to take possession. The construction was fully finished upto 50th floors. The opposite party committed to provide fit-out possession upto 30.09.2016 under Clause 11.1 of the agreement with grace period of one year. There is reasonable delay in offer of the possession. Interest of the buyers is fully secured by providing delay compensation. Complainant-2 stopped payment after December, 2016 but did not exercise his right to cancel the allotment under Clause 11.4 of the allotment letter on the ground of delay. Complainant-2 paid total Rs.116557299/- and not paid Rs.123856760/-. The complainants are arbitrarily claiming interest @18% per annum although as per Clause 11.4 of the terms and conditions of allotment letter no interest was payable. The date of issuance of "Occupation Certificate" shall be deemed with the date of offer of possession under Clause 11.4 of terms and conditions of the allotment letter. The complaint is liable to be dismissed.

5. The complainants filed Rejoinder Reply, Affidavits of Evidence of Umang Patni and Pranay P. Choksi. The opposite party filed Affidavit of Evidence of Surendran Nair, Sub-Rejoinder Affidavit. Both the parties have filed written synopsis.

6. The complainants took the case that complainant-2 booked the flat in the project "World One" as Mr. Umanag Patni, the agent of opposite parties, represented that the building "World One" would be constructed upto 117th floors and it would be tallest building in the world of the height of 423 mtrs., but the construction was stopped after 89th floors although the permission for construction up to 89th floors has been granted by Airport Authority of India, therefore, there was misrepresentation on the part of the opposite parties in respect of height of the building and due to misrepresentation complainant-2 is entitled to claim refund of their money with interest inasmuch as it is not possible for opposite parties to complete the construction up to 117th floors. The opposite party submitted that Airport Authority of India has sanctioned construction for 284.29 mtrs. in 2013 which was revised to 285.06 mtrs. in September, 2015. At the time of booking above news was widely circulated by print and electronic media and everybody had knowledge about it. In any case, complainant-2 would have exercised due diligence and this could not be a ground in

cancellation of the booking and refund of the amount. So far as delay in raising the construction is concerned, as per agreement the construction had to be completed upto 30.09.2016 with grace period of one year. It was completed and part of occupancy certificate was issued on 29.07.2017. Under the terms of the agreement, issuance “part occupancy certificate” was deemed date of offer of possession. In any case, the possession was offered through letter dated 13.11.2018. Complainant-2 stopped payment from December, 2016, therefore, no relief can be granted to the complainants.

7. We have considered the arguments of the counsel for the parties and examined the record. So far as preliminary objection relating to misjoinder of parties is concerned, complainant-1 is a voluntary consumer association, registered under Societies Registration Act, 1860 and can file complaint under Section 12(1)(b) of Consumer Protection Act, 1986. complainant-2 is actual consumer. No prejudice has been caused to the opposite parties for joining complainant-1 in the complaint. So far as Lodha Group (opposite party-2) is concerned, Lodha Group has been shown as the developer in the brochure. Lodha Group did subsequent communications with complainant-2, as such, there is no misjoinder of parties or any case no prejudice is caused to the opposite party on this ground.

8. So far as representation made to complainant-2 for raising 117th floors of the building as well as world’s tallest building is concerned, it is fully proved from the brochure and other papers. The opposite party pleaded that Airport Authority of India has sanctioned construction for 284.29 mtrs. in 2013 and revised to 285.06 mtrs. in September, 2015. The opposite party has not filed any evidence that the order of Airport Authority of India grant sanction for construction upto 284.29 mts. in the year 2013 had become a public news, at that time. Therefore, there was misrepresentation in respect of height of the building on the part of the opposite party. According to the complainants, tallest building in the world was only consideration for booking such an expensive flat in this project, therefore, the complainants are entitled to claim for refund of their money. Inasmuch as till today, the opposite parties could not obtain sanction of Airport Authority of India for raising the height of the building beyond to 285.06 mtrs. So far as default made by the complainant-2 in payment of instalments after December, 2016, is concerned, opposite party-1 did not exercise its right to cancel the allotment on this ground till filing of the complaint.

ORDER

In view of aforesaid discussions, the complaint is partly allowed. The opposite party-1 is directed to refund entire amount deposited by complainant-2 with interest @9% per annum from the date of respective deposit till the date of refund, within a period of two months from the date of this judgement.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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DR. INDER JIT SINGH



