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Complaint Case No. CC/61/2017
(Date of Filing : 01 Mar 2017)

1. NAVEEN JAMES
SHOP PLOT NO. 45/A, PANDAV NAGAR, DELHI-92.Complainant(s)

Versus

1. ACE TOWN PLANNERS
8D, 8th FLOOR, GOPALA TOWN, RAJENDER PLACE, NEW
DELHI-08.Opp.Party(s)

BEFORE:

HON'BLE MR. INDER JEET SINGH PRESIDENT
HON'BLE MRS. SHAHINA MEMBER
HON'BLE MR. VYAS MUNI RAI MEMBER

PRESENT:

Dated : 26 Aug 2023

Final Order / Judgement

Before the District Consumer Dispute Redressal Commission [Central], 5th Floor
ISBT Building, Kashmere Gate, Delhi

Complaint Case No. 61/01.03.2017

Naveen James son of Shri. M.J. Lal

Shop plot No.45/A, Pandav Nagar,

Delhi- 110092

...Complainant

Versus

M/s. ACE Town Planners Pvt. Ltd.(through its

Managing Director(s) Director/Manager]

Red.Office 8D, 8th Floor, Gopala Tower,

Rajender Place, New Delhi-110008.

...Opposite Party

Date of filing

01.03.2017

Date of Order: 26.08.2023

Coram: Shri Inder Jeet Singh, President

*Ms. Shahina, Member -Female**Shri Vyas Muni Rai, Member***ORDER**

Inder Jeet Singh , President

1.1. (Introduction to case of parties) – The complainant filed complaint u/s 12 of the Consumer Protection Act, 1986 with allegations of deficiency in services and unfair trade practices against the OP, since the complainant was not handed over possession of the allotted plot despite payment of agreed installments regularly and agreed amount was paid as Rs. 1,17,278/-. The OP had even not developed the residential plot to be delivered to the complainant. Moreover, the complainant was constrained by medical reasons and other reasons to agree to get the allotment cancelled for reduced amount because of need of money , even that amount was also not paid despite return of all requisite documents. That is why, the complaint.

The complainant seeks direction to OP (i) to refund a sum of Rs. 1,17,278/-towards deposited in respect of Plot No. 73, Sector-3, Plot Size-125 (Sq. Yds.) under 'Project' Celebrity City, Village-Bicchun, Mokhampura Chowk, Jaipur, Rajasthan along with interest up-to February 2017 i.e. Rs. 61,605/- w.e.f. April 2014 to till February 2017, total amount Rs. 1,78,952/- , (ii) to pay interest including pendente-lite interest @ 18% on Rs. 1,78,952/- till the date of payment by the OP, (iii) to pay compensation of Rs. 1,50,000/- towards mental agony and harassment caused to the complainant by the OP and (iv) to pay a sum of Rs. 1,50,000/- for loss of opportunity of utilization of money by the complainant because it remained locked with the OP.

1.2. The complaint is opposed vehemently by the OP that there is no deficiency of services nor unfair trade practice but the complaint is abuse of process of law as there is no cause of action in favour of complainant and against OP. The complaint is not maintainable since it was a commercial transaction, it does not fall in the Consumer Protection Act. There is also arbitration clause, therefore, the present consumer forum/ Commission lacks jurisdiction on the subject matter. The complainant also got cancelled allotment vis-à-vis the documents were not furnished/ returned by the complainant, therefore, the complainant is even not entitled for any amount in lieu of cancel of allotment or otherwise. The OP also denies other allegations of the complaint.

1.3 The amount deposited by the complainant is Rs. 1,17,278/-, but at some places in the pleading, the amount mentioned is **Rs. 1,17,147/- either by typographical or accidental slip, however, the amount figure of Rs. 1,17,278/- is being maintained.**

2.1. (Case of complainant) – In the month of March 2013, the complainant came across advertisement/ brochure of OP in respect of offering plots of land in the 'Project' Celebrity City in Village Bicchun, Mokhampura Chowk, Jaipur, Rajasthan (hereinafter referred as "Project") and the complainant was convinced by those advertisement and repudiation of OP that he will have a residential plot in the near future for his living, therefore, he got registered for a plot size 125 sq. yards at the rate of Rs. 2,149.02p and paid a sum of Rs. 12,500/- against receipt/ registration no. ACE/CC1334 dated 28.03.2013. On 03.04.2013, OP allotted him plot no. 73, Sector 3, plot measuring 125 sq. yard against total cost of Rs. 2,68,625/- (including EDC+IDC) in the said 'Project'.

2.2. The complainant paid the amount for said residential scheme from time to time, he paid total amount of Rs.1,17,278/- upto 05.04.2014 against receipts. The balance amount left was Rs. 1,51,347/-.

On 05.04.2014 when complainant paid 9th part monthly advance of Rs. 11,642/- he visited the site of 'Project', which shocked him that no work was started by the OP in the said 'Project'. It further shocked the complainant when he learned that OP is not holding any title in the said land nor it was granted any licence by the Government of Rajasthan

for developing residential plots. Whereas OP had promised and assured that plot will be handed over within one year but till 05.04.2014 there was no progress at the site.

2.3. The complainant was constrained by these reasons to demand back his deposited in the month of April 2014 but it was avoided by the OP on one pretext or the other. In July 2016, the complainant was in urgent need of money for his surgery, he requested the OP for return of money, however, the OP exploited the situation and made an agreement dated 13.07.2016 to return amount of Rs.50,122/- in lieu of paid amount of Rs. 1,17,278/ even the OP failed to return that amount vis-à-vis the complainant was put under pressure to sign the agreement. The complainant has been requesting the OP on telephone or otherwise but there is not refund of amount, consequently the complainant was constrained to issue legal notice dated 04.01.2017, even that notice was not responded or to refund the amount. The OP has also committed offence of cheating as complainant was induced to make investment in its bogus scheme apart from unfair trade practice and deficiency. The complainant has been deprived of his money. That is why, the complaint for return of deposit amount and for other reliefs claimed.

The complaint is accompanied with copy of booking receipt dated 03.04.2013, letters/correspondence exchanged inclusive of schedule for payment, provisional registration, memorandum of understanding dated 05.04.2014 with payment planning, booking details, copy of cancellation deed dated 13.07.2016, copy of legal notice with postal receipt, discharge summary dated 12.07.2018 and other medical papers of treatment undergone.

3.1 (Case of OP)- The complaint is opposed vehemently by the OP on facts as well as on legal issues. There is no deficiency of services nor unfair trade practice but the complaint is abuse of process of law as there is no cause of action in favour of complainant and against OP. The complaint is not maintainable since it was a commercial transaction, it is not within the purview of

the Consumer Protection Act. There is also arbitration clause, therefore, the present consumer forum/ Commission lacks jurisdiction on the subject matter.

3.2. The OP is a company of reputation and it has delivered many 'Project's upto the satisfaction of their customers and clients in India. The complainant got his name registered with the OP for allotment of a plot, however, there is some delay in delivery of the 'Project' because of formalities with the Government department, as soon as the formalities will be completed, OP will start delivering the plots in 'Project' as OP is committed for it.

3.3. Neither there is any deficiency of services or unfair trade practice on the part of OP, in fact it is complainant, who never made the timely payment of plot to OP, he tendered the payments as per his own convenience; the complainant never made any payment after 05.04.2014. The OP is having its goodwill. The OP is holding title in the land of the 'Project'. There is significant progress in the 'Project' at site. There are false allegations by the complainant that OP is not having title or licence from the government. The OP never agreed/ promised to hand over the plot within one year.

3.4. In July 2016, complainant approached OP with request of his inability to pay the outstanding payment in respect of plot allotted to him because of financial difficulties, he had requested for return of the deposited amount. On request of complainant, OP agreed to refund a sum of Rs.50,122/- and the parties entered into cancellation deed dated 13.07.2016. Thus, it was complainant, who got cancelled allotment of his own. The OP was always willing to refund the amount of complainant but it was complainant who backed out from the cancellation deed and insisted upon not to return the original papers to OP. The documents were not furnished/ returned by the complainant. Therefore, there is no question of returning any amount over the agreed amount, which OP was ready to return, but it is subject to return of original papers by the complainant.

3.5. The complaint is without cause of action, no harassment or mental agony was caused to the complainant by OP. The complaint deserves dismissal. The OP's reply is of 13.07.2017, it is under the signature of Sh. Anurag Upadhyaya, Director of the OP and reply is also supported by his affidavit.

4. (Replication of complainant) – The complainant filed his detailed rejoinder to the reply of OP, it reaffirms the complaint as correct. The plot was purchased for his own and future living purposes and not for a commercial transaction, he is a consumer covered under the Consumer Protection Act, 1986. The complaint is maintainable in the consumer forum, since it has jurisdiction on the subject matter. There was promise to deliver the possession but it was not done. The memorandum of understanding (MOU) also bind both parties. There is delay on the part of OP to deliver the possession of plot. The OP failed to honour the cancellation deed and even reduced amount was not paid and that is why legal notice was sent for entire amount and it was also not refunded.

5.1. (Evidence)- Complainant Sh. Naveen James filed his detailed affidavit of evidence, which is supported with the documentary record filed with his complaint.

5.2. OP led evidence by filing detailed affidavit of Sh. Anurag Upadhyaya, Director of OP, who is also author of the written statement, apart from author of cancellation deed dated 13.07.2016.

6.1 (Final hearing)- The complainant and the OP filed their written arguments.

6.2. The parties were given opportunity to make oral submissions, therefore, Sh. Puneet Tandon, Advocate for complainant and Sh. Amit Tayal, Advocate for OP presented their oral submissions.

6.3. It does not require to reproduce here either the contents of written arguments or the contentions advanced orally, since the same will be discussed/appreciated while dealing with the issue involved.

7.1 (Findings)- The rival contention of both the sides are considered, keeping in view the material on record, which is oral narration of events and of documentary record as mentioned in affidavits of parties, supplementing with oral narration.

7.2. Since some legal issues and other issues have emerged from the rival contentions, therefore, they are taken one by one.

7.3. (On the point of arbitration clause & jurisdiction of Commission on subject matter) - The OP contends that since there is an 'arbitration clause' in the agreement/MOU, it constitutes an arbitration agreement, therefore, the matter is to be adjudicated by an Arbitrator; the complainant is liable to be dismissed as the Commission lacks jurisdiction on the subject matter. Whereas Ld. Counsel for complainant has reservations that the present Commission is competent to decide the complaint, because the Consumer Protection Act, 1986 is special statute, it is for the welfare of the consumers.

7.3A: This question is raised by OP, 'whether it bars the Jurisdiction of Consumer Commission/Fora, because of an arbitration clause (no.25) in the MOU to refer the dispute, if so arises, to Arbitrator and consumer complaint is liable to be dismissed'?

To answer this question, it needs discussion from the point of the Arbitration and Conciliation Act 1996 as well as the Consumer Protection Act, 1986 (since complaint was filed under the Act, 1986), apart from the law laid down in precedents. It is matter of discretion of parties to enter into arbitration agreement or to include arbitration clause in the agreement to resolve the dispute, if so arises, through Arbitrator. The Arbitral Tribunals are private fora, which are chosen by the parties out of their volition to get determined their dispute, in place of public forum of Civil Court and other tribunals. When, there is such agreement between the parties, matter is to be referred to Arbitrator by the judicial authority in terms of section 8 of the Arbitration and Conciliation Act 1996 in case civil suit is filed in the court. The Arbitrator has to follow the provision of the Arbitration and Conciliation Act 1996. Arbitrator gives its final findings by writing an Award. There is also further remedy provided in the Act, 1996 itself if one is feeling aggrieved from such Award, however, it is subject to fulfilling the conditions laid down. Section 34(2)(b) and sec.48(2) of the Arbitration and Conciliation Act 1996, makes it clear that arbitral award may be set

aside if the court finds that subject matter of the dispute is not capable for settlement by the arbitration under the law for the time being in force or award is in conflict with the public policy in India.

By looking into Consumer Protection Act 1986, this Act does not specify non-arbitral matters. However, on the principles that adjudication of certain categories of proceedings are reserved by legislature exclusively for public fora as a matter of public policy, e.g. dispute relating to rights and liabilities which give rise to or arise out of criminal offences; matrimonial disputes relating to divorce, judicial separation, child custody, restitution of conjugal rights; guardianship matters; insolvency and winding up matters; testamentary matters (probate, letter of administration and succession certificate) and eviction of tenancy matters, which are governed by special statute, as held in *Booz Allen and Hamilton Inc Vs SBI Home Finance Ltd* 2011 5 SCC 532.

A situation, alike question in hand, had arisen in *M/s Emaar MGF Land Ltd Vs Aftab Singh* [decided on 10.12.2018 in Review petition (C) no.2629-2630 in civil appeal no. 23512-23513] wherein the revision petition was dismissed by holding that the arbitration clause in buyer's agreement is not a bar to resolve dispute by Commission, while relying upon the Act that provisions of Act are in addition to and not in derogation of other law in force (sec. 3 of Act 1986) and also on the basis of previous decisions inclusive of case *Booz Allen and Hamilton Inc* (supra). Moreover, sec. 100 of the Consumer Protection Act 2019 is identical to section 3 of Act 1986. Since, section 8 of the Arbitration and Conciliation Act 1996 was amended in 2015 and it was also discussed that it would also not affect the position because of amendment of 2015 in section 8(1) of the Arbitration and Conciliation Act 1996, that notwithstanding any decree or order of Supreme Court or other Court, the matter is to be referred to arbitration unless court finds prima facie that no valid arbitration agreement exists. To say, in *Emaar MGF* case, the reasons and objects of Bill of proposed amendment of 2015 in the Arbitration & Conciliation Act 1996, was also discussed to ascertain what was impetus for proposed amendment. It was discovered that in order to smooth and expedite the arbitration proceedings by least judicial intervention from the point of filing copy of agreement, section 8 was amended. It is never the move in objective of amendment to oust the jurisdiction of Consumer Commissions. Thus, OP failed to establish that the Consumer Commission lacks jurisdiction on the subject matter because of arbitration clause no. 25 in MOU.

7.4. (whether or not the transaction is commercial) – The OP has taken another objection that it was a commercial transaction, which was opposed by the complainant that this was a objection by OP just for the sake of the objection, otherwise OP has not led any evidence to substantiate that it was a commercial transaction.

7.4A The circumstances are speaking themselves and submissions of complainant are based on those circumstances that there is no iota of evidence by OP to decipher that the residential plot registered and allotted to the complainant was for commercial purposes or the transaction was commercial in nature. When the record of registration form or the receipt issued or the MOU is not qualifying that the transaction was commercial in nature, therefore, it is not fair on the part of OP to introduce concept of commercial transaction when it is not so in the record. Moreover, the complainant in para 4 of the complaint, rejoinder and evidence reaffirmed that the plot was booked

by him for his living/ livelihood. Therefore, it is held that the OP failed to establish that the transaction was commercial in nature.

7.5. So far other issues are concerned, by taking into stock totality of circumstances, it is held that there is deficiency of services and unfair trade practice on the part of OP for the following reasons:-

- (i) The registration of plot for 125 sq. yard in the 'Project' as well as MOU between the parties is not disputed by them. As per registration form, the total cost of the plot is Rs 2,68,625/- out of which advance amount to be paid is Rs. 1,17,278/- and total remaining due amount was Rs. 1,51,347/-. This total cost includes IDC + EDC+PLC.
- (ii) Letter dated 03.04.2013 of provisional registration accompanies payment plan showing due dates as well as corresponding amounts/installment of Rs. 11,642/- and MOU dated 05.04.2014, also shows monthly advance payment plan of Rs. 11,642/-, which the complainant had paid against receipts.
- (iii) As per MOU the other charges of IDC and EDC would be payable by the allottee as and when demanded by the Government, there is also provisions in the said MOU that rates of IDC or EDC may vary as per the scheme of Government. Therefore, when the complainant has already paid agreed amount of Rs. 1,17,278/-, the OP cannot say that remaining amount was not paid by the complainant since IDC and EDC are subject to demand and rates of the State Government/ Authority.
- (iv) As per MOU (clause no. 23) the OP has to hand over the possession after receiving full payment and the complainant had paid the agreed amount, therefore, when the complainant has paid the amount, the obligation of OP starts to comply the terms and conditions of MOU, which it failed, this amounts to deficiency of services.
- (v) The OP has also not prove as to when further demands were raised to the complainant which he failed to comply those demands, therefore, it is hollow plea of the OP that after 05.04.2014 there was no payment by the complainant, since no demands have been proved. There is also no proof of fact by OP that complainant was not paying the amounts regularly but as per his own convenience.
- (vi) The complainant has proved cancellation deed dated 13.07.2016, it was between OP through Sh. Anurag Upadhyaya/as first party and complainant Sh. Naveen James/as second party. Its relevant clauses are reproduced hereunder:-

"Clause no. 3 the second party hereby confirms that it will have no right, title, claim, concern, lien and interest with the said land and/or with the said unit of any nature whatsoever, and the Second Party, has handed over back to the First Party the original said application dated 28-03-2013 and the original documents and payments receipts."

."Clause no. 4 The second party agrees that after receiving the entire refund amount as detailed in Schedule A, shall have no defence in any matter pertaining to the said land and plot said unit".

The complainant has also filed his discharge summary that he was indoor patient in Deepak Memorial Hospital/ Kailash Hospital and Heart Institute, Noida in July 2016 (from 11.07.2016 to 12.07.2016), when during that phase, the cancellation deed was executed. The OP has vehemently contended in the reply as well as in the evidence that original documents were not furnished by the complainant and that is why there was no question of release of the amount. However, this plea of OP is a blatant lie, in view of the clause 3 above that original documents along with original registration were taken back by the OP. When the documents were already taken back, the OP was supposed to return the amount forthwith, therefore, the OP is taking inconsistent as well as a false plea of its own record that despite receiving back original documents, it was contended otherwise and amount was not released. This also manifests that OP had no intention to return the amount. It is unfair trade practice.

7.6. (whether complainant is entitled for amount under cancellation deed or full amount)- It has already been held that there is deficiency of services and unfair trade practice on the part of OP. Now simple question arises whether the complainant is entitled for refund of entire deposited amount of Rs. 1,17,278/- or the amount of Rs. 50,122/- mentioned in the cancellation deed. The answer of this quest inhere in the circumstances as well as the conclusion already drawn.

It can be elaborated. The complainant had deposited amount of Rs. 1,17,278/- despite that the possession was not delivered in terms of MOU of 2014. In the series of event took place, complainant was constrained by certain reasons and he entered into cancellation deed with the OP for reduced amount of Rs. 50,122/- and in lieu of for such payment, the complainant returned all original documents and original registration application to OP expecting immediate return of amount to meet his need, but OP failed to return the amount agreed. At both instances, the OP is not complying the terms and conditions of MOU by not handing over the possession of plot and then cancellation deed by not paying the agreed amount, under the pretext that original papers were not returned. Although, the author of cancellation of deed acknowledge the receipt of all documents in clause 3 of deed and same author/deponent too false plea that original papers were not returned. In fact, OP is taking different stand as per its own convenience but they are inconsistent to each other and it is establishing that false plea is taken in the pleading and evidence of not returning of documents. The OP with-held amount of complainant arbitrarily. The complainant is held entitled for return of entire advance amount of Rs. Rs.1,17,278/- deposited with the OP as OP failed to

deliver possession and it would not give any benefit to OP that cancellation deed was executed, since circumstances are suggesting that complainant was in weak condition to concede to OP.

8.1. Therefore, after critical analysis of case of both sides with record, it is held at complainant has succeeded that he had paid total amount of Rs.1,17,278/- from 28.03.2013 to 05.04.2004 in respect of allotted plot no. 73 measuring 125 sq. yard in the said 'Project' Celebrity City" Village-Bicchun, Mokhampura Chowk, Jaipur, Rajasthan, however, OP failed to hand over the developed plot to complainant despite payments. The complainant is held entitled for refund of his deposited amount of Rs.1,17,278/- from OP, because of deficiency in services and unfair trade practice on the part of OP.

8.2. The complainant claims interest of 18 % pa. There is no agreed rate of interest between the parties under MOU for such eventuality. There is provision of simple interest at the rate of 8% pa in MOU if there is delayed payment or in case cheque given is bounced. Thus, it would serve both ends by allowing simple interest at same rate of 8% pa being reasonable rate, that too from the date of complaint till realization of the amount, it is allowed in favour of the complainant and against the OP.

8.3. The complainant has claimed compensation of Rs.1,50,000/- on account of mental agony and harassment, therefore, considering all the circumstances of this case, a lump sum compensation of Rs. 25,000/- is determined and allowed in favour of complainant and against the OP.

8.4: The also claim additional amount of Rs.1,50,000/- because he was deprived of use of his amount, however, this request is declined since the complainant has already been allowed interest at the rate of 8%pa on the amount deposited with OP, he cannot be allowed further amount under such head.

8.5: The complainant also seeks costs of the proceedings, without quantifying it. Since he has succeeded in establishing the complaint, he had also sent legal notice to prior to filing of complainant, therefore, costs of Rs.15,000/- is determined and allowed in favour of complainant and against OP.

8.6: The complainant has also claimed other relief or order in his favour under the circumstances of this case.

It is manifest that this is a classic case in which OP's Director Shri Anurag Upadhyaya, author to written statement, is alleging vehemently that it was complainant who avoided to return the original documents to OP to implement the cancelling deed by paying amount and under these circumstances no amount is payable to the complainant. Whereas OP's same Director Shri Anurag Upadhyaya acknowledges the receipt of all original documents in the body of cancellation deed itself (clause no.3, already reproduced). It means the OP is taking false and frivolous plea, which is against OP's own record. This is not only inconsistent of its own case but it was a devise adopted by OP to decline refund amount, even of reduced amount, which the complainant was constrained to agree for medical and other reasons. The OP had intentions not to return the amount under any

circumstances. It needs to curb this type of malpractice and unfair practice on the part of OP. How it could be cured? Could it be cured by awarding punitive damages?

Then, what is punitive damages and what is its purpose? The punitive damages (exemplary damages) are assessed and awarded in order to pinch respondent for outrageous/intolerant behaviour and/or to refrain it or to deter others from engaging in conduct similar to that which formed basis of law suit. Punitive damages are also imposed to reform defaulting party as well as to deter other from indulging in such wrongs. Punitive damages are generally given in civil action, however, there is also provision in section 14(1)(d) the Consumer Protection Act, 1986 for punitive damages. The punitive damages are not fine or penalty as fine is imposed in criminal trials. Thus, the aforementioned circumstances discussed, which are against OP, warrants that it is a fit case to award punitive damages against OP and the same are quantified as Rs.15,000/- in favour of complainant and against OP.

8.7: Accordingly, the complaint is allowed in favour of complainant and against OP, while directing the OP to pay an amount of Rs.1,17,278/- (being refund of amount) along with interest at the rate of 8% p.a. from the date of complaint till realization of the amount, damages of Rs. 25,000/-, costs of Rs. 15,000/- and punitive damages of Rs.15,000/- in favour of the complainant and against OP. The OP shall pay the amount within 30 days from the receipt of this order.

In case the complainant does not pay the amount within 30 days from the receipt of this amount, then the rate of interest will be 10% per annum (instead of 8% pa) on the amount of Rs.1,17,278/-.

9: Announced on 26th August, 2023 [भार 04, साका 1945].

10. A copy of this Order be sent/provided forthwith to the parties free of cost as per rules for compliance.

[Vyas Muni Rai]

Member

[Shahina]

Member (Female)

[Inder Jeet Singh]

President

**[HON'BLE MR. INDER JEET SINGH]
PRESIDENT**

**[HON'BLE MRS. SHAHINA]
MEMBER**

**[HON'BLE MR. VYAS MUNI RAI]
MEMBER**