



IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

RESERVED ON : 10.01.2023
PRONOUNCED ON : 02.03.2023

CONSUMER COMPLAINT NO. 1455 OF 2018

Neeraj Antil
R/o D-103, Vikas Puri
New Delhi – 110018

..... Complainant

Versus

M/s Emaar MGF Land Limited
Through Chairman and Managing Director
Regd. Office at ECE House
28, Kasturba Gandhi Marg
New Delhi-110001

..... Opposite Party

BEFORE:

HON'BLE, MR. JUSTICE RAM SURAT RAM (MAURYA),

PRESIDING MEMBER

HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Mr.Chandrachur Bhattacharyya, Advocate

For the Opposite Party : Mr. Sunil Kumar, Advocate

ORDER

1. The present Consumer Complaint (CC) has been filed by the Complainant against Opposite Party (OP) as detailed above, inter alia praying for directions to the OP to:-

- (i) Refund the amount of Rs.56,29,609/- along with interest at the rate of 18% per annum.



- (ii) Pay to the complainant the cost of current proceedings.
- (iii) Pay a sum of Rs.20,00,000/- towards mental agony, harassment.
2. Notice was issued to the OP. Parties filed Written Statement/Reply, Evidence by way of an Affidavit and Written Arguments/Synopsis etc. as per details given in the Table at Annexure-A. The details of the flat allotted to the Complainant/other relevant details, based on pleadings of the parties and other records of the case are also given in the Table- A.
3. Brief facts of the case, as emerged from the pleadings of the parties and other case records are that: -
- (i) The complainant had booked a residential flat in the project of the OP, namely 'Imperial Gardens' on 1.11.2012. The total sale consideration of the flat as per agreement was Rs.1,47,37,662/- out of which an amount of Rs.56,29,609/- has been paid by the complainant.
- (ii) A Buyer's Agreement was signed on 30.4.2013 as per which the committed date of possession was 42 months with a grace period of 3 months from the date of execution of the agreement. Till date, possession has not been handed over to the complainant as the construction of the flat has not been completed yet.
- (iii) In view of the breach of the contract by the OP and in view of the fact that what was promised by the OP has not been provided on time. Complainant vide emails dated 9.2.2018 and 12.4.2018 showed her disinterest in taking the possession of the flat and asked for refund of money.
4. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the Complaint, based on their Complaint/Reply, Evidence, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.
5. It was argued by the OP that complainant had agreed to pay the total sale consideration of Rs.1,47,37,662/- in instalments/construction linked payment plan, but paid only 5 instalments totalling to a sum of Rs.56,29,609/- and thereafter, stopped further payments, as such defaulted in complying with the payment plan/part of the Buyer's Agreement. The complainant himself has been a chronic defaulter since the inception of the contract and has intentionally chosen not to deposit



the payable amounts as and when demanded by the OP in consonance with the Construction Linked Payment Plan opted by the complainant despite repeated requests by the OP, in fact complainant has not deposited any amount with the OP after 16.5.2014. In view of complainant's default, OP is entitled to terminate the contract and refund the deposited amounts after deduction of earnest money, non-refundable amounts etc. in terms of agreed clauses of buyer's agreement. In view of admitted fact that the complainant is holder of more than one unit in the same project of the OP, does not fall within the meaning of "Consumer" as defined u/s 2 (1) (d) of the C.P.Act, 1986. The complaint is barred by limitation.

6. The complainant on the other hand argued that as per clause 14 of the Buyer's Agreement, possession was to be handed over within 42 months with a grace period of three months. The said period of 45 months expired on 30.1.2017. The OP miserably failed to hand over the possession after obtaining the Occupancy Certificate within the contractual time period. Hence, complainant is entitled for refund with interest.
7. Committed date of possession as per agreement, with the grace period, was 30.1.2017. Even till date, after a gap of 6 years, OP has not obtained OC and offered possession to the complainant. OP has simply stated in its written statement that the project is near completion and OP is in the process of applying for OC and possession of the unit shall be handed over shortly. During the oral arguments, OP stated that they applied for OC in 2018 but same has not been obtained yet. Even now OP is not in a position to give any firm date/commitment for possession.
8. It was held by Hon'ble Supreme Court in **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs DLF Southern Homes Pvt. Ltd. & Ors.** (2020) 16 SCC 512, "*failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within the contractually stipulated period, amount to deficiency*". In **Ireo Grace Realtech Pvt.Ltd. Vs. Abhishek Khanna & Anr.** (2021) 3 SCC 241, Hon'ble Supreme Court held that "*allottees who have not been given possession, cannot be made to wait indefinitely for possession, nor they can be bound to take possession in other phase of the project. Such allottees are entitled to refund of entire amount deposited by them*". In **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghvan** (2019) 5 SCC 725, Hon'ble Supreme Court observed 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 incorporation of one sided clause in an agreement constitute an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling flats by the builder, the appellant-builder cannot seek to bind the respondent with such one sided contractual terms.”

9. In the instant case, there is an inordinate delay in handing over the possession of flat by the OP. The complainant cannot be made to wait for an indefinite time and suffer financially. Hence, the complainant in the present circumstances have a legitimate right to claim refund alongwith fair delay compensation/interest from the OP(s).
10. For the reasons stated hereinabove, and after giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised by the learned Counsel for the Parties, the Consumer Complaint is allowed/disposed of with following directions/reliefs :
 - (i) The OP(s) shall refund the entire principal amount of Rs.56,29,609/-(Rupees fifty six lakh twenty nine thousand six hundred nine only) to the complainant, alongwith compensation in the form of simple interest @ 9% per annum from the date of each payment till the date of refund. The principal amount refundable mentioned in this para is subject to verification of actual amount paid by the complainant based on receipts etc.
 - (ii) The OP(s) shall pay a sum of Rs.25,000/- as cost of litigation to the complainants.
 - (iii) The payment in terms of this order shall be paid within three months from today.
 - (iv) In case the complainant has/have taken loan from Bank(s)/other financial institution(s) and the same/any portion of the same is still outstanding, the refund amount will be first utilized for repaying the outstanding amount of such loans and balance will be retained by the complainant. The complainant would submit the requisite documents from the concerned bank(s)/financial institution(s) to



the OP four weeks from receipt of this order to enable them to issue refund cheques/drafts accordingly.

10. The pending IAs, in any of the Consumer Complaints, if any, also stand disposed off.



Sd/-

(RAM SURAT RAM (MAURYA), J.)
PRESIDING MEMBER

Sd/-

(DR. INDER JIT SINGH)
MEMBER

Sonia/



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Handwritten signature
03/03/2023

Annexure-A**Details of the Unit and other related details**

Sr No	Particulars	
1	Project Name/Location etc.	"Imperial Garden", Sector-102, Gurgaon
2	Apartment no.	IG-04-0203
3	Size (Built up/Covered/Super Area)	2000 sq.ft.
4	Date of booking	1.11.2012
5	Date of signing Buyer's Agreement	30.4.2013
6	Committed date of possession as per Agreement (with Grace period of three months)	30.1.2017
7	Total Consideration as per agreement	Rs. 1,47,37,662/-
8	Amount Paid	Rs.56,29,609/-
9	D/o Filing CC in NCDRC	20.5.2018
10	D/o Issue of Notice to OP	4.7.2018
11	D/o Filing Reply/Written Statement by OP	14.8.2018
12	D/o Filing Evidence by way of Affidavit by the Complainant	6.12.2020
13	D/o Filing Evidence by way of Affidavit by the OP	11.3.2020
14	D/o filing Written Synopsis by the Complainant	5.12.2021
15	D/o filing Written Synopsis by the OP	21.12.2021

