

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1485 OF 2015

1. DHWANIT PARMAR

S/o. Ram Dayal Sahu, R/o. B-395, Sarita Vihar,
NEW DELHI - 110 076.

.....Complainant(s)

Versus

1. PARSVNATH LANDMARK DEVELOPERS PVT. LTD. &
ANR.

6th Floor, Arunachal Building, 19, Barakhamba Road,
NEW DELHI - 110 001.

2. RAJEEV JAIN (DIRECTOR)

Parsvnath Landmark Developers Pvt. Ltd., 6th Floor, Arunachal
Building 19, Barakhamba Road,
NEW DELHI - 110 001.

.....Opp.Party(s)

BEFORE:

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

HON'BLE BHARATKUMAR PANDYA, MEMBER

FOR THE COMPLAINANT : MR. M.P. BHARGAVA, ADVOCATE

FOR THE OPP. PARTY : MR. PRABHAKAR TIWARI, ADVOCATE

Dated : 04 January 2024

ORDER

(PER MR. JUSTICE RAM SURAT RAM (MAURYA), PRESIDING MEMBER)

1. Heard Mr. M.P. Bhargava, Advocate, for the complainant and Mr. Prabhakar Tiwari, Advocate for the opposite parties.
2. Dhwanit Parmar has filed above complaint for directing the opposite parties to (a) pay the amount of Rs.78572240/- with interest @ 24% p.a. from 29.02.2012 on the amount till payment; (b) pay the damages to the tune of Rs.1.25 crores due to the lose, expenses and other amount to be paid for alternate accommodation; (c) pay a sum of Rs.10 lacs for litigation expenses; and (d) any other order as may be deemed fit.
3. The complainant stated that the opposite party-1 is a company incorporated under the Companies Act, 1956 and engaged in the business of development and sale of residential projects. Opposite party-2 is the Director of opposite party-1. Opposite parties launched a project, namely, "La Tropicana." On 29.02.2012, the complainant booked a residential apartment/pent house for himself and his family members and paid the entire cost of Rs.78572450/-. The opposite parties issued payment receipt stating that basic cost of the apartment was Rs.76600000/- and service tax was Rs.1972450/-. The complainant was provisionally allotted flat No. T2-PH1 at La Tropicana. As structural work of the project was already complete, delivery of the apartment was to be given by December, 2012. The

complainant vide email dated 25.07.2012 requested the opposite parties to make certain changes in the pent house such as (a) details of heat insulation and water proof of both the terrace, heavy plantation and solar panels; (b) water proofing for all toilets and pool area; (c) load bearing capacity of terrace to support terrace garden heavy plantation and solar panels; (d) door window schedule; (e) electrical layout; and (f) plumbing layout. Thereafter, the complainant sent repeated emails in this regard upto 04.03.2013. The opposite parties, vide email dated 22.03.2013 replied that since the contractual agency is engaged to carry out the interior work, it would not be possible to accommodate the changes suggested by an individual and the changes, if any, can be made after taking possession of the unit. As there was delay in handing over the possession, the complainant wrote several letters between 30.04.2013 to 07.06.2013 to the opposite parties to shift his flat to Tower-1, which were not replied to. On 07.06.2013, the complainant sent an email to opposite party-2 *inter alia* demanding compensation for delay in delivery of possession. Opposite Parties sent letter dated 15.06.2013 to the complainant that the possession would be handed over in March, 2014, which the opposite parties failed to do. On 22.01.2015, opposite parties sent email to the complainant that the fit out possession would be handed over between March to June, 2015. Again, the opposite parties failed to handover the possession on the promised date. The complainant sent email dated 20.06.2015 and several other emails up 03.08.2015. The opposite party replied on 04.08.2015 that there would be delay for another three months. The complainant did not receive the copy of the flat buyer agreement sent by the opposite party. On 20.08.2015, the complainant visited the corporate office of the opposite party and requested for builder buyer agreement. Thereafter, the complainant tried to contact the opposite party telephonically regarding possession of the flat but no response was received. Thereafter, the complainant sent legal notice dated 12.09.2015 seeking refund of amount of Rs.78572450/- with interest @ 24% p.a. from the date of booking alongwith cost of notice Rs.11000/-. As the opposite parties failed to refund the amount despite legal notice, then the complainant filed the instant complaint on 16.12.2015.

4. The opposite parties filed their written reply on 01.03.2016 admitting booking and allotment of the flat and the deposits made by the complainant. It was stated that confirmation of the project land from DMRC took time. Thereafter, the opposite party took requisite approvals of layout plan and building plan from the concerned authorities. There were major changes in the Master Plan of Delhi in 2007 due to which the opposite party has to change its layout plans and building plans. After obtaining necessary approvals, the opposite party started construction in September, 2009 and completed the construction work in 2012. The opposite party never assured the complainant that the flats would be completed within 3 years. In clause 11 of the flat buyer agreement it was stated that the construction of the flat is likely to be completed within 36 months from the commencement of the construction of the individual tower wherein flat has been booked or from the date of booking, whichever is later with a grace period of 6 months, subject to force majeure. Delay in handing over of possession is beyond the control of the opposite party.

5. The complainant filed rejoinder and affidavit of evidence of Dhwanit Parmar. Opposite parties filed the affidavit of evidence of Dinesh Kumar Jain. Both the parties have filed written arguments.

6. We have considered the arguments of the counsel for the parties and examined the record. Counsel for the opposite parties relied on the judgments in **Bharathi Knitting vs.**

DHL Courier World Wide Express Courier, (1964) 4 SCC 704; DLF Universal Ltd. vs. Ekta Seth, (2008) 7 SCC 585; and M/s Unicol Bottlers Ltd. vs. M/s Dhillon Kool Drinks and Anr. (1994) 28 DRJ 483.

7. Facts of the case are admitted. The only dispute relates to the delay in handing over the possession. The copy of the flat buyer agreement filed by the complainant is undated and unsigned. Therefore, we are not relying on it. The opposite party vide letter dated 15.06.2013 admitted that offer of physical possession was to be given by end of December, 2012 and it would be given in March, 2014. Again, vide email dated 22.01.2015 the opposite party stated that fit out possession would be handed over in between March to June, 2015. Therefore, delay in handing over possession is established by their own letters of the opposite parties. Reasons for delay as given by the opposite parties are prior to the booking of the complainant and not relevant. Till today the opposite party are not in position to hand over possession. Therefore, the opposite parties are liable to refund the amount with interest. Supreme Court in **Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711, Fortune Infrastructure Vs. Trevor D' Limba, (2018) 5 SCC 442, Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, (2019) 5 SCC 725, Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, 2019 (6) SCALE 462**, held that the buyer cannot be made to wait for indefinite period for possession.

ORDER

In view of the aforesaid discussion, the complaint is partly allowed with cost of Rs.50000/-. The opposite parties are directed to refund an amount of 78572240/ with interest @ 9% from the date of deposit till realization, within 2 months from this order.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER