

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 3242 OF 2017

1. GUNJITA NIRComplainant(s)

Versus

1. DLF HOMES PANCHKULA LTD. & ANR.

Through its Manager/ Authorized Signatory /Officer-in-charge/Director Sales & Marketing SCO 190-191-192, Sector -8 C,

chandigarh

UT. Pin -160009

.....Opp.Party(s)

CONSUMER CASE NO. 3243 OF 2017

1. NIRAJ NIRComplainant(s)

Versus

1. DLF HOMES PANCHKULA LTD.

Through its Manager/Authorized Signatory /Officer-In-charge/director sales & Marketing DLF Gateway Tower, Secnd Floor DLF City, Phase-III,

Gurgaon-122002

Haryana

.....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.Amarjeet Singh, Advocate

For the Opp.Party : Mr. Aditya P.N. Singh, Advocate

Ms. Seema Sundd, Advocate

Dated : 19 Jan 2023

ORDER

DR.INDER JIT SINGH, MEMBER

1. The present Consumer Complaints (CCs) have been filed by the Complainants against the opposite party as detailed above, *inter aila* praying for directing the OP to:-

(i) hand over the proper and legal possession of the Independent Floor , after obtaining all due permission and certificates including the Completion Certificate from the concerned authorities;

(ii) pay compensation for delay in handing over possession by way of interest calculated @15% p.a. on the amount deposited i.e. from the date of delay in handing over the possession till the date of possession.

(iii) to provide all basic and promised facilities to the complainant within specified time, otherwise to compensate;

(iv) pay compensation on account of causing financial hardship, mental agony, harassment, emotional disturbance to the complainant.

(v) pay litigation expenses.

2. Since the facts and question of law involved and the reliefs prayed for in these complaints are similar/identical and against the same Opposite Party except for minor variations in the dates, events and flat numbers etc., which are summarized in the Table in Para 5 below, these complaints are being disposed off by this common order. However, for the sake of convenience, Consumer Complaint (CC) No. 3242 of 2017 is treated as the lead case and facts enumerated herein under are taken from CC/3242/2017.

3. It is averred/stated in the complaint that:-

i) On 03.08.2010, the complainant booked an Independent Floor, with total area of 3230 sq.ft. in the project of OP, namely, 'The Valley' in Sector-3, Kalka Pinjore Urban Complex, Panchkula.

Independent Floor Buyer's Agreement (IFBA) dated 23.02.2011 was entered between the parties, whereby a unit bearing number A-1/34 Ground Floor with car parking number P-GF was allotted to the complainant. Total consideration for the flat was Rs.1,27,81,109.73/-. Out of which the complainant deposited Rs.1,01,50,215/-. The OP was liable to handover the possession of the unit within 24 months from the date of execution of the Agreement. The OP inserted many illegal clauses in the floor buyer agreement and on raising the objection by the complainant the OP informed the complainant to forfeit their complete amount alongwith booking amount, in case the complainant does not enter in agreement with the OP and thus, the complainant had no option except just to sign the agreement with many arbitrary clauses. In clause 15 of the IFBA, the OP mentioned that if any delay happens beyond 24 months then OP shall pay compensation @Rs.10/- per sq.ft. per month of the saleable area for such delay. The complainant was assured by the OP that the possession of the unit shall be given within 24 months. The construction of the project in full swing with double shift.

ii) Despite promising several times and written commitments made in the independent Floor Buyers' Agreement, the OP failed to deliver the possession as promised and a new date of delivery of the unit was informed to the complainant whenever the complainant visited their office. The OP office also published an advertisement in newspaper Hindustan Times dated 13.01.2014 wherein OP department again made another promise to handover the possession in 2014 but also failed to handover the

possession in 2014. The complainant visited the office of the OP to know the date of possession but no satisfactory answer was given by the OP.

iii) The complainant getting no relief, had filed an original complaint before this Commission on 23.05.2017 (CC/812/2017) and subsequent to that, the OP offered possession of the said unit on 31.05.2017 and afterwards the complainant had withdrawn the complaint on 18.08.2017 with liberty to file the present complaint for seeking compensation for delay in delivering the possession the same cause of action.

iv) The OP was supposed to give the possession on 23.02.2013. The OP has not provided several facilities, as promised initially. The OP had given false promises and assurances to the complainant and had malafide intention with the motive to cheat and extract money on various illegal grounds from the complainant and further the OP's dealings were vague from the very inception resulting into harassment and mental agony to the complainant and also amounts to breach of trust. Hence, the complainant is before this Commission.

4. OP in their written statement/reply stated that:-

i) It is submitted that OP have already completed construction of 258 Independent Floors on 86 Independent Floors and another 1517 built up units are nearing completion. It is stated that out of 1775 built-up units, Occupation Certificate has been received for 258 (86 Independent Floors) units and as on date 86 units have been offered for possession to the owners. It is also submitted that proper water connection and Electricity supply is in place and full housekeeping and maintenance services are being provided through leading multinational Company namely Jones Lang Lasalle (JLL). The complainant has neither any cause of action nor any locus standi to maintain the present complaint against the OP, especially when the complainant is actually seeking the complete amendment/modification/re-writing of the terms of the concluded and binding inter-se agreements executed between the parties. This Commission does not have the jurisdiction to consider the present complaint or pass orders on the relief claimed.

ii) It is also contended by the OP that the OP has acted in

accordance with the terms and conditions of the floor buyers agreement. The complainant was duly informed about the Schedule of Possession as per clauses of the Buyers' Agreement entered into between the complainant and the OP. It is also contended by the OP that the parties are bound by the terms and conditions mentioned in the agreement. The Buyers Agreement was entered between the parties on 23.02.2011. The said agreement was duly signed by the complainant after going through the same and understanding each and every clause contained in the Agreement. The complainant were neither forced nor influenced by the OP to sign the said Agreement. The said agreement is binding between the parties. The OP has relied upon the judgment of the Hon'ble Supreme Court in the case of **Bharti Knitting Co. vs. DHL Worldwide Courier** (1996) 4 SCC 704, **Bhubaneshwar Development Authority v Susanta Kumar Mishra** (2009) 4 SCC 684 and in the case of **Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors**, AIR (1990) SC 699.

iii) It is also contended by the OP that there is no deficiency in service or unfair trade practice on the part of the OP. The delay, if any, has been caused due to force majeure conditions which were beyond the control of the OP. The delay was due to Government rules, orders, notifications etc. Hence the OP cannot be made liable for the delay or failure due to force majeure conditions.

iv) The complainant has filed purported complaint to evade the holding charges and other charges. The complainant after a period of over 1 month with malafide intention disputed the final statement of account vis-à-vis club charges, external development charges and other charges demanded by the answering respondents. The OP contended that the aforesaid grievances are completely unfounded, afterthought and an attempt to wriggle out of his contractual obligations. The final statement of account was strictly in terms of the IFBA and not otherwise. The complainant has waived off their right by not opting for exit policy and the complainant is not entitled for compensation as the complainant failed to show that they have suffered any loss/damage and have only made baseless averments. Hence, there is no deficiency in service or unfair trade practice on part of the OP. The complainant has not approached before this Commission with clean hands.

5. Evidence by way of affidavit was filed by the complainants as well as by the OP broadly on the lines of averments made in the complaint.

6. The details of the floors allotted to the Complainants/other relevant details of the case based on pleadings of the parties and other case records are given in the Table below:-

Sr No	Particulars	Case No/ Complainant	Case No/ Complainant
		CC/3242/2017 Gunjita Nir	CC/3243/2017 Niraj Nir
1	Project Name/Location etc.	“DLF Valley” Sector 3, Pinjore – Kalka Urban Complex, Panchkula	“DLF Valley” Sector 3, Pinjore – Kalka Urban Complex, Panchkula
2	Apartment No.	A-1/34-GF	A-1/35-GF
3	Size (Built up/Covered/Super Area)	3230 sq.ft.	2770 sq.ft.
4	Date of application	03.08.2010	03.08.2010
5	Date of signing Independent Floor Buyers’ Agreement (IFBA)	23.02.2011	24.02.2011
6	Committed date of possession as per Independent Floor Buyers’ Agreement (with Grace period, if any)(within 24 months from the date of IFBA)	23.02.2013	24.02.2013
7	D/o Offering Possession	31.05.2017	31.05.2017
8	Total Consideration	Rs.1,27,81,109/-	Rs.1,04,06,889/-
9	Amount Paid	Rs.1,01,50,215/-	Rs.82,26,626/-

10	D/o Filing CC in NCDRC	06.11.2017	06.11.2017
11	D/o Issue of Notice to OP(s)	20.11.2017	20.11.2017
12	D/o Filing Reply/Written Statement by OP	18.01.2018	18.01.2018
13	D/o filing Rejoinder by the Complainants	30.11.2018	30.11.2018
14	D/o Filing Evidence by way of Affidavit by the Complainant	30.11.2018	30.11.2018
15	D/o Filing Evidence by way of Affidavit by the OP	10.01.2019	10.01.2019
16	D/o filing Written Synopsis by the Complainant	17.10.2022	17.10.2022
17	D/o filing Written Synopsis by the OP	Not filed	Not filed

7. Heard counsels of both sides.

8. It was contended by the OP that construction could not be completed on account of stay granted by the Hon'ble Supreme Court which operated from 19.04.2012 to 12.12.2012. Thereafter, the OP sought consent from the complainant to extend the period of handing over possession by one year by letter dated 05.06.2013. In the alternative, an option was given to get back the money deposited by the complainant along with simple interest @9% per annum. It was pointed out that the complainant did not exercise such exit option and hence deemed to have accepted one year extension. The complainant argued that even if benefit of one year is given on account of this reason, still the possession was delayed from the committed date. Keeping in view this, we find that OP is entitled for the benefit of one year from the committed date of possession as per IFBA i.e. 23.02.2013. Hence, the delay will be counted w.e.f. 23.02.2014.

9. The contention of OP that this Commission lacks pecuniary jurisdiction is not valid. Under Section 21 of the Act, Commission has the jurisdiction where value of goods and services and compensation, if any, claimed exceeds Rs. one crore. The contention that complainant is not a consumer as he has purchased the unit for investment purpose is also rejected as no such evidence has been adduced by the OP in this regard. The plea of OP that delay was due to force majeure circumstances is not valid as even after a gap of more than three years (with a grace period of one year) from the committed date given in the IFBA, possession of flat was not given. There is no documentary evidence to support the contention of the Opposite Party that except for the stay granted by Hon'ble Supreme Court, the other reasons pleaded by them, can be construed as *'Force Majeure'*. The contention of the OP that the parties are bound by the agreement is also not acceptable. Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raglivan II (2019) CPJ 34 (SC) decided on 02.04.2019*** held that *"a term of a contract will not be final and binding if it is shown that the flat purchasers had no option 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."* As regards contention of OP with respect to arbitration clause in the Agreement, it is to be noted that the remedies under the Consumer Protection Act are in addition to the remedies under special statutes.

10. In the instant case, even after allowing one year on account of stay by Hon'ble Supreme Court and offer of exit option, which was not exercised by the complainants, there was a delay of more than three years in offering the possession of flat by the OP. The complainants cannot be made to wait for an indefinite time and suffer financially. Hence, the complainants in the present circumstances have a legitimate right to claim

fair delay compensation/interest from the OP The plea of OP for entitlement of compensation to the complainant in accordance with provisions of the IFBA is not valid.

11. 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 off with the following directions/reliefs: -

CONSUMER COMPLAINT NO.3242 OF 2017

i. The OP shall pay to the complainant delay compensation in the form of simple interest @ 6% per annum from the committed date of possession (23.02.2014) (with one year grace as stated above) till the date of offer of possession (31.05.2017).

ii. The OP shall pay a sum of Rs.25,000/- as cost of litigation to the complainant.

(iii) The payment in terms of this order shall be paid within two months from today.

CONSUMER COMPLAINT NO.3243 OF 2017

i. The OP shall pay to the complainant delay compensation in the form of simple interest @ 6% per annum from the committed date of possession (23.02.2014) (with one year grace as stated above) till the date of offer of possession (31.05.2017).

ii. The OP shall pay a sum of Rs.25,000/- as cost of litigation to the complainant.

iii. The payment in terms of this order shall be paid within two months from today.

12. The pending IAs, if any, also stand disposed off.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

DR. INDER JIT SINGH
MEMBER