

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 784 OF 2017**

1. BALBIR SINGH DHALTA

H.NO.104, E-9, GH-79, AWHO COMPLEX, SECTOR-20.

PANCHKULA

.....Complainant(s)

Versus

1. DLF UNIVERSAL LTD. (PREVIOUSLY KNOWN AS DLF INDIA LTD.)

THROUGH ITS MANAGER/AUTHORIZED SIGNATORY/OFFICE-IN- CHARGE/DIRECTOR SALES AND MARKETIN. SCO 190-191-192, SECTOR-8 C, CHANDIGARH-160009

2. DLF UNIVERSAL LTD.

THROUGH ITS MANAGER/AUTHORIZED SIGNATORY/OFFICE-IN-CHARGE/DIRECTOR SALES AND MARKETING. 1-E, JHANDEWALAN EXTENSION, NAAZ CINEMA COMPLEX.

DELHI-110055

.....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. Pravin Bahadur,  
Ms. Sonia Dhamija,  
Mr. Prabhat Ranjan and  
Ms. Seema Sundd, Advocates

**Dated : 06 Jan 2023**

**ORDER**

**DR.INDER JIT SINGH, MEMBER**

1. The present Consumer Complaint (CC) has been filed by the Complainant against the opposite party as detailed above, *inter aila* praying for directing the OP to:-

i. refund of Rs.37,73,154/- alongwith interest @18% p.a.  
from the respective dates of deposits till realization.

(ii) pay compensation of Rs.5,00,000/- on account of causing  
financial hardship, mental agony, harassment, emotional

disturbance caused to the complainant.

(iii) pay Rs.70,000/- as litigation expenses etc.

2. Notice was issued to the opposite party on 06.08.2018 giving them 30 days' time to file their written statement.

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

i) That the complainant booked a flat admeasuring 1881 sq.ft. on 20.08.2012 in the residential Project launched by the OP in the name of "Hyde Park Terraces" situated at Mullapur, New Chandigarh. Floor Buyers Agreement dated 28.08.2013 was entered between the parties. The total consideration for the flat was Rs.73,13,635/-, out of which, the complainant paid Rs.37,73,154/- till 29.07.2013. The OP was liable to handover the possession of the unit within 30 months from the date of application, i.e. by 18.02.2015. 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.

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 complainant wrote a letter dated 21.01.2014 to OP stating that since the OP is not disclosing the status of the unit, complainant will not make any further payment demanded by the OP. The complainant wrote a letter dated 10.06.2015 to OP for refund of amount deposited by the complainant. In addition to the above, OP has not provided a community hall, covered stilt parking, Yoga Centre, proper swimming pool, library, card/carom room, pool/billiards room and a clubhouse with modern facilities and several such facilities/amenities as was provided in the brochure/website for the said apartment project namely The Valley. Several other common facilities have not been provided, as promised initially by the OP.

iii) Instead of refunding the money as asked by the complainant, the OP sent a letter dated 15.02.2016 offering the possession of the unit and also enclosing Final Statement of Account (FSA) allegedly mentioning an amount which is due from the complainant. Since the complainant already asked for refund of the amount from the OP vide letter dated 10.06.2015 but still OP sent the letter dated 15.02.2016 and offered the physical possession of the above mentioned unit while admitting the fact of the receipt of the OC for the above said independent floor and asked the complainant to deposit the amount of Rs.68,34,910/- within one month with a condition that non-submission of payment as mentioned in the letter dated 15.02.2016 within 30 days of final statement of account would attract interest "Holding Charges" @Rs.10 per sq.ft. per month as per the terms and conditions of clause 13 of the Floor Buyer Agreement. The OP asked the complainant to deposit the arbitrary illegal demands on different heads. The clause of the agreement is misused and manipulated according to the whims and fancies of the builder and clauses of the agreement are misused as ploy of cheat the complainant.

iv) The OP was supposed to give the possession on 18.02.2015 and thus in that eventuality complainant is not liable to pay any other taxes and charges which occurred due to delay of the OP in handing over the possession. The OP raised the demands to make the profit at the cost of hard earned money of the complainant is illegal, unethical and liable to be quashed.

v) The OP has not received any completion certificate from Punjab Country Town Planning Department. It is also stated by the complainant that the State Commission also in CC/87/2016 decided on 27.05.2016 –Pardeep John David Vs. DLF Universal held against the same builder qua same project that basic construction work and amenities are not provided.

vi) The complainant approached the OP and requested to refund the total amount deposited with 18% interest, but no avail. Hence, the complainant has filed complaint before this Commission.

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

- i. OP has already completed construction of 897 plots and 255 built up units on 85 plots. It is stated that out of 326 built up units, OC has been received for 255 units (85 plots) units, and as on date conveyance deed for 507 properties have been executed in the name of the owners and provided proper water connection and electricity supply. The OP received a Partial OC on 10.09.2014. Basic amenities such as roads, sewerage, drinking water, electricity, street lights, drainage etc. etc. have been provided in terms of the agreement. The partial OC is issued to the promoter only when the conditions were fulfilled. It is also contended by the OP that the complainant has challenged the mutually agreed and concluded and binding Agreement entered into between the parties. The complainant has made baseless allegations of unfair trade practice etc. with an ulterior motive to amend/modify or re-write any concluded agreement/contract duly executed between the party to illegally invoke jurisdiction of this Commission. This Commission cannot adjudicate upon the matter where the prayers are for modification of the Clauses of the Independent Floor Buyer's Agreement. The complainant is virtually inviting the Commission to assume the powers conferred on the Fora under the Competition Act and/or under Civil Court. The complainant is not a Consumer and has booked the Floor for investment purpose. It is also contended by the OP that the jurisdiction to be adjudicated first.
- ii. The complaint was filed in March 2017. As per Section 24A of the C.P.Act, 1986 the complaint can be filed within two years from the date when the cause of action arose. In the present case, the cause of action arose more than two years prior to the filing of the complaint. It is further contended by the OP that the terms of the agreement are binding between the parties. It is further contended by the OP that the OP has paid the brokerage amount to the broker i.e. Goel Associates. Since the complainant is seeking refund of the entire amount, the OP is entitled to deduct the brokerage amount paid to the broker.
- 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 as the OP offered possession of the independent floor vide letter dated 15.02.2016 to the complainant and requested him to remit the outstanding dues and to furnish documents in order to facilitate the conveyance of the said floor in complainant's name, as per Final Statement of Account.
- iv. The complainant has breached terms and conditions of the agreement and defaulted in payments of instalments. The timely payment of instalments is the essence of Agreement. It is also contended by the OP that in presence of the arbitration clause as contained in Clause 55 of the agreement dated

28.11.2013, which has been agreed to by the complainant and in light of the amendments in the Arbitration and Conciliation Act brought into effect from 01.01.2016, the dispute raised by the complainant shall be referred for arbitration, and any further proceedings before this Commission cannot and ought not be proceeded with.

v. It is contended by the OP that the complaint be dismissed with costs.

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

6. Heard counsels of both sides.

7. The details of the flat allotted to the Complainant/other relevant details of the case as borne out of records/pleadings of the parties are given in the Table below:-

Sr No	Particulars	
1	Project Name/Location etc.	“Hyde Park Terraces” Mullapur, New Chandigarh
2	Size (Built up/Covered/Super Area)	1881 sq.ft.
3	Date of application	20.08.2012
4	Date of signing Independent Floor Buyers’ Agreement (IFBA)	28.08.2013
5	Committed date of possession as per IFBA (with Grace period, if any) (30 months from the date of Application)	20.02.2015
6	D/o Offering Possession	15.02.2016
7	Total Consideration	Rs.73,13,635/-
8	Amount Paid	Rs.37,73,154/-
9	D/o Filing CC in NCDRC	21.03.2017
10	D/o Issue of Notice to OP	06.08.2018
11	D/o Filing Reply/Written Statement by OP	04.10.2018
12	D/o filing Rejoinder by the Complainant	16.01.2019
13	D/o Filing Evidence by way of	16.01.2019

	Affidavit by the Complainant	
14	D/o Filing Evidence by way of Affidavit by the OP	11.03.2019
15	D/o filing Written Synopsis by the Complainant	22.01.2020
16	D/o filing Written Synopsis by the OP	Not filed

8. It is admitted by OP that subsequent to obtaining O.C. on 27.08.2015, offer of possession was made on 15.02.2016. Hence, there is a delay of one year from the committed date of possession as per IFBA i.e., 20.02.2015. Before the offer of possession was made, the complainant had sought refund vide his letter dated 10.06.2015 as the unit was not completed & handed over by the committed date. Complainant contended having written to OP on 21.01.2014 that since OP is not disclosing the status of the Unit, complainant will not make any further payments demanded by the OP. OP denied having received this letter dated 21.01.2014 from the Complainant.

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 objection that the Complaint is barred by limitation is also not accepted. The OP has failed to deliver the possession of the unit to the complainant till date and therefore, the cause of action is continuing. 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 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."* The plea of OP that there is an arbitration clause in the agreement is also not valid as remedies under the Consumer Protection Act are in addition to the remedies available under special statute. Hence, this Commission has the jurisdiction to entertain this complaint. Regarding delay in payments on the part of the complainant, it was stated by the complainant that OP has charged delayed interest from the complainant.

10. In the instant case, there is a delay in handing over the possession of flat by the OP. Hence, the complainant in the present circumstances have a legitimate right to claim refund alongwith fair delay compensation/interest from the OP, which he did before the offer of possession was made.

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: -

i. The OP shall refund the entire principal amount of Rs.37,73,154/- (Rupees Thirty seven lakh seventy three thousand one hundred fifty four only) to the complainant, alongwith compensation in the form of simple interest @ 6% 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 shall pay a sum of Rs.25,000/- as cost of litigation to the complainant.

iii. The liability of the OP shall be joint as well as several.

iv. The payment in terms of this order shall be paid within three months from today.

v. In case the complainant has 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(s) four weeks from receipt of this order to enable them to issue refund cheques/drafts accordingly.

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

.....J  
**RAM SURAT RAM MAURYA**  
**PRESIDING MEMBER**  
.....  
**DR. INDER JIT SINGH**  
**MEMBER**