

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 3446 OF 2017

1. UJJWAL KUMAR & ANR.

.....Complainant(s)

Versus

1. GODREJ PROPERTIES LTD. & 2 ORS.

Godrej One,5th Floor,Pirojshanagar, Eastern Expressway,
Vikhroli (E), Mumbai-400079

2. AR LANDCRAFT LLP

Plot No.35, 3rd Floor UM House, Sector-44, Gurgaon,Haryana.

3. SATISH GUPTA

(GHARONDA ESTATE CONSULTANT)House No.225,
Vigyapan Lok, Mayur Vihar, New Delhi-110091

.....Opp.Party(s)

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Vigyapan Lok, Mayur Vihar,

NEW DELHI-110091

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BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE COMPLAINANT : MR RANVIR SINGH, MR RISHI SINGH GAUTAM
ADVOCATES

FOR THE OPP. PARTY : MR PRAGYAN PRADIP SHARMA, ADVOCATE

Dated : 01 January 2024

ORDER

1. This complaint under section 21 (a) (i) of the Consumer Protection Act, 1986 (in short, 'the Act') alleges deficiency in service in not making available an application form in respect of the booking of a villa no. GDCRSTV5018 ad-measuring a built up area of 4693.06 sq ft for a sale consideration of Rs.2,43,83,310/- in the project Crest Godrej Golf Links at Sector 27 Greater Noida, Uttar Pradesh allotted by opposite party no.1.

2. This order will also dispose of CC no.3447 of 2017 which pertains to villa no. 2062 in the above project booked by complainant no.1. The facts of the case are taken from CC no.3446 of 2017 as the facts, grievances and prayer in both the case are the same.
3. The facts according to the complainants are that they had booked the above villa by making a payment of Rs.5.00 lakh on 29.10.2016. However, he was neither given any application form nor was an agreement for sale executed by the opposite party. At the time of booking, a receipt dated 01.11.2016 was issued and signatures were obtained on an application form running into approximately 20 pages. A signed copy of the agreement was promised to be dispatched by the opposite party which was not done. Despite several efforts over phone and personal visits, no signed copy of the application form was made available. On 09.01.2017, a demand for Rs.23,65,240/- was received from the opposite party no.2 for payment in accordance with the payment schedule. The complainant insisted upon a signed copy of the application form from the opposite party which was not provided. In January 2017, the complainant states that it had asked the opposite party to cancel the booking of the villa and to refund the booking amount. However, the opposite party nos. 1 and 2 kept sending reminders for the payment of next installments. A request for cancellation and refund was also made by way of e-mail. On 28.08.2017, the complainant received an e-mail addressed to one "Mr Gupta", stating that cancellation was subject to clause 14 in the application form and would involve forfeiture of the amount paid at the time of booking and that the request of full refund could not be acceded to. The complainants filed CC no. 2880 of 2017 in respect of both the villas. However, on 27.10.2017, the complaints were withdrawn with liberty to file individual complaints.
4. The complainant has stated that on 04.10.2017 a termination letter was received from the opposite party no.2 which, *inter alia*, stated that based on the application for refund, the booking amount had been forfeited in view of clause 14 of the application form. The complainant is before this Commission with the prayer to:
 - a. Direct the opposite party no.1 to refund the entire amount of Rs.5,00,000/- as paid by the complainant along with interest of 18% per annum till the date of actual payment;
 - b. Grant Rs.5,00,000/- as compensation towards harassment and mental agony caused to the complainant by the respondent in the process of claiming the refund;
 - c. Grant Rs.55,000/- as cost towards legal expenses including filing the present complaint; and
 - d. Pass such other and further orders as this court may deem fit in the facts and circumstances of the case.
5. The complaint was resisted by way of reply by the opposite party denying the averments of the complaint. It was argued that the complainants had sought refund of Rs.5.00 lakh, the jurisdiction for which does not lie with this Commission. It was also stated that the complainants were not 'consumers' in terms of section 2 (1) (d) of the Act since they had booked two villas in the same project without disclosing the need for two villas; therefore, it was for a commercial purpose. It was also stated that the complainants also owned other residential properties in Unit no.503, SG Alpha Tower 2, Sector 9, Vasundhra, Ghaziabad, Uttar Pradesh and Unit no.2074, ATS Advantage, Indirapuram, Ghaziabad, Uttar Pradesh, the details of which had not been disclosed. It is contended that the complainants were aware of the payment plan and this was also indicated in the allotment letter sent to them on

22.12.2016. The complainants were defaulters in not making timely payments and therefore had forfeited the right to the earnest money. It was stated that there was misjoinder of parties since the complainants had only transacted with opposite party no.2 and opposite party no.1 was only a partner and had been wrongly arrayed as a party. According to the opposite party, the payment of the first instalment was to be made within a period of 45 days for which invoice along with e mail had been sent on 09.01.2017. The complainants did not make any demand for the application form despite several letters and reminders and it was only after the final opportunity, the letter dated 18.08.2017 and e-mail dated 19.08.2017 were sent. It is the opposite party's case that the complainants have concocted the present story in order to escape from the liability of forfeiture of the earnest money. The opposite party contends that the complainants have no cause of action and that the villas were booked only for investment purposes and the payment plan had been defaulted. It is, therefore, contended that the complaint be dismissed with cost.

6. I have heard the learned counsel for the parties and have carefully considered the material on record.

7. From the records it is manifest that the application form was signed by the complainants in respect of villa 5018 along with a cheque dated 24.10.2016 drawn on HDFC Bank, Mumbai, for Rs.5,00,000/- which was also counter signed by a representative of Gharondha Estates and Financial Consultants partner/ authorised signatory. This document was, however, not signed nor returned by the opposite party to the complainants. The document contains a schedule of a payment plan spread over a time frame indicating stages of payment/construction linked payment stages. The contention of the complainant is that the process of booking was incomplete since a signed copy of the booking form itself has not been provided to the complainant. On the other hand, the opposite party contends that as per this document, the complainant should have made payments which it failed to do so despite several letters and reminders issued to it. Therefore, the complainant was declared a defaulter and the earnest money paid at the time of booking the villa was forfeited by the opposite party.

8. The fact that an allotment letter has been issued by the opposite party to the complainant is not in dispute since it is admitted by both the parties. The opposite party has also admitted that it asked for payment as per the payment schedule in Annexure 3 of this document and in view of the default in payment, it terminated the allotment and forfeited the earnest money deposited by the complainant. On the other hand, the complainant has argued that since there was no signed copy of the allotment letter delivered to it by the opposite party, the process of booking, despite the payment of Rs.5.00 lakh as the booking amount had not been completed. Therefore, it is contended that the opposite party could not claim that allotment letter constituted a valid agreement/ contract between two parties as per which the balance amount had to be paid within 45 days of the booking and/ or, that the opposite party cancelled the booking due to default in payments.

9. We have no reasons to disbelieve that the complainants made several efforts to contact the opposite party in order to obtain a valid signed copy of the allotment letter since there were several e-mails that were reportedly issued to the opposite party some of which have also been brought on record. The opposite party's contention that the complainants have come up with a contrived story to escape from its liability is belied by the fact that the

opposite itself did not make available a duly signed copy of the allotment letter to the complainant as it was required to do. A contract that was drafted by the opposite party with various one-sided and onerous conditions and was not provided in a duly executed manner to the complainant and, indeed has not been done even on date, makes it manifest that the opposite party is guilty of unfair trade practice under section 2 (r) of the Act. It is also clearly a deficiency in service since the opposite party was required to execute a document that set out both the obligations and rights of the complainant with regard to the villa that was booked by it. It is also manifest from the record that the opposite party has failed to do so since it has not brought any such document on record and has also not evidenced the same by way of any means of communication duly acknowledged by the complainant. An allotment letter that has not been duly executed is now sought to be relied upon by the opposite party to forfeit the earnest money deposited by the complainant which is a clear evidence of unfair trade practice as well as constituting deficiency of service. The contention of the complainant is that document which has not been executed and a copy of which has not been delivered to him cannot be used against him to cancel the allotment and forfeit money deposited at the time of allotment.

10. There is merit in the contention of the complainant, especially since the opposite party has failed bring on record any documentary evidence to prove that the letter of allotment was duly executed. In the absence of a duly executed allotment letter, the opposite party cannot seek to enforce the schedule relating to payment of instalments and on that basis seek to establish fault on the part of the complainant and to enforce the same by cancellation of allotment with forfeiture of the earnest money. It would also be unfair to non-suit the complainant merely because he has booked two apartments in the light of this Commission's orders in *Kavita Ahuja Vs. Shipra Estates*, I (2016) CPJ 31 and *Sanjay Rastogi Vs. BPTP Limited & Anr.*, CC No. 3580 of 2017 dated 18.06.2020, which places the onus on the opposite party to establish that the complainants were in the business of buying and selling flats and therefore not 'consumers' purchasing the flat for a residential purpose and this onus has not been discharged. The onus of proving that the complainants are in the business of real estate, i.e., buying and selling the flats lies squarely upon the opposite party which it has failed to discharge. This argument therefore, cannot be sustained.

11. An additional synopsis of arguments alongwith references to various case laws was filed by the opposite party. The same have also been considered. The learned counsel for the opposite party has stressed that the application form itself was the agreement between the parties and that the complainant had duly signed it. It is contended that no evidence of its non-receipt had been filed by the complainant. The complainant, as per the opposite party, was bound by the terms and conditions signed by it in the Application Forum as per which deduction of earnest money was liable to be done. As per the case laws cited, forfeiture of 10% earnest money was justified as held by the Hon'ble Supreme Court in *Satish Batra vs Sudhir Rawal* (2013) 1 SCC 345 and *Lakshmanan vs B R Mangalgiiri and Ors.* (1995) Supp. 2 SCC 33. Opposite party contends that the allotment was cancelled after a pre-termination notice and that it was done for the reasons of default in payments. The application form is argued to be a binding document in terms of *Bharathi Knitting Co. vs DHL Worldwide Express courier Division of Airfreight Ltd.*, AIR 1996 SC 2508.

12. These arguments have also been considered. It is evident from the case law cited vide *Satish Batra* (supra) and *V Lakshmanan* (supra) that the forfeiture of earned money is

justified when there is default on part of the allottee/ complainant. The sanctity of an agreement as per *Bharathi Knitting* (Supra) is also established only when the document is duly executed by both the parties. In the instant case, there is no executed document between the parties. The opposite party has failed to bring on record any such document. Hence, the question of default on part of complainant does not arise. In fact, the grievance of the complainant is that a duly executed document has not been provided by the opposite party, even though he had signed the allotment letter. For this reason, the forfeiture of earnest money is not warranted.

13. Insofar as pecuniary jurisdiction is concerned, the settled law on pecuniary jurisdiction as held by this Commission in *Ambrish Kumar Shukla and 21 Ors. vs Ferrous Infrastructure Pvt., Ltd.*, I 2017 CPJ 1 (NC) and *Renu Singh vs Experion Developers Pvt., Ltd.*, CC no.1703 of 2018 is that the principle for determining the pecuniary jurisdiction is the total consideration paid by the complainant or persons who have joined the complaint in a joint complaint and other damages claimed to determine such jurisdiction. In view of this position of law the contention of the opposite party regarding pecuniary jurisdiction does not sustain. This contention is of no avail to the opposite party.

14. In view of the foregoing discussion, there is a merit in the complaint and the same is liable to succeed. For the foregoing reasons, in the facts and circumstances of the case, the complaint is allowed. The opposite party is directed to refund the entire amount of Rs.5.00 lakh received by it on 29.10.2016 with compensation in the form of interest at the rate of 6% per annum till realisation. This order shall be complied with within eight weeks failing which it shall attract 9% interest per annum till realisation. The opposite party shall also pay the litigation cost of Rs.25,000/- to the complainant.

15. Pending IAs, if any, shall also stand disposed of with this order.

16. CC no. 3447 of 2017 also stands disposed of in terms of this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**