

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1714 OF 2019

1. AMRESH PEDNEKARComplainant(s)

Versus

1. D.K. REALTY (INDIA) PRIVATE LIMITED
NO.8, ABHISHEK, DALIA INDUSTRIAL ESTATE OFF NEW
ANDHERI LINK ROAD, ANDHERI WEST, MUMBAI,
MAHARASHTRA-400053

.....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. Anshul Gupta, Advocate
: Mr. Ravi Shandikar, Advocate

For the Opp.Party : Nemo

Dated : 04 May 2023

ORDER

1. Heard Mr. Anshul Gupta, Advocate, for the complainant. No body appeared, for the opposite party.
2. Amresh Pednekar has filed above complaint, for directing the opposite party to (i) refund Rs.2595188/- with interest @18% per annum from the date of respective deposit till the date of refund; (ii) pay Rs.1000000/-, as compensation for unfair trade practice; (iii) pay Rs.1000000/-, as compensation for mental agony and harassment; (iv) pay Rs.200000/-, as costs of litigation; and (v) any other relief which is deemed fit and proper in the facts and circumstances of the case.
3. The complainant stated that D.K. Realty (India) Private Limited (the opposite party) was a company, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project. The opposite party launched a group housing project in the name of "Livsmart" near Kohinoor Health Club, Kiroil Road, Kurla (West), Mumbai-400070 in the year, 2015 and made wide publicity of its amenities and facilities. Believing upon the representations of the opposite party, the complainant booked Flat No.1206, carpet area 536.69 sq.ft., 16 Wing, for total consideration of Rs.11397000/- on 11.04.2016 and deposited booking amount of Rs.646727/- (i.e. Rs.100000/- on 19.12.2015, Rs.150000/- on 03.01.2016, Rs.10000/- and Rs.250000/- on 29.01.2016 and Rs.46727/- on 11.04.2016. The opposite party executed Agreement For Sale dated 22.05.2016. Payment plan was "construction link payment plan". Clause-28 of the agreement provides that the developer shall endeavour to complete the construction of the said flat on or before 31.12.2018 with grace period up to 31.12.2019. The complainant took loan from Dewan Housing Finance Corporation Limited, for paying instalments. As per demand, the complainant deposited Rs.1834461/- and Rs.114000/- on 30.06.2016. However, the construction was not started/completed. The complainant was in urgent need of a residence and the financier also started realizing EMI. The complainant, vide letter dated 02.01.2019, requested to cancel his allotment and return his money. The complainant, thereafter gave emails dated 12.02.2019, 16.12.2019, 23.02.2019, 03.03.2019, 14.03.2019, 27.03.2019, 04.04.2019, 13.05.2019 and 02.07.2019 to the opposite party, to cancel his allotment and return his money but they did not respond. Then this complaint was filed on 26.08.2019.
4. In spite of service of notice, the opposite party did not contest the complaint. The complainant filed Affidavit of Evidence of Amresh Pednekar, documentary evidence and written synopsis.
5. We have considered the arguments of the parties and examined the record. Clause-10 of the agreement provides a lock-in-period of two years from 03.01.2016, during which the agreement could not be cancelled.

The complainant, vide letter dated 02.01.2019, requested to cancel his allotment and return his money. The opposite party did not respond although several emails were given by the complainant to the opposite party. There is nothing on record that the opposite party raised any demand of instalment after 30.06.2016 or proceeding with the construction. The construction has been unreasonably delayed therefore the complainant was entitled to cancel the agreement and seek refund.

ORDER

In view of aforesaid discussions, the complaint is partly allowed. The opposite party is directed to refund entire amount deposited by the complainant with interest @9% per annum from the date of respective deposit till the date of refund, within a period of two months from the date of this judgment. It shall be open to the opposite party to satisfy the loan of the complainant first and return the balance amount to the complainant.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER

.....
DR. INDER JIT SINGH
MEMBER