

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI

CONSUMER CASE NO. 1805 OF 2018

1. RAJVIR SINGH RANA & ANR.

S/O MR. UMRAO SINGH RANA R/O 918A, THE  
MAGNOLIAS, DLF GOLF LINKS, DLF PHASE 5,  
GURGAON-122001

HARYANA

2. MRS. SANTOSH RANA

W/O MR. RAJVIR SINGH RANA R/O 918 A, THE  
MAGNOLIAS, DLF GOLF LINKS, DLF PHASE 5,  
GURGAON-122001

HARYANA

.....Complainant(s)

Versus

1. PIONEER URBAN LAND & INFRASTRUCTURE  
LTD.

THROUGH ITS DIRECTORS A-22, GREEN PARK,  
3RD FLOOR, AUROBINDO MARG,  
NEW DELHI-110016

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE V.K. JAIN, PRESIDING MEMBER**

**For the Complainant :** Mr. Aditya Parolia, Advocate  
Mr. Nithin Chandran, Advocate

**For the Opp.Party :** Ms. Gayatri Gulati, Advocate  
Ms. Sneh Dhillon, Advocate  
Mr. T.V.S. Raghavendra Sreyas, Advocate

**Dated : 24 Jul 2019**

**ORDER**

**JUSTICE V.K. JAIN, (ORAL)**

The complainants who are residents of Gurgaon booked a high end residential flat with the OP in a project namely 'Araya' which the OP was to develop in Sector-62 of Gurgaon. The booking was made on 27.03.2012. Unit No.A-601 in Tower-A of the aforesaid project was

allotted to the complainants for a consideration of Rs.4,75,27,981/-. The parties then executed an Apartment Buyers Agreement dated 25.05.2012, incorporating their respective obligations. As per clause 11.2 of the said agreement, the developer was to make all efforts to apply for the Occupancy Certificate within 39 months from the date of excavation, though it was also entitled to a grace period of 180 days, after expiry of the said 39 months period. The grace period was available for applying and obtaining the requisite Occupancy Certificate. Admittedly, the excavation started on 04.06.2012. The construction therefore, ought to have been completed and the developer ought to have applied for the Occupancy Certificate on or before 04.09.2015. The possession was not offered to them, the complainants approached this Commission seeking refund of the amount of Rs.4,43,08,486/- which they have already paid to the opposite party.

2. The complaint is stated to have been opposed by the opposite party primarily on the grounds which this Commission has already rejected in some other consumer complaints including **Consumer Complaint No.238 of 2017 – Geetu Gidwani Verma & Anr. Vs. Pioneer Urban Land & Infrastructure Ltd. and Consumer Complaint No.239 of 2017 – Govindan Raghavan & Anr. Vs. Pioneer Urban Land & Infrastructure Ltd. decided on 23.10.2018** . It is also alleged in the written version that the complainants seem to be speculators they being residents of Magnolia in Gurgaon. This is also the case of the opposite party that the Occupancy Certificate in respect of the tower in which the allotted flat is located was obtained by them on 23.7.2018 and thereafter the possession of the allotted flat was offered to the complainants vide letter dated 28.8.2018.

3. The OP preferred appeals against the above-referred decision of this Commission being Civil Appeal No.12238 of 2018 and Civil Appeal No.1677 of 2019. The said appeals were dismissed by the Hon'ble Supreme Court vide a common order dated 2.4.2019. To the extent it is relevant, the order reads as under:-

*“3.1 ..... As per Clause 11.2 of the Agreement, the Appellant – Builder was to make all efforts to apply for the Occupancy Certificate within 39 months from the date of excavation, with a grace period of 180 days.*

*3.2. The excavation of the project commenced on 04.06.2012. As per Clause 11.2 of the Agreement, the Builder was required to apply for the Occupancy Certificate by 04.09.2015, or within a further grace period of 6 months i.e. by 04.03.2016, and offer possession of the flat to the Respondent – Flat Purchaser. The Appellant – Builder however failed to apply for the Occupancy Certificate as per the stipulations in the Agreement.*

3.5. During the pendency of the proceedings before the National Commission, the Appellant – Builder obtained the Occupancy Certificate on 23.07.2018, and issued a Possession Letter to the Respondent – Flat Purchaser on 28.08.2018.

3.6. The Appellant – Builder submitted before the National Commission that since the construction of the apartment was complete, and the Occupancy Certificate had since been obtained, the Respondent – Flat Purchaser must be directed to take possession of the apartment, instead of directing refund of the amount deposited.

3.7. The Respondent – Flat Purchaser however submitted that he was not interested in taking possession of the apartment on account of the inordinate delay of almost 3 years. The Respondent – Flat Purchaser stated that he had, in the meanwhile, taken an alternate property in Gurugram, and sought refund of the entire amount of Rs.4,48,43,026/- deposited by him along with Interest @18% p.a.

6.1. In the present case, admittedly the Appellant – Builder obtained the Occupancy Certificate almost 2 years after the date stipulated in the Apartment Buyer's Agreement. As a consequence, there was a failure to hand over possession of the flat to the Respondent – Flat Purchaser within a reasonable period. The Occupancy Certificate was obtained after a delay of more than 2 years on 28.08.2018 during the pendency of the proceedings before the National Commission.

*In Lucknow Development Authority v. M.K. Gupta*, this Court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a “service” as defined by Section 2 (o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.

*In Fortune Infrastructure & Anr. v. Trevor D'Lima & Ors.*, 3 this Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

6.2. The Respondent – Flat Purchaser has made out a clear case of deficiency of service on the part of the Appellant – Builder. The Respondent – Flat Purchaser was justified in terminating the Apartment Buyer's Agreement by filing the Consumer Complaint, and cannot be compelled to accept the possession whenever it is offered by the Builder. The

*Respondent – Purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation.*

*7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent – Flat Purchaser. The Appellant – Builder could not seek to bind the Respondent with such one-sided contractual terms. 20 8. We also reject the submission made by the Appellant – Builder that the National Commission was not justified in awarding Interest @10.7% S.I. p.a. for the period commencing from the date of payment of each installment, till the date on which the amount was paid, excluding only the period during which the stay of cancellation of the allotment was in operation. In Bangalore Development Authority v. Syndicate Bank, a Coordinate Bench of this Court held that when possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable Interest thereon from the date of payment till the date of refund.*

*9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest.”*

4. In the present case also though the Occupancy Certificate is stated to have been obtained by the builder on 23.7.2018 about 16 days before the complaint was instituted, the fact remains that receipt of the Occupancy Certificate by the builder was not communicated to the complainants before they instituted the complaint and the offer for possession came to be made after this complaint had been instituted on 8.8.2018 and had been admitted by this Commission on 20.8.2018. More than two years and four months from the stipulated date had already expired by the time the Occupancy Certificate was obtained. Therefore, in this case as well the complainants were justified in terminating the agreement by instituting the consumer complaint.

5. It is submitted by the learned counsel for the opposite party that Govindan Raghavan had acquired an alternative accommodation in the meanwhile, whereas no alternative accommodation has been acquired by the complainants in this case and, therefore, they have no justification for refusing to take possession and insisting upon refund of the amount paid by them to the opposite party. The learned counsel for the complainants points out that as far as Geetu Gidwani is concerned, no alternative accommodation was acquired by her. Moreover, the Hon'ble Supreme

Court upheld the termination of the agreement by the flat buyers primarily on account of unreasonable delay in completion of the construction and not on account of acquisition of alternative accommodation by Mr. Govindan Raghavan in the meanwhile. The principle approved by the Hon'ble Supreme Court is that in case of an unreasonable delay, which the builder is unable to explain, the choice will be with the buyer whether to take a belated possession or to seek refund with appropriate compensation.

6. In the present case when this contention was advanced, the complainants were directed to file an affidavit disclosing therein as to why they are not willing to take possession of the allotted flat. An affidavit has been filed by the complainants which to the extent it is relevant, reads as under:-

*“4. That it is pertinent to mention here that only the bare shell of Towers – A & B in the Project and the amenities promised in the Project are still not complete. That the Towers C & D are still under construction which would cause a lot of Noise Pollution and Air Pollution due to the construction activity at the Project site which would go on for a considerable amount of time given the fact that there is quite a lot of work left at the Project site at the moment.*

*5. That since the construction activity is still going on at the site, there is a lot of particle, including but not limited to, saw dust, ceramic dust, wood residues and other construction materials which would cause great harassment and unease to the Complainants. Further, the abovementioned facts coupled with the noise pollution caused by continuous construction and hazard to the health and safety of the Complainants and their family has resulted in the Project being uninhabitable at the moment. The Opposite Party has failed to address all these issues which has led to total loss of confidence in the ability of the Opposite Party to deliver in the near future.*

*6. That the Complainants had booked the said Unit for the residential purpose of their child, but due to the huge delay caused due to the deficiency in services promised by the Opposite Party, the Complainants were forced to change their plans and now their purpose of living near their child in an Ultra-Luxurious Project has been hopelessly frustrated and the Complainants are left with no option but to seek Refund as the Opposite Party has failed to deliver on the time promised on various occasions and the Opposite Party has been giving false hopes to the Complainants and has forced them to seek Refund in the present case.”*

7. In my opinion, in the facts and circumstances of the case and the legal proposition approved by the Hon'ble Supreme Court in **Govindan Raghavan and Geetu Gidwani (supra)**, the complainants are justified in insisting upon refund of the amount paid by them to the opposite party.

8. As regards the complainants being speculators, there is no evidence to prove that the flat in question was booked by them for a speculative purpose. Though it is submitted by the learned counsel for the opposite party that the complainants owned a house in Magnolia and a house in Delhi, no such averment has been made in the written version filed by them. Unless such a plea is taken in the written version of the opposite party, the complainants get no opportunity to rebut the same by way of a rejoinder. Though an averment to this effect is stated to have been made in the affidavit filed by the opposite party by way of evidence, no details of the property alleged to be owned by them in Delhi has been given even in the affidavit filed by them. In any case, as noted earlier, the complainants had no opportunity to respond to the said affidavit filed by the opposite party by way of evidence.

9. For the reasons stated hereinabove, I hold that the complainants are entitled to refund of the amount paid by them to the opposite party alongwith compensation in the form of interest. The complaint is, therefore, disposed of in terms of the following directions:-

- i. The OP shall refund the entire principal amount of Rs.4,43,08,486/- to the complainants alongwith compensation in the form of simple interest @ 10.65% per annum in terms of Rule 15 of Haryana Real Estate (Regulation And Development) Rules 2017 w.e.f. the date of each payment till the date of refund.
- ii. The OP shall also pay a sum of Rs.25,000/- as the cost of litigation to the complainants.
- iii. The payment in terms of this order shall be made within three months from today.

.....J  
**V.K. JAIN**  
**PRESIDING MEMBER**