

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI

CONSUMER CASE NO. 1315 OF 2018

1. ALOK KUMAR

R/O LA TOUR TOYOGI UEHARA C-302, 3-28-1,  
UEHARA, SHIBOYA-KU,  
TOKYO  
JAPAN

.....Complainant(s)

Versus

1. M/S. GOLDEN PEACOCK RESIDENCY PRIVATE  
LIMITED & ANR.  
THROUGH ITS DIRECTOR 502, BUILDING D MALL,  
NETAJI SUBHASH PLACE, PITAMPURA,  
NEW DELHI-110034  
2. HOMESTEAD INFRASTRUCTURE  
DEVELOPMENT PVT LTD  
PLOT NO 15, 2ND FLOOR, SECTOR-44,  
GURGAON-122011  
HARYANA

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT  
HON'BLE MRS. M. SHREESHA, MEMBER**

**For the Complainant :** Mr. Siddharth Yadav and  
Mr. Wasim Ashraf, Advocates

**For the Opp.Party :** Ex-parte vide order dated 11.03.2019

**Dated : 06 Sep 2019**

**ORDER**

**PER MRS. M. SHREESHA, MEMBER**

This Complaint has been filed under Section 21 (a) (i) of the Consumer Protection Act, 1986 (in short "the Act") against M/s. Golden Peacock Residency Private Limited (hereinafter referred to as "the Developer") and Homestead Infrastructure Development Pvt. Ltd. (hereinafter referred to as "the Construction Company"), seeking the following reliefs:

1. *The respondent no. 1 & 2 jointly and severally be directed to refund the amount of Rs.4,12,98,926 (rupees four Crore Twelve Lakh Ninety Eight Thousand Nine Hundred and Twenty Six Only) along with interest @ 18% p.a. from the date of payment of the amount by the Complainant;*

2. *The respondent no.1 & 2, jointly and severally be directed to pay pendentelite and future interest @ 18% p.a. to the Complainant;*
3. *The respondent no. 1 & 2, jointly and severally be directed to pay a sum of Rs.1,15,16705/- (Rupees One Crore Fifteen Lakhs Sixteen Thousand Seven Hundred and Five) towards interest amount paid by the Complainant to HDFC Bank on the Home Loan availed towards purchase of the residential apartment;*
4. *Direct the respondent no. 1 & 2, jointly and severally, to pay the costs of the present proceedings to the Complainant;*
5. *Pass any other or further order which this Hon'ble Court deems fit and proper.*

2. The brief facts as set out in the Complaint are that the Complainant was looking for a residential accommodation in Gurgaon, wherein he wants to reside after his return to India from Tokyo, Japan. The Complainant came across the advertisement of the Developer, wherein the Developer advertised residential project namely "Micheal Schumacher World Tower" in Sector 109, Gurgaon, Haryana to be constructed by the Construction Company. Lured by the advertisement and promises made by the Developer regarding the residential project namely "Micheal Schumacher World Tower" in Sector 109, Gurgaon, Haryana, the Complainant, who was residing in Tokyo and was looking for a residential accommodation in India, after his return from Tokyo booked a residential Apartment of 5450 sq. ft. vide application dated 07.08.2012 and totally paid an amount of 4,12,98,926/- by 03.09.2015. The payment details are as follows:

<i>Paid on</i>	<i>amount</i>	<i>through</i>	<i>for</i>	
<i>21/08/2012</i>	<i>5,00,000</i>	<i>Self</i>	<i>Booking amount</i>	
<i>29/08/2012</i>	<i>35,00,000</i>	<i>Self</i>	<i>Booking amount</i>	
<i>01/01/2013</i>	<i>58,10,000</i>	<i>Self</i>	<i>Within 60 days of booking</i>	
<i>22/03/2013</i>	<i>7,60,000</i>	<i>Self</i>	<i>Completion of Excavation</i>	
<i>22/03/2013</i>	<i>46,00,000</i>	<i>Self</i>	<i>Completion of Excavation</i>	<i>Total self paid portion</i>  <i>1,51,70,000</i>

31/12/2013	35,45,326	HDFC (Loan)		
31/05/2014	80,70,636	HDFC (Loan)	Completion of Ground Floor Slab	
10/11/2014	72,56,482	HDFC (Loan)	Completion of 3 <sup>rd</sup> Floor Slab	
03/09/2015	72,56,482	HDFC (Loan)	Completion of 7 <sup>th</sup> Floor Slab	Total Loan Portion 2,61,28,926
Total	<u>4,12,98,926</u>			<u>4,12,98,926</u>

3. It is averred that the Flat Buyer's Agreement was executed between the Developer and the Complainant on 19.02.2013 and as per Clause 12 of the Agreement, the possession of the Apartment was to be delivered within 36 months with additionally grace period of six months from the date of execution of the Agreement, which ended on 19.08.2016. It is also pleaded that the Complainant obtained a home loan of 2,61,28,926/- from HDFC Bank Limited @ 10.10% p.a.

3. It is averred that during his visit to India sometime in December 2015 the Complainant visited the site to see the development work and was shocked to see that the construction work had been completely stopped since January, 2015. The Complainant visited the corporate office of the Developer and was informed that due to disputes with the Construction Company, they had terminated the contract with them, but the Complainant was assured that a new construction company would complete the balance work and the Complainant shall receive the possession in terms of the Agreement by February 2016 or at least within the extended period i.e. by August, 2016. In January, 2017 the Complainant again visited the site and was disappointed to observe that no work was being carried out and he was assured by the officials of the Developer that the new construction company would complete the balance work. The Complainant wrote to the Developer, reminding about assurance given to him in January, 2017 and he was informed by them that tendering process for appointing a new construction company had already started and the construction work would commence in 3- 4 months' time. Once again, the Complainant visited the site of construction in April, 2018 and found that the site office was locked. On 25.04.2018, the Complainant got issued a legal notice to the Opposite Parties seeking the exact date of possession of the said Apartment, but the same was received back with postal remarks "refused" and "left" respectively from both the Opposite Parties.

4. Vexed with the attitude of the Opposite Parties, the Complainant approached this Commission seeking the aforementioned reliefs.

5. The Complaint was admitted on 24.07.2018 and notice was directed to be issued to the Opposite Parties. Notice was received back with the postal endorsement “refused to accept” from the first Opposite Party and “left” from the second Opposite Party respectively. On 11.10.2018, the first Opposite Party was deemed to be served and notice was directed to be issued once again to the Second Opposite Party on the fresh address furnished by the Complainant. Accordingly, notice was issued to the second Opposite Party and the same was received back with the postal endorsement “refused”. On 11.03.2019, the second Opposite Party was deemed to be served and both the Opposite Parties were set ex parte and their right to file Written Version was also closed. Thereafter, the Complainants filed Evidence by way of Affidavit and the matter was heard on 27.08.2019.

6. The Complainant filed their Affidavit by way of Evidence and marked Exhibit CW-1/1 (copy of the Brochure), Exhibit CW-1/2, Exhibit CW-1/3 and Exhibit CW-1/4 (copies of the payment receipts), Exhibit CW-1/5 (copy of the Buyer’s Agreement), Exhibit CW-1/6, Exhibit CW-1/7, Exhibit CW-1/8, Exhibit CW-1/9, Exhibit CW-1/10 and Exhibit CW-1/11 (copies of copy of payment receipts), Exhibit CW-1/12 (chart depicting all the payments made), Exhibit CW-1/13 (Copy of email written by the Complainant), Exhibit CW-1/14 (copy of the reply of the first Opposite Party to the email), Exhibit CW-1/15 (chart depicting payments made to HDFC along with interest), Exhibit CW-1/16 (copy of the interest paid certificate issued by HDFC), Exhibit CW-1/17 (copy of legal notice dated 25.04.2018), Exhibit CW-1/18 (copy of postal receipts), Exhibit CW-1/19 (copy of sealed envelope received from first Opposite Party) and Exhibit CW-1/20 (copy of sealed envelope received from the second Opposite Party) on his behalf.

7. Heard counsel for the Complainant at length and perused the material on record. The documents evidence that the Complainant paid an amount of 4,12,98,926/- between 21.08.2012 to 03.09.2015 in terms of the Agreement entered into between the Complainant and the Developer on 19.02.2013 for an Apartment No. 2401, admeasuring 5450 sq. ft. of super area, which was allotted vide letter dated 23.08.2012. As per the Clause 12 of the Agreement the possession ought to be offered by the Developer within 36 months with the grace period of six months from the date of execution of the Agreement, which ended in August, 2016.

8. Learned Counsel appearing for the Complainant drew our attention to Annexure C-11, which gives a statement of account and the amounts paid to the Developer amounting to 4,12,98,926/-, out of which the Complainant paid an amount of 1,51,70,000/- and took a loan from HDFC for an amount of 2,61,28,926/-. The payment plan on record shows that it is C construction linked plan. Annexure C-12, is an email addressed by the Complainant to the Developer on 19.06.2017 requesting the details with respect to the stage of construction. Annexure C-15, evidences that the Complainant was paying interest @ 10.50% as on March, 2014 and as on April 2018 was paying interest @ 10.10% p.a. to HDFC Bank Limited. Annexure C-16, is the legal notice dated 25.04.2018 got issued by the Complainant to the Developer seeking details of delivery of possession and also the explanation as to why civil or criminal suits cannot be initiated against the Company and the senior Manager. Annexure C-17 is the copy of the returned registered notice with an endorsement “refused”.

9. Learned Counsel appearing for the Complainants vehemently argued that despite repeated attempts to contact the Developer and seek information regarding the progress of construction, there was no response.

10. At this juncture, we find it a fit case to place reliance on the recent judgement of the Hon'ble Apex Court in ***Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, II (2009) CPJ 34 (SC)***, wherein the Apex Court has observed as follows:

*“6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes 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 the flats by the Builder.*

*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.”*

For all the aforementioned reasons, this judgement squarely applies to the facts and circumstances of this case.

11. We also rely on the judgement of the Hon'ble Supreme Court in ***Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 (SC)***, in which the Hon'ble Apex Court has observed as hereunder:

*“.....It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund.*

*In the circumstances, we are of the view that the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified.”*

12. In the instant case also the Complainants cannot be made to wait indefinitely for possession of the unit, as the construction is yet to be completed even after a period of more than 6 years has lapsed from the date of booking.

13. As the material on record evidences that the Complainant has paid a total amount of 4,12,98,926/- between 21.08.2012 to 03.09.2015 and as per Clause 12 of the Agreement which stipulates the promised the date of delivery of possession to be August 2016 and there is no progress with respect to construction and both the Opposite Parties have refused to accept notice, we are of the considered view that there is deficiency of service on behalf of both the Opposite Parties. However, since the amounts were paid to the Developer the liability is being fastened on the Developer i.e. M/s. Golden Peacock Residency Private Limited. The case against the Construction Company i.e. Homestead Infrastructure Development Pvt. Ltd. is dismissed.

14. In the result, this Complaint is allowed in part directing the Developer to refund 4,12,98,926/- with interest @ 12% p.a. from the respective dates of deposit till the date of realisation. This interest is being awarded as it is seen from the record that the Complainant has paid interest ranging between 10.10% to 10.50% to HDFC Bank Limited and has also undergone mental agony and monetary loss as the Developer not only could not complete the construction on time and deliver possession of the said flat but also could not give any further promise with respect to the future delivery of possession of the subject flat. We also find it a fit case to award costs of 25,000/-. This amount is directed to be paid within four weeks from the date of this order, failing which, the amount shall attract interest @ 14% p.a. for the same period.

.....J  
**R.K. AGRAWAL**  
**PRESIDENT**  
.....  
**M. SHREESHA**  
**MEMBER**