

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1986 OF 2017

1. JAY KUMAR MANOT & ANR.

S/o Dulichand Manot R/o 14, Bentinck Street, 5th Floor,

KOLKATTA

WEST BENGAL

2. SMT. SMITA MANOT

W/o Jay Kumar Mahot R/o 14, Bentinck Street, 5th Floor

KOLKATTA

WEST BENGAL

.....Complainant(s)

Versus

1. RUCHI REALITY HOLDINGS LTD. & ANR.

610, Tulsiani Chambers, Nariman Point,

MUMBAI 400021

2. MAHAKOSH PROPERTY DEVELOPERS

Rahul Apartment, 1st Floor, 24/24, Ansari Road,

NEW DELHI 110002

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

FOR THE COMPLAINANT : MR. MUKESH M. GOYAL, ADVOCATE
MS. PRIYA, ADVOCATE

FOR THE OPP. PARTY : MS. AANCHAL TIKMANI, ADVOCATE
MS. MRINAL CHAUDHRY, ADVOCATE

Dated : 06 February 2024

ORDER

1. Heard Mr. Mukesh M. Goyal, Advocate, for the complainants and Ms. Aanchal Tikmani, Advocate, for the opposite parties.

2. Jay Kumar Manot and Smita Manot have filed above complaint for directing the opposite parties to (i) hold the opposite parties guilty of deficiency in service for not delivering the possession of the flat despite expiry of 2 years over and above the stipulated period; (ii) refund to the complainants a sum of Rs.9508517.34 with interest @ 18% p.a. from the date of respective payment till realization; or handover the possession of the flat to the complainants within a period of six months with compensation in the form of interest @ 18% p.a. on the amount deposited by the complainants w.e.f. 01.06.2015 till realization; (iii) pay Rs.25 lacs to the complainants for harassment and mental agony suffered by them; (iv) pay Rs.100000/- to the complainants towards litigation cost; and (v) any other order which this Commission deems fit in the facts and circumstances of the case.

3. The complainants stated that they are husband and wife. Opposite party-1 is the developer which whom the complainants booked the flat in question. Opposite party-2 is the owner of property No.54/10 on which the project was to be developed. Opposite parties 1 & 2 entered into a joint venture for construction of a project. Complainant-1 launched a housing project "Active Acres" offering the flats of different sizes. Representative of OP-1 approached the complainants and represented that they were raising very high quality construction of flats and would be delivering possession of the flats within time. Allured by the representation made on behalf of OP-1, the complainants applied for booking of residential flat No.2H3, 3rd floor having super built up area of 1727 sq. ft., the said project, vide application dated 11.04.2012 by depositing an amount of Rs.5 lacs. Super built up area of the flat was revised from 1727 sq. ft. to 1753 sq. ft. and the total consideration of the flat was fixed at Rs.11405950/-. Agreement for sale was executed between the parties on 25.04.2012. As per clause 5.1 of the agreement, possession of the flat was to be handed over on or before 30.05.2015, with a grace period of six months. The complainants made the payments well in time whenever demanded by opposite party-1. The complainants paid total amount of Rs.9508517.34 till May, 2014. Opposite party-1 failed to complete the construction and handover possession of the flat within the stipulated period. The complainants visited the site various times to know the status of construction and possession of the flat but no satisfactory answer was given to the complainants. Then the complainants sent a legal notice dated 06.4.2016 to the opposite parties. Though opposite party-1 replied to the legal notice on 15.04.2016 but possession has not been handed over. Alleging deficiency in service on the part of the opposite parties, the complainants have filed the instant consumer complaint on 13.07.2017.

4. The complaint was contested by the opposite parties by filing separate written versions. Opposite party-1 filed its written version on 08.03.2018 wherein booking of the flat, agreement between the parties and deposit of Rs.10265354.91 have been admitted. It is stated that opposite party-2 was the owner of an industrial land on which project was to be constructed. OP-2 got the land converted from industrial to residential from the Government of West Bengal on 05.09.2006. OP-2 got necessary sanctions and approvals from Kolkata Municipal Corporation on 20.03.2008 and 09.08.2008 for construction of six residential towers. Thereafter, opposite parties-1 & 2 entered into a joint venture agreement dated 31.03.2008. Provisional environmental clearance was obtained from the concerned authority on 23.05.2008. The sanctioned plan was revised by Kolkata Municipal Corporation in the years 2010 and 2013. Thereafter, opposite party-1 has constructed four blocks in the project comprising of various flats/apartments and car parking spaces as per sanctioned plan, for which completion certificate has also been obtained. The opposite parties found that the space for car parking was not sufficient, therefore, they decided to construct the multi-level car parking and applied for revised sanctioned plan. OP-2 also filed an application on 16.07.2015 before the State Environment Impact Assessment Authority (SEIAA) seeking modification of the provisional environmental clearance granted on 23.05.2008. SEIAA filed a complaint against OP-2 under Section 19 of the Environment (Protection) Act, 1986 for violation of environment provisions, before the Additional Chief Judicial Magistrate, wherein the Court imposed a fine of Rs.5000/- on opposite party-2, vide order dated 06.05.2016. On 16.01.2017, OP-2 sent letter to the Senior Environment Officer requesting for environment clearance. On 23.03.2017, Chief Environment Officer informed OP-2 that a meeting was scheduled to be held in the premises of Kolkata Municipal Corporation to discuss the issue

relating to environment clearance but the said meeting could not be held because High Court of Madras, vide order dated 04.05.2017 stayed the notification dated 14.02.2017 issued by Ministry of Environment, Forest and change (MOEF). Due to aforesaid reasons, opposite party-1 could not complete the project in time. The delay was due to the reasons beyond the control of the opposite parties. There is no deficiency in service on the part of opposite party-1 and the complaint is liable to be dismissed.

5. Opposite party-2 filed its written version on 08.03.2018 wherein it has also admitted the facts relating to booking of the flat, agreement between the parties and deposit of Rs.10265354.91 made by the complainants. Regarding delay in construction and handing over the possession, OP-2 has taken the reiterated the grounds as taken by OP-1. It was stated that though the project had been completed long back but possession could not be delivered due to necessary approvals by the appropriate authorities.

6. The complainants filed Rejoinder Reply, Affidavit of Evidence of Jay Kumar Manot and documentary evidence. Opposite party-1 filed Affidavit of Evidence of Shivam Asthana. Opposite party-2 has also filed Affidavit of Shivam Asthana. Opposite parties have filed their written arguments.

7. We have considered the arguments of the counsel for the parties and examined the record. Admittedly, agreement for sale was executed on 25.04.2012. As per clause 5.1, possession of the flat was to be handed over by 30.06.2015 with a grace period of six months, subject to force majeure, meaning thereby that the possession was to be handed over latest by 30.12.2015. In the written statements filed by the opposite parties, they have admitted that the complainants have deposited an amount of Rs.10265354.91. However, the complainants stated that they have deposited an amount of Rs.9508517.34. In the prayer clause, the complainants have also sought refund of an amount of Rs.9508517.34. Opposite party-1 received the said amount from 20.07.2012 to 20.05.2014. When the opposite parties were aware that they have not received the necessary approvals from the competent authorities, opposite party-1 was not expected to execute the sale agreement and issue demand letter and receive the payment. In the written arguments filed by the opposite parties, it is submitted that the environment clearance has been received on 13.06.2019 and the opposite parties obtained the completion certificate on 17.03.2020 and immediately issued the offer of possession to the complainants on 18.03.2020, but the complainants have already filed the instant consumer complaint on 13.07.2017 seeking refund of the amount deposited by them or in alternative handover the possession of the flat to the complainants within a period of six months with delay compensation in the form of interest @ 18% p.a. on the amount deposited by them. Counsel for the complainants has relied on the judgments in **Marvel Omega Builders Private Limited and Anr. Vs. Shrihari Gokhale and Anr. (2020) 16 SCC 266; Kolkata West International City Private Limited vs. Devasis Rudra (2020) 18 SCC 613; and Pioneer Urban Land and Infrastructure Limited vs. Govindan Raghavan (2019) 5 SCC 725** and submitted that the complainants are entitled for refund of the amount paid to opposite party-1 with interest. The complainants have deposited an amount of Rs.9508517.34 between 2012 to 2014 but opposite parties have not handed over possession nor refunded the amount. Supreme Court in **Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711, Fortune Infrastructure Vs. Trevor D' Limba, (2018) 5 SCC 442, Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, (2019) 5 SCC 725, Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, 2019**

(6) SCALE 462, held that the buyer cannot be made to wait for indefinite period for possession. Thus, the complainants are entitled for refund of the amount with interest. The opposite parties have taken a preliminary objection that the complainants are not consumers but they have not adduced any evidence to substantiate the allegation.

ORDER

In view of the aforesaid discussion, the complaint is partly allowed with cost of Rs.50000/-. Opposite party-1 is directed to refund an amount of Rs.9508517.34 with interest @ 9% from the date of respective deposits till realization, within 2 months from this order.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER