

IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI

(THROUGH PHYSICAL / VIRTUAL / HYBRID HEARING)

Consumer Complaint No. 908 OF 2019

With

IA no. 2305 of 2020 (condonation of delay)

Reserved on 23.09.2021

Pronounced on: 11/03/2022

Mr Vikas Jain  
18/23 Second Floor  
Shakti Nagar  
Delhi - 110 007

Complainant

Versus

M/s Chintels India Limited  
Through its Director  
Having its Registered Office at:  
A - 11 Kailash Colony  
New Delhi - 110 048

Opposite Party

Corporate Office at  
Chintels Corporate Park  
Near Chintels Chowk  
Sector 114  
Gurugram - 122 017  
Haryana

**BEFORE**

**HON'BLE MS JUSTICE DEEPA SHARMA, PRESIDING MEMBER  
HON'BLE MR SUBHASH CHANDRA, MEMBER**

For the Complainants

Ms Geetika Kapur and Ms Ensha Chhabra  
Advocates (Physical)

For the Opposite party

Mr Nishi Ranjan Singh, Advocate



## ORDER

### PER MR SUBHASH CHANDRA, MEMBER

This is a consumer complaint under section 21 (a) (1) of the Consumer Protection Act, 1986, filed by the complainant being aggrieved by the change in the layout of the project, delay in handing over the possession of the flat allotted and inability of the opposite party to complete the project as per the proposed plan resulting in deficiency in service and unfair trade practice and subsequent loss.

2. The brief facts of the case are that the complainant had booked a flat ad-measuring 2350 sq ft in August - September 2012 and was allotted flat no. 601 in Tower D in the project Chintels Serenity for which the complainant had paid an initial booking amount of Rs.24,84,211/- vide two cheques dated 16.12.2012 and 15.11.2012. At the time of booking of the flat the opposite party had assured delivery of the possession within 42 months of the date of booking.

3. On 19.08.2013, the opposite party sought another payment of Rs.25,29,230/- with additional amounts in the total sale consideration of the flat towards EDC, IDC, PLC, Car Parking charges, IFMS, club charges etc. The date of booking was changed to 19.08.2013. Thereafter, on 15.10.2013, an Apartment Buyers Agreement was executed by the opposite party wherein vide clause 11, the period of 42 months including 6 months grace period for the delivery of the possession was mentioned.



Subsequently, the opposite party demanded various amounts on several occasion which was also paid timely by the complainant totalling to an amount of Rs.1,62,67,614/-. According to the complainant the total sale consideration was 1,93,55,795/-. He also obtained a home loan from the HDFC Ltd., in order to ensure timely payment to the opposite party. As the promised date of delivery of 36 months from the date of execution of the agreement elapsed on 15.10.2016, the complainant enquired about the status from the opposite party who informed that due to the delay in commencement of construction the possession would be delivered on or before 03.12.2017, as per clause 11 of the agreement, i.e., within a period of 42 months. It is submitted by the complainant that the opposite party made an offer of possession on 01.03.2019 along with final demand notice after a delay of about 15 months from the stipulated date of delivery as per the agreement. After repeated requests the opposite party arranged a site visit for the complainant on 04.03.2019, when it was noted by the complainant that the allotted flat was uninhabitable and the project was in-complete. It was also learnt by the complainant that the opposite party had divided its project into two phases with only 3 out of the 9 towers being offered for possession as part of Phase I. Consequently, over 50% of the area had been cordoned off for the construction of the balance six towers, leaving the complainant and other allottees in Phase I with substantially reduced common areas and amenities. It is contended by the complainant that the changes made to the project were unilateral and without consent. Instead of two large flats



per floor, the opposite party had increased the number of flats per floor to four and substantially diluted the quality of the construction and finish. Instead of 330 flats which were spread over a large area, the number of flats had been increased to 450 on the same project area which resulted in reduction in common areas and amenities for the allottees. It is also submitted by the complainant that the flats in the same tower as the complainant are priced at Rs.7000/- per sq ft., inclusive of taxes whereas the complainant is being charged Rs.8149.80 per sq foot. As the project in the present state does not conform to any of the representations and the proposed specifications provided by the opposite party at the time of booking of the flat, the complainant had declined to take possession of the flat. Efforts for an amicable solution did not fructify. He has therefore, requested for refund of the amount paid by him along with interest on 04.04.2019.

4. The grounds for seeking refund stated by the complainant are that the opposite party had mis-represented the project details and lured him to pay a premium price for the flat, much higher than the prevalent rate. The increase in the number of flats from 330 to 450 by the opposite party which represents an increase of over 36%, while the area of the project remains the same. Consequently, the reduction of the super area of the flat and proportionate rates and interest in the common areas resulted in the complainant being deprived of their rights as consumers with reference to the service that was promised. A reduction in the offer price of the flats by the opposite party in order to cater to another section of





the society has also resulted in dilution of the specifications of the fittings, fixtures and amenities and removal of certain provisions, such as banquet area. It is also stated that the offer of possession and final demand notice dated 01.03.2009 is pre mature as the project remains incomplete and the construction for the Phase II is still underway.

5. The complainant is before us with the following prayer:

- (a) Direct the opposite parties to refund the total amount of Rs.1,62,67,614/- which has been received by the opposite parties as part of the total consideration and applicable taxes along with penal interest @ 18% compounded quarterly from the date of the receipt of payments by the opposite party till its realisation by the complainant;
- (b) Direct the opposite parties to pay compensation to the complainant to the tune of Rs.10,00,000/- for the mental agony, harassment and undue hardship caused to the complainant due to the above facts and omissions on part of the opposite party;
- (c) Direct the opposite party to pay a sum of Rs.2,00,000/- to the complainant towards the cost of the present complaint and the litigation expenses; and
- (d) Pass any other further order (s) as this Hon'ble Commission may deem fit and proper in the interest of justice equity and good conscience.



6. The opposite party has resisted the claims of the complainant and stated that the complainant is not a "consumer" as defined under Consumer Protection Act, 1986, since the flat was booked only for speculative purpose. It is also stated that the complainant has defaulted in timely payments on several occasions and requested for waiver of interest which has been accommodated by the opposite party. It is contended that opposite party had completed the project and obtained the occupation certificate on 12.02.2019 and offered the possession in March 2019. It is admitted that the project had been a bit delayed due to unavoidable reasons for which the opposite party has agreed to compensate the buyers as per the terms of the Apartment Buyers Agreement, as per clause 12 @ of Rs.5/- per sq foot per month after adjustment of the interest amount waived which was Rs.2,07,741.85.

7. It is also contended by the opposite party that the complainant was aware of the developments with regard to the project and that no notice of 90 days as per clause 12 of the Apartment Buyers Agreement for exit and refund has been served upon the opposite party. It is denied that the project specifications had been diluted. The opposite party states that it had assured the delivery of possession within 42 months of the date of booking. As the Apartment Buyers Agreement was executed on 15.10.2013 immediately after launching of the project, the contention of the complainant that the opposite party has failed to execute any agreement in October 2012, despite receipt of advance booking amount of Rs.24,84,221/- is incorrect. It is contended by the opposite party that



the complainant had booked a flat as a pre-launch booking on 19.08.2013. It is submitted that while the opposite party made all endeavours to complete the project well within the time, due to National Green Tribunal's order to stop the construction due to the increased level of pollution, labour issues, there was some delay in the project for which compensation has been offered. The offer of possession has been made only after the occupation certificate dated 12.02.2019 has been obtained from the competent authority. The opposite party has stated that the layout changes were made as per rules after objections were invited from all the buyers. The complainant had not raised any objections with regard to the said changes and neither opted to exit or seek refund at that time. The allegation of unfair trade practice is also denied by the opposite party since all charges were done with the knowledge of the complainant.

8. Parties have led their evidence and we have heard the learned counsels for the parties and have carefully perused the records.

9. In his written submission, the complainant has pointed out that the opposite party has admitted a delay in offering the possession which was done on 01.03.2019, i.e., nearly two years after the period for offering possession stood expired. Such delay amounts to deficiency in service. Accordingly, the complainant is under no obligation to take the possession of the said flat. It is also submitted that the Apartment Buyers' Agreement dated 15.10.2013 was unfair and unreasonable and in particular clauses 11 and 12 were especially in favour of the opposite





party, in so far as the contention of the opposite party that the period of 42 months for construction was from the date of actual date of commencement of the construction of a particular tower building (clause 11). Under clause 12, the compensation for delay in handing over the possession provides an unreasonably low rate of compensation and the option to exit is only after 90 days period of notice. In contrast, 30 days notice is provided, in case the opposite party wishes to issue notice. It has been denied that there was any default in the payment schedule by the complainant; instead, it is stated that the project has been changed behind the back of the complainant by creating two phases for construction and it was only in 2019 that the nomenclature of the flat was changed from "D - 601" to "T4 - 601". The complainant has relied upon the following judgments of the Hon'ble Supreme Court as well as this Commission:

- (i) **Pioneer Urban Land and Infrastructure Ltd., vs Govindan Raghavan and Ors.** – Civil Appeal nos. 12238 of 2018 and 1677 of 2019 decided on 02.04.2019 ;
- (ii) **Arifur Rahman Khan and Ors., vs DLF Southern Homes Pvt. Ltd., and Ors.,** - Civil Appeal nos. 6239 and 6303 of 2019, decided on 24.08.2020; and
- (iii) **Subodh Pawar vs M/s IREO Grace Realtech Pvt. Ltd., and Ors** – Consumer Case no. 1998 of 2016 decided on 24.09.2018





Complainant has claimed full refund of Rs.1,62,67,614/- deposited by him with the opposite party along with penal interest of 18% compounded quarterly, Rs.10,00,000/- for mental agony and Rs.2,00,000/- towards costs.

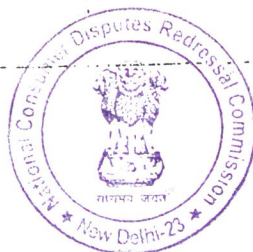
**10.** The right to file written submissions by the opposite party was closed on 23.09.2021. Later on, the counsel for the opposite party requested for setting aside of the *ex parte* order on the same date. On his request, *ex parte* order was set aside and the arguments were heard. In his evidence by way of affidavit, the opposite party has stated that the said flat was booked by the complainant as a pre-launch booking in October 2012 and that the Apartment Buyers' Agreement was dated 15.10.2013. Therefore, the period of 36 months and further grace period of six months is to be reckoned from this date, i.e., 15.10.2013. A delay of 15 months is admitted on account of an order by the NGT on construction and labour problems. It is also submitted that the occupation certificate had been obtained on 12.02.2019 for three towers and that possession has been offered in a completed tower to the complainant. It is the case of the opposite party that the lay out changes were made as per rules after calling for objections from all the buyers and the complainant had not raised any objections with regard to these changes nor opted to exit from the project or sought refund. A notice of 90 days for existing the scheme as per clause 12 of the Apartment Buyers Agreement has also not been provided. The project has been divided into



two phases after due notice to the complainant and therefore, at this stage, the claim of refund is not justifiable.

**11.** The issue before us is whether the offer of possession dated 01.03.2019 is as per the Apartment Buyers' Agreement. Admittedly, it is delayed beyond the stipulated date as per the Agreement, i.e., by 15 months. It is also admitted by the opposite party that the re-casting of the project into two phases, increase in the number of apartments and apartment per floor was done subsequent to the Apartment Buyers' Agreement. The opposite party's contention that this was after due notice has been contested by the complainant, stating that this was not done. The opposite party in its evidence has failed to provide any documentary evidence to the effect that the complainant was served with any notice seeking consent to the proposed changes in the flat provisionally allotted to him. No documents to support the contention that the complainant had defaulted in his payments has also been furnished. In the absence of such evidence, the contentions of the opposite party cannot be accepted. On the contrary, the complainant has provided evidence of the loan obtained by him from HDFC Bank and payment to opposite party on various dates between 31.10.2013 and 21.11.2015.

**12.** The contention of the opposite party that the complainant is not a 'consumer' and has invested in the said flat for speculative purposes is also belied by the fact that the complainant had obtained a home loan of Rs.1,37,87,000/- from the HDFC, a copy of the statement of account for



the said loan for 01.04.2019 to 25.05.2019 has been provided by the complainant in his affidavit of evidence. It has been established in **(Rajnish Bhardwaj and Ors vs M/s CHD Developers Ltd., and Ors** in CC no. 3775 of 2017, decided on 26.11.2019) that the onus of proving that the complainant is not a 'consumer' is squarely upon the opposite party. In the instant case, other than stating this, no evidence has been addressed to support the allegation. The same cannot, therefore, be accepted.

**13.** The alteration in the number of flats per tower without the area of the project being increased does amount to greater occupation density and dilution of the initially promised common facilities under the project as it is obvious that there would be more persons utilising the same, in view of the increase in the number of flats. There is, therefore, some merit in this grievance of the complainant which the opposite party has not been able to rebut except to state that the specifications of fittings and fixtures have not been altered.

**14.** The complainant has contended that no prior intimation or notice regarding the change in the project was given to him. The opposite party in his affidavit and evidence has not provided any documentary proof of having served the complainant with such a notice. There is an admitted delay in offer of possession. There is also an admitted alteration in the project inasmuch as it has been bifurcated into two phases with an increase in the number of total flats by 36% or additional 120 flats. It is,





therefore, evident that opposite party has indulged in unfair practice. There is also deficiency in service on the part of the opposite party in view of the delay. The imposition of conditions in the Apartment Buyers Agreement with regard to notice for exiting the scheme and compensation for delay in execution of the project when compared to the conditions of notice by the complainant and compensation respectively is tilted in favour of the opposite party.

**15.** The offer of possession on 01.03.2019 is for a partially completed project wherein only three out of nine towers have been completed. The complainant has declined to accept the possession in view of the fact that the project is incomplete. We cannot find fault with this stand for the reasons that the Apartment Buyers Agreement did not speak of a phased construction and this was not agreed to by the complainant.

**16.** In view of the above, the complaint succeeds and the following order is made:

(i) The opposite party shall refund the entire principal amount of Rs.1,62,67,614/- to the complainant along with compensation in the form of simple interest at the rate of 9% per annum from the respective dates of deposit till the date of payment, failing which the opposite party shall be liable to pay interest @ 12% per annum for the same period;

(ii) The opposite party shall pay a sum of Rs.25,000/- as cost of litigation to the complainant;





(iii) The order shall be complied with within three months from the date of receipt of this order.

Sd/-

( SUBHASH CHANDRA )  
MEMBER

Sd/-

( DEEPA SHARMA, J. )  
PRESIDING MEMBER



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*14/03/2022*