

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 295 OF 2013

1. MRS. NUTAN AGGARWAL,
W/o Shri Nand Lal Aggarwal, R/o A-5/B, 279, SFS Flats,
Pachim Vihar,
NEW DELHI.

.....Complainant(s)

Versus

1. M/S PUREARTH INFRASTRUCTURE LTD.,
6th Floor, Vikrant Tower, 4-Rajindra Place,
NEW DELHI - 110008.

.....Opp.Party(s)

BEFORE:

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

FOR THE COMPLAINANT : MR. NAVDEEP SINGH, ADVOCATE
MR. S.K. GOYAL ADVOCATE

FOR THE OPP. PARTY : MR. ANIL K. AIRI SENIOR, ADVOCATE ASSISTED BY
MR. RAVI KRISHAN CHANDNA, ADVOCATE
MR. MALYAJ SEHGAL, ADVOCATE
BINDIYA LOGAWNEY, ADVOCATE
MS. SHRUTI CHANDNA, ADVOCATE

Dated : 13 June 2024

ORDER

1. Heard Mr. Navdeep Singh, Advocate, for the complainant and Mr. Anil K. Airi, Senior Advocate assisted by Mr. Ravi Krishan Chandna, Advocate for the opposite party.

2. Mrs. Nutan Aggarwal has filed above complaint, for (a) declaring the act of the opposite party in not handing over the possession of the booked space, as deficiency in service and unfair trade practice and directing the opposite party to (b) hand over the possession of the booked unit No.P-2-1046, Plaza-II, Purearth, Central Square, Bara Hindu Rao, Delhi and execute and register the documents of transfer of title in favour of the complainant; (c) pay Rs.7217127.52 towards interest @ 18% p.a. on the deposited amount with *pendent lite* and future interest till handing over the possession; (d) pay Rs.10/- lacs as compensation for physical harassment and mental agony suffered by the complainant; (e) pay litigation cost; and (f) any other relief which is deemed fit and proper in the facts and circumstances of the case.

3. The complainant stated that in the year 2006, the opposite party launched a project in Bara Hindu Rao, Delhi advertising that the project would be equipped with all modern facilities and other amenities for the comfort and future prospects and the possession of the space would be handed over within three years from the date of commencement of construction. The opposite party invited bookings from the general public. On 03.05.2006,

the complainant, allured by the assurances and commitments made by the opposite party, booked a space admeasuring 782 sq. ft. in Central Square Plaza-II by paying booking amount and signing the agreement. In the agreement, there were some blanks which were to be filled by the opposite party before providing a copy thereof to the complainant. The opposite party did not supply the copy of the agreement to the complainant despite repeated requests and visits to the office of the opposite party. However, the opposite party kept on demanding payments which were made by the complainant. The total cost of the space was Rs.6451500/-, out of which the complainant paid Rs.6166303/-. Last instalment was to be paid at the time of handing over the possession. The opposite party neither informed the date of delivery of possession nor demanded the balance payment. The officials of the opposite party informed the complainant that the possession would be handed over within time and the tentative date of possession has been given on the website of the company. However, the officials of the opposite party assured that the possession would be handed over by March, 2010. In the similar situations and in the identical agreements with other buyers, the opposite party has promised to deliver the possession within 2 years with extension of 6 months. In the advertisements, the opposite party represented the commencement date as 07.09.2007. Despite receiving almost 95% amount, the opposite party failed to fulfil its commitment under the agreement. In case of delay in payment by the complainant, the opposite party has charged delay interest @ 18% p.a. from the buyers but there is no provision for delay compensation to the buyers in case of delay in handing over the possession. The Complainant sent several emails to the opposite party but the opposite party failed to reply to the same. Then the complainant sent a legal notice dated 05.07.2013 to the opposite party seeking possession of the space and delay compensation in the form of interest @ 18% p.a. on the amount deposited by the complainant and Rs.25000/- for harassment and cost of legal notice. The opposite party has not replied to the legal notice despite service. Then the complainant filed the above consumer complaint on 13.09.2013.

4. The opposite party has contested the complaint by filing its written version on 20.11.2013 stating that the complainant has booked the unit after knowing well the terms & conditions of the booking. Now, the complainant cannot allege that there is any arbitrary clause in the agreement. The opposite party is making every effort to obtain necessary clearance from the concerned authorities for handing over the possession of the units to the buyers. The opposite party did not make any false representation. The complainant was attracted by central location of the project and she made advance registration in the year 2006 when even the booking was not open for Plaza-II. When the complainant was allotted unit No.P2-1046 admeasuring 782 in January, 2008 fresh application form was taken from her. The opposite party never made the promise that the possession would be handed over within 3 years from the date of commencement of construction. The opposite party supplied the copy of the agreement to the complainant at the time

of booking of the space (January, 2008) and the agreement was to be returned to the opposite party for counter signature. The complainant returned the agreement in May, 2012. The opposite party counter signed the agreement on 26.07.2012 and sent the same to the complainant alongwith letter dated 14.08.2012. It is denied that several clauses in the agreement were left blank. All the blanks were filled up before signature of the complainant except the due date of possession. It is denied that the opposite party gave any false

assurance regarding possession. Delay has occurred due to the reasons beyond the control of the opposite party. Further, the relationship between the complainant and the opposite party is governed by the agreement wherein there is no provision for delay compensation. Thus, complainant is not entitled for delay compensation. The opposite party would hand over the possession very soon. The complainant has falsely alleged that the opposite party has not replied to the legal notice. In fact, the opposite party replied to the legal notice, vide letter dated 16.09.2013. There is no deficiency in service on the part of the opposite party and the complaint is liable to be dismissed.

4a. The opposite party also raised the preliminary issue of maintainability stating that the complainant has suppressed material facts from this Commission and made false allegations against the opposite party. The appropriate forum to adjudicate the dispute is a Civil Court and the complaint before the Consumer Commission is not maintainable as the complainant is not a consumer.

5. The complainants filed Rejoinder Reply and Affidavit of Evidence of Nutan Aggarwal and documentary evidence. The opposite party filed Affidavit of Evidence of Ravi Shanker Thakur and documentary evidence. Both the parties have filed written synopsis.

6. At this stage, the complainant filed an application on 29.02.2024 being IA/3419/2024 for amendment in the complaint seeking refund of the amount with interest @ 18% p.a. and compensation of Rs.10/- lacs and litigation cost. The counsel for the opposite party also filed the reply to the interim application. On 26.04.2024, the counsel for the complainant made a statement that he does not want to press the application and the amendment application was dismissed as not pressed.

6. We have considered the arguments of the parties and examined the record. Booking of the space and the payments made by the complainant have not been disputed by the opposite party. The only dispute relates to delivery of possession and delay compensation. Agreement between the parties was executed on 26.07.2012. Clause-19 of the agreement is relevant which reads as under: -

“Provided all amounts due and due and payable by the applicant under the terms and conditions are paid to the developer as per schedule, the developer shall endeavour to give possession of the said unit to the buyer in -----years from the date of commencement of construction of plaza 2 which may be extended by a further period of six months...”

7. From the above it is clear that in the agreement the opposite party has left blank space instead of giving the date by which possession of the unit was to be handed over. Supreme Court in **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 if specific date of possession has not been mentioned in the agreement, the opposite party is required to handover the possession within a reasonable period of three years. The home buyer cannot be made to wait for possession for an unlimited period. Therefore, clause 19 of the agreement is

one sided, unjust and favouring the opposite party. The opposite party was required to handover the possession by 26.07.2015. Therefore, the opposite party is liable to pay delay compensation to the complainant. The opposite party obtained the completion certificate dated 03.12.2016 and issued offer of possession dated 07.04.2017. Thus, the complainant is entitled for delay compensation from 26.07.2015 till 07.04.2017. Regarding quantum of compensation, Supreme Court in **Wg.Cdr. Arifur Rahman Khan Vs. DLF Southern Homes Pvt. Ltd., (2020) 16 SCC 512** and **DLF Home Developers Pvt. Ltd. Vs. Capital Greens Flat Buyers Association, (2021) 5 SCC 537**, held that 6% interest on the deposit of home buyers for the delayed period is appropriate delayed compensation. So far as the preliminary issue raised by the opposite party that the complainant is not a consumer, no evidence whatsoever has been filed by the opposite party in support of this argument.

ORDER

In view of aforesaid discussions, the complaint is partly allowed with cost of Rs.50000/-. The opposite party is directed to issue fresh offer of possession including the demand of balance payment, if any, within a period of one month from the date a certified copy of this order is produced. The opposite party shall charge interest @ 9% per annum on the balance amount from 08.04.2017 till the date of demand. The complainant shall make payment of the amount within a period of one month from the date of the demand letter. Thereafter the opposite party shall execute the conveyance deed in favour of the complainant within a period of two months thereafter. The opposite party shall also pay delay compensation in the form of interest @ 6% on the amount deposited by the complainant from 26.07.2015 till 07.04.2017.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER