

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II UDYOG SADAN C 22 23
QUTUB INSTITUTIONAL AREA BEHIND QUTUB HOTEL NEW DELHI 110016**

**Complaint Case No. CC/181/2020
(Date of Filing : 13 Oct 2020)**

1. KAMINI KAPOOR

NO. C-1/12, SECOND FLOOR, ARDEE CITY, GURGAON,
HARYANA 122011

.....Complainant(s)

Versus

1. M/S ADINATH PROPERTIES PVT LTD

B-05, 252 NAZAR SINGH PLACE SANT NAGAR EAST
OF KAILASH, SOUTH DELHI NEW DELHI

.....Opp.Party(s)

BEFORE:

**HON'BLE MRS. MONIKA A. SRIVASTAVA PRESIDENT
KIRAN KAUSHAL MEMBER**

PRESENT:

Dated : 10 Dec 2024

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-II

Udyog Sadan, C-22 & 23, Qutub Institutional Area

(Behind Qutub Hotel), New Delhi- 110016

Case No.181/2020

Kamini Kapoor

W/o Yogesh Kapoor

R/o No.C-1/12, Second Floor

Ardee City, Gurgaon

Haryana-122011.

Yogesh Kapoor

S/o Late R.C. Kapoor

R/o No.C-1/12, Second Floor

Ardee City, Gurgaon

Haryana-122011.

....Complainant

VERSUS

M/s Adinath Properties Pvt. Ltd.

No.B-05, 252 Nazar Singh Place

Sant Nagar East of Kailash

South Delhi, New Delhi-110065.

ALSO AT:

5th Floor, Plt No. 18, Sector-44

Gurgaon, Haryana-122003

D-74, 2nd Floor, Hauz Khas

New Delhi-110016.

....Opposite Parties

Coram:

Ms. Monika A Srivastava, President

Ms. Kiran Kaushal, Member

Present: Adv. Anshul Gupta for complainant.

Adv.Rajnish Ranjan for OP.**ORDER**

Date of Institution:13.10.2020

Date of Order :10.12.2024

President: Ms. Monika A Srivastava

Complainant has filed the present complaint seeking refund of Rs.16,74,698/-; delay penalty of Rs.13,40,400/- with simple interest 18% w.e.f. promised date of delivery; Rs.10,00,000/- as compensation for mental agony and harassment and Rs.2,00,000/- as litigation cost. Complainants are husband and wife.

1. It is stated by the complainant that he took a unit with OP at their project “Terra City” at Tijara, District Bhiwadi, Alwar vide application dated 29.09.2012 and paying an amount of Rs.1,60,500/-. Copy of the application form dated 29.09.2012 along with the payment are annexed as annexure C-1 (colly).
2. It is further stated by the complainants that they have booked the unit for their residential requirements and it was promised to the complainants that the project will be constructed on or before 29.03.2016.
3. It is further stated by the complainants that OP denied to collect significant amount of money from them even when they were not in a position to deliver the project at the promised time. It is stated that complainant executed a Builder Buyer Agreement (BBA) and was allotted flat measuring 850 Sq. Ft. super area No.U-403, Fourth Floor, Tower Carnation. Copy of the BBA dated 29.03.2013 is annexure C-4.
4. It is stated that the unit was transferred from sole ownership of complainant No.-2 to co-ownership of complainant 1 & 2 and was approved by OP on 06.06.2015. Copy of the

transfer form dated 22.05.2015 is annexure C-5. It is further stated that a tripartite agreement was executed between complainants, OP and HDFC Ltd. On 15.06.2015 by which a loan amount of Rs.10,81,000/- was sanctioned. The said agreement is annexed as annexure C-6.

5. It is stated by the complainants that as per Clause 14 of the BBA dated 19.03.2013 unit was to be constructed within 36 months from the date of agreement i.e. 29.03.2016 and there is a delay of more than four years.
6. It is further stated by the complainants that all the payments have been made within time against all demands raised by OP with the hope that the possession would be handed over by 29.03.2016. Copy of the letter issued by OP showing the total amounts paid and IFMS charges are annexed as annexure C-7 (colly).
7. It is further stated by the complainants that the construction of the unit is still incomplete and the OP is arbitrarily demanding more money for the clubhouse facility which is nowhere completion. Copy of the photos showing incomplete construction is annexed as annexure C-8.
8. It is further stated by the complainants that several reminders were sent vide emails to the OP for production of OC and CC and for valid offer of possession but vide email dated 16.06.2017 OP has stated that it is not mandatory to obtain OC and CC for the unit. Copy of the said email is annexure C-9 (colly). In this regard, complainant sent legal notice dated 08.12.2017, 08.10.2018, 26.08.2020 which are annexed as annexure C-10 (colly).
9. It is further stated vide email dated 20.11.2019 OP provided a NOC from the architect claiming it to be the CC for the project which is annexed as annexure C-11.
10. Complainant has placed reliance on judgment passed by the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. Vs. Govindan Raghavan CA 12238/2018*.

It is stated that OP has sent a letter dated 05.08.2020 “*reminder for possession of residential unit*” which is unfair trade practices by OP and by which letter a sum of Rs.4,89,948/- was shown to be pending from the complainants. It is stated that this letter has been sent with a view of extract money from the complainants without obtaining OC and CC from the requisite authority and that it is illegal to offer such possession as has been held by the Hon’ble Supreme Court in *Fakir Chand Gulati Vs. Uppal Agencies Pvt. Ltd. CA No.3302/2005*. Copy of the letter dated 05.08.2020 is annexed as annexure C-12.

11. It is further stated by the complainant that there is no reasonable justification from the side of the OP for the inordinate delay in completing the construction of the project or that the circumstances were beyond the control of OP. Complainant has also placed reliance on the judgment passed by the Hon’ble Supreme Court in *Lucknow Development Authority Vs. M.K. Gupta AIR 1984 SC 787* and *Fortune Infrastructure Vs. Trevor D’Lima CA No.3533-3534/2017*.
12. It is further stated by the complainant that they have sent multiple emails to the OP requesting the production of OC and CC and legal notice for refund of Rs.16,74,798/- but to no avail.
13. Right of OP to file reply was closed and was upheld by the Hon’ble State Commission. Written arguments have been filed by the OP. Complainant has also filed evidence and written arguments.
14. In their written arguments OP challenged the territorial jurisdiction of this Commission relying on Clause 49 of the BBA and has relied on catena of judgments in this regard.
 - i. *Hakam Singh vs. Gammon (India) Ltd. AIR 1971 SC 740*
 - ii. *Globe Transport Corporation vs. Triveni Engineering Works and Ors. MANU/SC/0011/1983 : (1983) 4SC C 707*
 - iii. *M/s Swastik Gases Pvt. Ltd. vs. Indian Oil Corp. Ltd. (2013) 9 SCC 32*

- iv. *EXL Careers Ors vs. Frankfinn Aviation Services Pvt. Ltd. (2020) 12 SCC 32*
- v. *State of West Bengal vs. Associated Contractors MANU/SC/0793/2014 : 2015 (1) SCC 32*
- vi. *State of west Bengal vs. Associated Contractors*
- vii. *Dhodha House and Ors. vs. S.K. Maingi AIR 2006 SC 730 : MANU/SC/2524/2005*

15. Complainant has placed on record BBA dated 29.03.2013 Clause 14 of which states that OP proposes to deliver the flat within 36 months from the date of agreement. As per this BBA a total sale consideration of Rs.17,22,000/- and on that date complainant had paid a sum of Rs.3,40,999/-. Clause 50 of the said agreement deals with delay in handing over possession i.e. where delay is not for the reason of any *force majeure* and by which OP was liable to pay compensation @ Rs.5 per sq. ft. per month of the super area till the date of notice offering the possession to the allottee.
16. Complainant has also placed on record Transfer Form and the endorsement by OP. Complainant has also placed on record tripartite agreement dated 11.06.2015 for a sum of Rs.10,81,000/-. As per the offer of possession placed on record dated 07.06.2017 the amount paid by the complainants is Rs.16,74,698/- and further demand of Rs.1,56,937/- was further from the complainants.
17. Complainants have also placed on record pictures of the project showing incomplete development dated 19.08.2018. Complainant has also placed on record various emails issued by OP seeking reminders for the balance payment and the emails wherein the complainant has sought OC and CC from the OP. It is clear from the documents filed on record that the complainants had made a payment of 95% of the flat. It is further seen that though the OP offered possession dated 07.06.2017 however, neither of the emails sent by OP clarifies whether any OC or CC was received by them.

As has been held in *Samruddhi Co-operative Housing Society Ltd. Versus Mumbai Mahalaxmi Construction Pvt. Ltd. 2022 LiveLaw (SC) 36* Wing Commander Arifur Rahman Khan v. *DLF Southern Homes Private Limited & Others*⁹ and *Pioneer Urban Land Infrastructure Limited v. Govindan Raghavan* by Hon'ble Supreme Court this Court has held that the failure to obtain an occupancy certificate or abide by contractual obligations amounts to a deficiency in service. It is further seen that the offer of possession was much later than promised as per BBA and that too without OC/CC therefore, this Commission has no

hesitation in holding that OP is guilty of unfair trade practice and deficient in its services. Therefore OP is directed to refund Rs. 16,74,698/-with interest @9% per annum within three from the date of pronouncement of this order failing which the interest payable would be 10% per annum. OP is further directed to pay a sum of Rs.50,000/- for offering possession without any OC/OC.

Copy of the order be given to the parties as per rules. File be consigned to the record room. order be uploaded on the website.

**[HON'BLE MRS. MONIKA A. SRIVASTAVA]
PRESIDENT**

**[KIRAN KAUSHAL]
MEMBER**