

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 2781 OF 2017

1. NITIN GUPTA

.....Complainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.

C-23, GREATER KAILASH ENCLAVE 1,
NEW DELHI-110048.

2. ORRIS INFRASTRUCTURE PVT. LTD.

RZ-D-5, MAHAVIR ENCLAVE,
NEW DELHI-110045.

.....Opp.Party(s)

CONSUMER CASE NO. 1175 OF 2018

1. VIDYASAGAR BALIYARA & ANR.

.....Complainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.

C-23, Greater Kailash Enclave-1, New Delhi-110048.

2. ORRIS INFRASTRUCTURE PVT. LTD.

RZ-D-5, Mahavir Enclave, New Delhi-110045.

.....Opp.Party(s)

CONSUMER CASE NO. 1176 OF 2018

1. NEENA BHARDWAJ

.....Complainant(s)

Versus

1. ORRIS INFRASTRUCTURE PVT. LTD. & ANR.

THROUGH ITS DIRECTORS RZ-D-5, MAHVIR
ENCCLAVE, NEW DELHI-110045

2. THREE C SHELTERS PVT.LTD

THROUGH ITS DIRECTORS, C-23, GREATER
KAILASH ENCLAVE I, NEW DELHI-110048

.....Opp.Party(s)

CONSUMER CASE NO. 1972 OF 2017

1. NEENA BHARDWAJ

A 051, SUMMIT DLF PHASE SECTOR 54,
GURGAON-122011
HARYANA

.....Complainant(s)

Versus

1. ORRIS INFRASTRUCTURE PVT. LTD. & ANR.

RZ-D5, MAHAVIR ENCLAVE,

NEW DELHI-110045

2. THREE C UNIVERSAL DEVELOPORS PVT. LTD.
REGISTERED OFFICE C-23, GREATER KAILASH
ENCLAVE I,

NEW DELHI-110048

.....Opp.Party(s)

CONSUMER CASE NO. 2564 OF 2017

1. KRISHAN LAL NARULA & ANR.

12/40, GROUND FLOOR, OLD RAJINDER NAGAR,
NEW DELHI-110060

2. KANTA NARULA

RZ-D-5, MAHAVIR ENCLAVE,

NEW DELHI-110060

.....Complainant(s)

Versus

1. ORRIS INFRASTRATURE PVT. LTD. & ANR.

RZ-D-5, MAHAVIR ENCLAVE,

NEW DELHI-110045

2. THREE C UNIVERSAL DEVELOPERS PVT. LTD

REGD. OFFICE AT: C-23, GREATER KAILASH
ENCLAVE 1,

NEW DELHI-110048

3. Three C Shelters Pvt. Ltd.

Through ITs Directors C-23, Greater Kailash Enclave I,

New Delhi-110048.

.....Opp.Party(s)

CONSUMER CASE NO. 337 OF 2018

1. ANUBHAV GUPTA

.....Complainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.

.....Opp.Party(s)

CONSUMER CASE NO. 3815 OF 2017

1. ABHISHEK VAIDYA & ANR.

.....Complainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.

Through its Director C-23, Greater Kailash Enclave 1,
new delhi-110048

2. ORRIS INFRASTRUCTURE PVT. LTD.

THROUGH ITS DIRECTOR , RZ-D-5, MAHAVIR
ENCLAVE,

NEW DELHI-110045

.....Opp.Party(s)

CONSUMER CASE NO. 3816 OF 2017

1. RAJINDER SINGH SODHI & ANR.

.....Complainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.

THROUGH ITS DIRECTORS, C-23, GREATER
KAILASH ENCLAVE 1,
NEW DELHI-110048

2. ORRIS INFRASTRUCTURE PVT. LTD.

THROUGH ITS DIRECTORS, RZ-D-5, MAHAVIR
ENCLAVE,
NEW DELHI-110045

.....Opp.Party(s)

CONSUMER CASE NO. 3881 OF 2017

1. DEEPAK AGARWAL & ANR.

.....Complainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.

THROUGH ITS DIRECTORS, C-23, GREATER
KAILASH ENCLAVE 1,
NEW DELHI-110048

2. ORRIS INFRASTRUCTURE PVT.LTD.

THROUGH ITS DIRECTORS, RZ-D-5, MAHAVIR
ENCLAVE,
NEW DELHI-110045

.....Opp.Party(s)

BEFORE:

HON'BLE MR. PREM NARAIN,PRESIDING MEMBER

For the Complainant : For the Complainant: Mr Aditya Parolia, Advocate with
Mr Zahid Hussain, Advocate
Ms Harshita Chauhan, Advocate

For the Opp.Party : For Three C. Shelters Pvt. Ltd.: Ms Ruchika Jain, Advocate
For Orris Infrastructure Pvt. Ltd.: Mr Anurag, Proxy Counsel for
Mr Pankaj Vivek, Advocate

Dated : 20 Jul 2020

ORDER

These consumer complaints have been filed by the complainants Nitin Gupta & others who are the allottees of the project "Greenopolis" situated in Sector 89, Gurgaon alleging deficiency in

service on the part of the opposite parties Three C Shelters Pvt. Ltd. &anr. As the complaints have been filed with more or less similar prayers against the same opposite parties, therefore, they are being decided together.

CC 2781/2017

2. The brief facts of the case are that the original allottee booked an Apartment in OP's project for total consideration of Rs.83,01,800/-. Through allotment letter dated 28.08.2012 Apartment no. 1001 on 10th floor in Tower 11 was allotted to initial buyer & later, on 31.03.2014 it was endorsed in favour of the complainant. The Flat Buyer's Agreement was executed between the parties on 21.05.2013 with the earlier buyer and endorsed in favour of complainant on 31.03.2014. The opposite parties failed to deliver the possession in 42 months from the date of allotment inclusive of 6 months grace period i.e. by 28.02.2016. Till date, Complainant has paid Rs.73,45,239/- to the opposite parties and the last installment was paid on 26.03.2016. Possession has not been offered to the complainant as yet. Hence, this complaint with the following prayers:-

“(i) Direct the opposite party for an immediate 100% refund of the total amount of Rs.73,45,239/- (Rupees Seventy Three Lacs Forty Five Thousand Two Hundred Thirty Nine only) paid by the complainant, along with a penal interest of 18% per annum from the date of receipt of each payments made to the opposite party(s);

(ii) Direct the opposite party(s) to pay compensation of Rs.5,00,000/- (Rupees Five Lakhs only) to the complainant(s) for mental agony, harassment, discomfort and undue hardships caused to the complainant(s) as a result of the above acts and omissions on the part of the opposite party(s);

(iii) Direct the opposite party (s) to pay a sum of INR.1,00,000/-(Rupees One lakhs only) to the complainant (s) as a whole, towards litigation costs;

(iv) Pass any other order and/or further relief in favour of the complainant(s) as the Hon'ble Commission may deem fit and proper in the fact and circumstances of the case.”

CC 3815/2017

3. The brief facts of the case are that Complainant booked an Apartment in OP's project for total consideration of Rs.83,01,800/-. Through allotment letter dated 25.08.2012 Apartment no. 1004 on 10th floor in Tower 9 was allotted. The Flat Buyer's Agreement was executed between the parties, after a delay of more than 1yr i.e. on 09.05.2013. OPs failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 25.02.2016. Till date, Complainant has paid Rs.72,45,394/- to OPs, and the last installment was paid on 08.01.2016. Possession has not been offered to the complainant as yet. Hence, this complaint with the similar prayers as in CC No.2781 of 2017.

CC 3816/2017

4. The brief facts of the case are that Complainant booked an Apartment in OP's project for total consideration of Rs.92,93,300/-. Through allotment letter dated 30.08.2012 Apartment no. 905 on 9th floor in Tower 19 was allotted. The Flat Buyer's Agreement was executed between the parties, after a delay of more than 1yr i.e. on 07.08.2013. OPs failed to deliver the possession in

42 months inclusive of 6months grace period i.e. by 02.03.2016. Till now, Complainant has paid Rs.89,42,247/- to OPs by Oct 2017. Possession has not been offered to the complainant as yet. Hence, this complaint with the following prayers:-

“(i) Direct the opposite party(s), jointly or severally, to handover possession of the Apartment to the complainant (s), complete in all respects and in conformity with the Buyer’s Agreement and for the consideration mentioned therein, with all additional facilities and as per quality standards promised and execute all necessary and required documents in respect of the said apartment in favour of the complainant (s) within 8 months of this petition being filed before this Hon’ble Commission or as this Hon’ble Commission deems fit and appropriate;

(ii) Direct the opposite party(s) jointly or severally, for an immediate 100% refund of the total amount of Rs.89,42,247/- (Rupees Eighty Nine Lakhs Forty two Thousand two Hundred and forty seven Only) paid by the complainant(s) along with a penal interest of 18% per annum from the date of receipt of each payments made to the opposite party(s), in the event that absolute, complete and final possession of the flat cannot be handed over within a period of 8 months or as stipulated by this Hon’ble Commission;

(iii) Direct the opposite party(s), jointly or severally, to pay interest @12% per annum on the amount deposited by the complainant(s) with the opposite party(s), with effect from the date of delivery promised in the Agreement till the date of actual possession as per clause (a) above is handed over by the opposite party (s) along with all necessary documents and common area and facilities as promised during the initial booking made by the complainant(s);

(iv) Direct the opposite party(s), jointly or severally, to pay Rs.6,000/- (Rupees Six Thousand only) per day to the complainant(s) in case of failure to provide the possession within the stipulated time as directed by this Hon’ble Commission;

(v) Direct the opposite party(s), jointly or severally, to make adequate arrangements to cover the sewage drainage canal flowing through the project and pay compensation amounting to 20% of the total consideration of the Apartment for loss of value of the Apartment due to the presence of sewage drainage canal and the high tension wire;

(vi) Direct the opposite party(s) jointly or severally, to refund wrongfully charged taxes, which includes but not limited to Service Tax, and other charges like Preferential Location Charges (PLC) along with the interest on that amount at the rate of 12% from the date of receipt of such wrongfully levied charged and taxes;

(vii) Direct the opposite party(s), jointly or severally to pay compensation of Rs.5,00,000/- (Rupees Five Lakh Only) to the complainants) for mental agony, harassment, discomfort and under hardships caused to the complainant(s) as a result of the above acts and omissions on the part of the opposite party;

(viii) Direct the opposite party (s), jointly or severally, to pay a sum of Rs.1,00,000/- (Rupees One Lakh Only) to the complainant(s) in the project “Greenopolis” towards litigation costs;

(ix) Direct the opposite party(s), jointly or severally, to provide adequate car parking spaces in the project for the occupants and refund the excess amount collected and/or wrongly collected charges from the complainant(s), in the project "Greenopolis" towards car parking slots with interest @12% p.a.;

(x) That any other and further relief in favour of the complainant as the Hon'ble Commission may deem fit and proper in the fact and circumstances of the case."

CC 3881/2017

5. The brief facts of the case are that Complainant booked an Apartment in OP's project for total consideration of Rs.96,75,300/-. Through allotment letter dated 27.08.2012 Apartment no. 402 on 4th floor in Tower 15 was allotted. The Flat Buyer's Agreement was executed between the parties, after a delay of more than 1yr i.e. on 21.05.2013. OPs failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 27.02.2016. Till date, Complainant has paid Rs.89,24,429/- to OPs, and last installment was paid on 07.01.2016. Possession has not been offered to the complainant as yet. Hence, this complaint with the similar prayers as in CC No.3816 of 2017.

CC 337/2018

6. The brief facts of the case are that Complainant booked an Apartment in OP's project for total consideration of Rs.1,09,65,600/-. Through allotment letter dated 29.08.2012 Apartment no. 501 on 5th floor in Tower 27 was allotted. The Flat Buyer's Agreement was executed between the parties, after a delay of more than 1yr i.e. on 14.06.2013. OPs failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 01.03.2016. Till date, Complainant has paid Rs.90,42,210/- to OPs, and the last installment was paid on 15.03.2016. Possession has not been offered to the complainant as yet. Hence, this complaint with the similar prayers as in CC No.2781 of 2017.

CC 1972/2017

7. The brief facts of the case are that Complainant booked an Apartment in OP's project for total consideration of Rs.97,70,800/-. Through allotment letter dated 30.08.2012 Apartment no.1805 on 18th floor in Tower 19 was allotted. The Flat Buyer's Agreement was executed between the parties, after a lapse of 10 months i.e. on 21.05.2013. OPs failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 01.03.2016. Till date, Complainant has paid Rs.75,38,995/- to OPs, and last installment was paid on 28.3.2015. Possession has not been offered to the complainant as yet. Hence, this complaint with the similar prayers as in CC No.2781 of 2017.

CC 2564/2017

8. The brief facts of the case are that Complainants booked an Apartment in OP's project for total consideration of Rs.83,01,800/-. Through allotment letter dated 25.08.2012 Apartment no. 703 on 7th floor in Tower 8 was allotted. The Flat Buyer's Agreement was executed between the parties, after a delay of more than 1yr i.e. on 27.06.2013. OPs failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 25.02.2016. Till date, Complainant has paid

Rs.76,07,661/- to OPs, and last installment was paid on 28.12.2015. Possession has not been offered to the complainant as yet. Hence, this complaint with the similar prayers as in CC No.3816 of 2017.

CC1175/2018

9. The brief facts of the case are that original buyer booked an Apartment in OP's project for total consideration of Rs.85,50,800/-. Through allotment letter dated 28.09.2012 (later on endorsed in favour of complainant on 28.01.2013) Apartment no.801 on 8th floor in Tower 3 was allotted. The Flat Buyer's Agreement was executed between the parties on 19.7.2013. Complainant had taken a loan of Rs.59,71,259/- from State bank at 8.75% per annum rate. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 28.03.2016. Till date, complainant has paid Rs.78,58,465/- to opposite parties and the last instalment has been paid on 21.04.2016. Possession has not been offered to the complainant as yet. Hence, this complaint with the following prayers:-

“a. Direct the opposite party (s), jointly or severally, to handover possession of the Apartment to the complainant (s), complete in all respects and in conformity with the Buyer's Agreement and for the consideration mentioned therein, with all additional facilities and as per quality standards promised and execute all necessary and required documents in respect of the said Apartment in favour of the complainant(s) within 8 months of this petition being filed before this Hon'ble Commission or as this Hon'ble Commission deems fit and appropriate;

b. Direct the opposite party (s), jointly or severally, for an immediate 100% refund of the total amount of INR 78,58,465.07/- (rupees seventy eight lakh fifty eight thousand four hundred sixty five and seven paise only) paid by the complainant(s) along with a penal interest of 12% per annum from the date of receipt of payments made to the opposite party(s), in the event that absolute, complete and final possession of the flat cannot be handed over within a period of 8 months or as stipulated by this Hon'ble Commission.

c. Direct the opposite party(s), jointly or severally, to pay interest @12% per annum on the amount deposited by the complainant(s) with the opposite party(s), with effect from the date of delivery promised in the agreement, till the date of actual possession as per clause (a) above is handed over by the opposite party(s) along with all necessary documents and common areas and facilities as promised during the initial booking made by the complainant(s);

d. Direct the opposite party(s) jointly or severally, to pay Rs.6,000 (rupees six thousand only) per day to the complainant (s) in case of failure to provide the possession within the stipulated time as directed by this Hon'ble Commission;

e. Direct the opposite party (s) jointly or severally to pay compensation of Rs.5,00,000/- (rupees five lakh only) to the complainants for mental agony, harassment, discomfort and undue hardships caused to the complainants as a result of the above acts and omissions on the part of the opposite party;

f. *Direct the opposite party (s), jointly or severally, to pay a sum of Rs.1,00,000/- (rupees one lakh only) to the complainants in the project "Greenopolis" towards litigation costs;*

g. *That any other and further relief in favour of the complainant as the Hon'ble Commission may deem fit and proper in the fact and circumstances of the case."*

CC 1176/2018

10. The brief facts of the case are that Complainant booked an Apartment in OP's project for total consideration of Rs.1,05,51,600/-. Through allotment letter dated 28.08.2012 Apartment no.2002 on 20th floor in Tower 12A was allotted. The Flat Buyer's Agreement was executed between the parties, after a delay of 11 months i.e. on 11.7.2013. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 28.02.2016. Till date, complainant has paid Rs.49,14,784/- to opposite parties and the last instalment was paid on 28.03.2015. Possession has not been offered to the complainant as yet. Hence, this complaint with the similar prayers as in CC No.3816 of 2017.

11. CC 3881/2017, CC 3816/2017, CC 1175/2018, CC 1176/2018 & CC 2564/2017 have been filed by the complainants against the opposite parties for getting the possession of the flat along with compensation for delay in possession and if possession is not possible then the refund has been requested. The consumer complaints Nos. 2781/2017, 3815/2017, 337/2018 and 1972/2017 have been filed for getting the refund of the paid amount by the complainants to the opposite parties as there is no progress in the construction work. These complaints have been resisted by the opposite parties by filing their written statement. All the parties filed their evidence by way of affidavits which have been taken on record.

12. Heard the learned counsel for the parties and perused the record. Learned counsel for the complainants stated that similar complaints have already been decided against the same opposite parties and therefore, these are covered cases under the judgments already passed by this Commission. Learned counsel referred to the judgment of this Commission in **consumer complaint No.2877 of 2017, Vinamra Shyamji Sharma Vs. Three C Shelters Pvt. Ltd. &anr. decided on 19.08.2019 (NC)** wherein the possession was sought and if the possession was not possible then refund was requested. This Commission vide order dated 19.08.2019 in this case, allowed the complaint and ordered the possession to be handed over after obtaining the occupancy certificate by 30.11.2019 and an interest @6% p.a. was also awarded for delay in handing over the possession. It was also ordered in this case that if the possession is not delivered by 30.11.2019, the complainant would be entitled to get the refund along with 10% p.a. interest. Similarly in the case where the refund was sought, this Commission in **Atma Krishna Vs. Orris Infrastructure Pvt. Ltd. &anr. CC No.1590 of 2016 decided on 21.12.2018 (NC)** has allowed the refund of the deposited amount along with 10% p.a. interest from the date of respective deposits. Learned counsel for the complainants requested that these consumer complaints be also allowed on the same lines as of **Vinamra Shyamji Sharma Vs. Three C Shelters Pvt. Ltd. &anr.** (supra) and **Atma Krishna Vs. Orris Infrastructure Pvt. Ltd. &anr.** (supra).

13. Learned counsel for the complainants further stated that all the objections raised by the opposite parties have already been discussed in detail and have been decided in the aforesaid consumer complaints. Learned counsel for the complainants further stated that in the present

consumer complaints, the payment has been made to the opposite party Three C Shelters Pvt. Ltd. and therefore, if the refund is ordered, they should be responsible for refund of the amount. In these complaint cases, the possession was due in 2015-2016, however, even the construction is not complete and therefore, there is no question of giving any possession by the opposite parties. The learned counsel mentioned that in these consumer complaints, the possession has not been offered till date.

14. It was further argued by the learned counsel for the complainants that there is no force in the objection raised by the OPs with regard to payment of interest on the amount of refund, because the compensation for delayed possession as per the apartment buyer agreement is not sufficient to compensate the complainants for the loss suffered. In support of his contention, the learned counsel referred to the following judgments:

i) ***ThangavelPalanivel and another Vs. M/s. DLF Southern Homes Pvt. Ltd., Consumer Complaint No.304 of 2015 decided on 29.8.2016*** by this Commission (NC).

(ii) ***Jivitesh Nayal and another Vs. Emaar MGF Land Ltd. and another, CC No.34 of 215, decided on 2.11.2017, (NC).***

15. In respect of the point raised by the opposite parties that the complainant has breached the provision of the Apartment Buyer Agreement as he stopped paying instalments and consequently as per Section 55 of the Indian Contract Act, 1872, the complainant is not entitled to any relief, the learned counsel for the complainant stated that this question has been considered by this Commission in ***Rakesh Mehta Vs. Emaar MGF Land Limited, CC No.653 of 2015, decided on 16.10.2017***, wherein the following has been observed:

“5. This complaint was instituted way back on 10.8.2015, about two years before the occupancy certificate was obtained by the opposite party. Therefore, the opposite party was not in a position to offer possession of the flat to the complainant even after the complaint was instituted or within a reasonable period thereafter. The first prayer made by the complainant being for delivery of immediate possession of the flat and the opposite party not being in a position to offer the said immediate possession, he became entitled to the alternative relief of refund of the amount paid by him. Even otherwise, Section 55 of the Indian Contract Act expressly provides that ‘when a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promise, if the intention of the parties was that time should be of the essence of the contract’. I therefore, find no merit in the submission that the complainant is not entitled to refund of the amount paid by him.”

16. Learned counsel for the complainant further stated that the plea taken by the OPs in respect of the force majeure conditions is not valid. First of all, the order of the Hon’ble High Court referred to by the OPs was only in respect of not drawing the ground water. The High Court order does not put ban on the construction activity nor any ban on use of water. The OPs should have brought water from outside and should have used the same for construction activity. Thus, this order of the Hon’ble High Court cannot be treated as force majeure condition. Obviously, the OPs should have taken remedial measures. Once the apartment buyer agreement is signed between the

parties, the OPs have to keep in mind the adverse situations that may arise and they should be ready to counter those conditions so that complainants need not suffer for the same. In support of his argument, the learned counsel referred to the judgment in **M/s. IREO FiveriverPvt. Ltd. vs. Surinder Kumar Singla and another, FA No.1358 of 2016, decided on 29.11.2016** by this Commission, wherein it has been observed:

“14. We have considered the rival contentions and perused the record. On careful consideration of record, we do not find merit in the contention of the appellant. In our considered view, the protection of Force Majeure clause in the agreement between the parties is not available to the appellant builder for the reason that it is the stand of the appellant that vide letter dated 16.03.2011, DTCP Haryana had directed the appellant not to carry out any earth work or construction work at the subject site without obtaining no objection certificate from the Irrigation Department Haryana. It is also admitted case of the appellant that ultimate clearance for undertaking construction work was received vide letter dated 24.04.2015 of National Board of Wild Life granting clearance for the development project. Despite of the aforesaid restraint on the appellant for carrying out development work, admittedly, the appellant executed Plot Buyer’s agreement with the respective complainants during the period 23.06.2011 to 23.04.2012. It is not the case of the appellant that while entering into the agreement, the appellant disclosed about the restraint letter dated 16.03.2011 issued by DTCP Haryana. Thus, it is clear that appellant by concealment of material fact defrauded the respondents / complainants to execute the agreement contained Force Majeure clause, which in our considered opinion is unfair practice amounting to deficiency in service. As the agreement containing Force Majeure clause has been executed by concealment of material fact on the part of the opposite party, the aforesaid agreement is not binding on the complainants. Thus, appellant cannot take benefit of said clause. In view of the discussion above we do not find fault with finding of State Commission holding the appellant to be guilty of deficiency in service and directed the appellant to refund the money paid by the respective complainants with 12% interest besides payment of compensation and litigation expenses.”

17 . On the other hand, learned counsel for Orris Infrastructure Pvt. Ltd. stated that Orris Infrastructure Pvt. Ltd. is only the land owner and the Three C Shelters Pvt. Ltd. is the developer. There is a development agreement between these two parties and this was in the knowledge of complainants. As per this development agreement, 35% units are to be sold by Orris Infrastructure Pvt. Ltd. and 65% units are to be sold by Three C Shelters Pvt. Ltd. In this background, it is to be considered that the project has been delayed by Three C Shelters Pvt. Ltd. and therefore, Orris Infrastructure Pvt. Ltd. is not responsible for paying any compensation for the delay in handing over the possession.

18 . The learned counsel for the opposite parties have argued the following points:-

(i) According to clause 4.3 of the apartment buyer agreement it has been clarified that time is of the essence under this agreement and allottee shall make the timely payment in respect of each instalment. Clearly, the complainants have agreed to this clause and therefore, they are clear defaulters and no relief can be granted to defaulters in the consumer complaint. If the allotment is cancelled, and refund is ordered, then Ops are entitled to forfeit 10% of the consideration amount as earnest money as per the agreed clause.

(ii) As per Section 55 of the Indian Contract Act, if a party to the contract does not perform its part/obligation, he is not entitled to ask for relief under the contract from other party. In this regard, learned counsel stated that the construction of the building depends upon the timely payment by the buyers and if a buyer does not pay instalment in time, the buyer becomes defaulter in the performance of his part/obligation. Therefore, under Section 55 of the Contract Act the complainant cannot demand relief as per the agreement from the OPs. To support his arguments, learned counsel referred to the following judgment:

DLF Southern Town Pvt. Ltd. vs. Dipu C. Seminlal, RP NO.1973 of 2014 decided on 7.1.2015 by this Commission, wherein it has been observed as under:

“9 . Complainant filled application form for provisional allotment on 30.9.2008 and rest of the amount was to be paid in instalments within 27 months of booking. Complainant did not pay any of the instalments and OP vide demand notice dated 31.10.2008, 4.12.2008, 17.12.2008, 31.12.2008, 2.2.2009, 2.3.2009 and 6.3.2009 asked complainant to remit payment, but complainant did not remit payment. OP also asked complainant from time to time to return duly signed Apartment Buyers Agreement, but that was not sent by complainant to OP. As per letter dated 28.1.2010, OP asked complainant to deposit Rs.10,60,326/- outstanding against him on or before 1.3.2010, failing which, allotment will be cancelled and earnest money will be forfeited. Later on, by notice dated 10.3.2010, issued by complainants Advocate it was expressed that complainant was ready to remit unpaid instalments or in the alternative demand of Rs.4,00,000/- deposited was made which was denied by OP vide reply dated 9.4.2010. It was specifically stated in this reply that OP was to complete construction within 36 months from date of execution of the agreement subject to allottee making timely payment of instalments and when payment was not made by the complainant, OP vide letter dated 28.7.2010 cancelled allotment and forfeited Rs.4,00,000/- earnest money and intimated to the complainant that no balance was refundable. After this letter, complainant filed complaint before District Forum with aforesaid prayer.

12. He has also placed reliance on judgment of this Commission in R.P. No. 624 of 2007 – Sahara India Commercial Corpn. Ltd. &Anr. Vs. C. MadhuBabu in which also similar order was passed as in P. Gajendra Chary (Supra). He further placed reliance on judgment of Hon’ble Apex Court reported in (2000) 4 SCC 120 – Prashant Kumar Shahi Vs. Ghaziabad Development Authority in which it was observed as under:

“4....Having failed to perform his part of the contract, the appellant cannot be permitted to urge that he is not liable to pay the balance amount along with interest as according to him the respondent-authority had failed to deliver possession as per terms of the brochure. The authority was not expected to deliver possession in the absence of the payment of the agreed amount”.

13. *In the light of aforesaid judgments, it becomes clear that as complainant has not paid any subsequent instalments and committed default in making payments of instalments and also committed default in returning back duly signed agreement, OP had every right to forfeit amount of earnest money deposited by complainant and learned District forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal.”*

(iii) It has been contended that the interest on the refund amount can only be awarded under the provisions of the Interest Act, 1978 as held by the Hon’ble Supreme Court in **HUDA Vs. Raj Singh Rana, Civil Appeal No.4436 of 2008, decided on 16.7.2008** as under:

“10. The concept of levying or allowing interest is available in almost all statutes involving financial deals and commercial transactions, but the provision empowering Courts to allow interest is 13 contained in the [Interest Act](#), 1978, which succeeded and repealed the [Interest Act](#), 1839. [Section 3](#) of the said Act, inter alia, provides that in any proceeding for the recovery of any debt or damages or in any proceeding in which a claim for interest in respect of debt or damage already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the periods indicated in the said Section.”

(iv) It has been stated that as per the definition of the current rate of interest as given in the Interest Act, 1978, it is the highest rate of interest payable in FDs and highest FD rate is about 7-8% p.a. and therefore, more interest cannot be granted even if a decision is taken to refund the amount alongwith interest.

(v) It is accepted that there has been a delay in the project, however, the matter has now been taken cognizance of by the Real Estate Regulatory Authority, Haryana (RERA,Haryana). The RERA Haryana had convened a meeting on 7.9.2018 where MDs of Orris Infrastructure Pvt. Ltd. and Three C Shelters Pvt. Ltd. participated and it has been decided that the construction will be completed by 30.9.2020. The property in question is likely to be ready by that time and opposite parties will be in a position by that time to give possession.

(vi) Coming to the force majeure conditions, it was stated that vide order dated 31.7.2012, Hon’ble High Court of Punjab and Haryana in **“Sunil Singh Vs. Ministry of Environment & Forests parayavaran” which was numbered as CWP-20032-2008** imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of construction. In the light of force majeure conditions, no compensation is payable according to clause 5.2 of the apartment buyer agreement. The delay has occurred due to conditions prevailing which were beyond the control of the OPs.

(vii) A consumer forum is authorized to order compensation as per Section 14(i)(d) of the Consumer Protection Act, 1986 and the compensation has to be based on the loss or

injury suffered by complainant due to negligence of the OPs. In the present case, no loss has been suffered by the complainants as no proof has been filed by the complainants whether they have suffered any loss due to payment of any rent or any such other thing. In support of his arguments, learned counsel referred to the judgement of the Hon'ble Supreme Court in **M/s. Fortune Infrastructure (Now known as M/s. Hicon Infrastructure) (and another Vs. Trevor D" Lima and others, Civil Appeal No. 3533-3534 of 2017, decided on 12.3.2018**, wherein the Apex Court has held as under:-

“11. It is now well established that the contractual damages are usually awarded to compensate an injured party to a breach of contract for the loss of his bargain. In the case of Johnson and Anr. V. Agnew, [1979] 1 All ER 883, the aforesaid case has clearly held as under-

The general principle for the assessment of damages is compensatory, i.e. that the innocent party is to be placed, so far as money can do so, in the same position as if the contract had been performed.”

(viii) As per clause 5.5. of the Apartment Buyer Agreement, the OPs are liable to pay delay charges @ Rs.10/- per sq. ft. per month if the delay is more than 9 months and in these cases, this will be applicable. As the parties are bound by the agreement and the OPs are ready to pay the delay charges as per the agreement, there should be no question of seeking more compensation by the complainants and the Commission would not be justified in ordering further compensation beyond the one agreed in the agreement between the parties.

19 . I have carefully considered the arguments advanced by the learned counsel for the parties and have examined the material on record.

20 . So far as Sections 54 and 55 of The Indian Contract Act, 1872 are concerned, OPs have relied upon the judgment of this Commission in **DLF Southern Town Pvt. Ltd. vs. Dipu C. Seminlal (supra)**, whereas the learned counsel for the complainants has relied upon the decision of this Commission in **Rakesh Mehta Vs. Emaar MGF Land Limited (supra)**. In the case of **DLF Southern Town Pvt. Ltd. vs. Dipu C. Seminlal (supra)** the complainant has deposited only the booking amount and no instalments were paid whereas in the present cases instalments have been paid upto reasonable limit and the payment was stopped later on as there was no progress in the construction. Thus, two cases cannot be compared and therefore, it cannot be said that the complainants breached the agreement first and they are not entitled to any relief in the light of Section 54 and 55 of The Indian Contract Act, 1872.

21. Clearly the OPs have not been able to complete the project in time and to deliver the possession of properties in question to the respective complainants in time as per the allotment letter or the Apartment Buyer Agreement. It is now clearly established that the allottees have right to ask for refund if the possession is inordinately delayed and particularly beyond one year. In the present cases, the project is not yet complete though the possession was to be given in the year, 2016. The OPs have taken the defence of force majeure conditions for delay including the order of the Hon'ble High Court of Punjab and Haryana in **“Sunil Singh Vs. Ministry of Environment & Forests Parayavaran (supra)** wherein the use of ground water was restricted and OPs had to bring water from outside. Clearly, there was no ban on construction and OPs should have put their resources and managerial skills to bring water from outside and to complete the construction in

time. On the one hand, learned counsel for Three C Shelters Pvt. Ltd. has pleaded force majeure conditions for delay and on the other hand, Orris Infrastructure Pvt. Ltd. has pleaded that Three C Shelters Pvt. Ltd. is responsible for delay in construction. Clearly it was a joint project of Orris Infrastructure Pvt. Ltd. and Three C Shelters Pvt. Ltd. as both of them have signed the Apartment Buyer Agreement, therefore, both are responsible for delay. However, in cases where refund has been sought, the opposite party that has taken the money from the respective allottee, will be liable to refund if ordered.

22. As Three C Shelters Pvt. Ltd. has received all the amount paid by the complainants, Three C Shelters Pvt. Ltd. would be liable to refund the same to the complainants. Recently, Hon'ble Supreme Court in Kolkata West International Pvt. Ltd. Vs. Deva Asis Rudra, II (2019) CPJ 29 (SC) has reduced the interest from 12% p.a. awarded by this Commission on the amount of refund to 9% p.a. Hence, it will be appropriate to order refund of amounts along with 9% p.a. interest from the date of respective deposits.

23. So far as the question of forfeiture of earnest money is concerned, it is seen that the complainants are seeking refund as the project has been inordinately delayed. Even though the RERA, Haryana has taken a meeting to expedite the project and Three C Shelters Pvt. Ltd. has agreed to complete the project in phases, it is seen in the same proceedings that the following has also been observed:

“7. The license holder and developer have entered into an agreement without permission of the government/DTCP Haryana which may attract action against the license holder as well as against the developer which finally in turn will affect the interest of the allottees. BIP permission is necessarily and legally required to regularize the already entered agreement by the developer and license holder. License holder shall apply for BIP in favour of 3C Shelters Pvt. Ltd. with DTCP Haryana, preferably within a month. The fee for BIP shall be paid to the government for which the drafts shall be made by the developer 3C Shelters Pvt. Ltd. preferably within a month and thereafter within three days of getting the draft the licensee shall apply for the BIP and pursue with the Government for issuance of the same well in time.”

24. From the above, it is clear that Orris Infrastructure Pvt. Ltd. and Three C Shelters Pvt. Ltd. have not entered into the agreement as per provisions of law and accordingly, the Development Agreement itself becomes questionable and without any basis. Though this ground has not been taken by the complainants for seeking refund, however this is also a valid ground for the complainants for seeking refund. If there is uncertainty in the development agreement itself, as entered between Orris Infrastructure Pvt. Ltd. and Three C Shelters Pvt. Ltd., the allottees would not like to block their money in such a project. Similarly in para -4 of the same proceedings it is mentioned that the OPs have not paid EDC and IDC to the Government and it seems that the OPs were not serious in timely completing the project. Thus, in these circumstances, there can be no question of forfeiture of earnest money.

25. In these complaints there are certain cases where the subsequent buyers have filed the complaint. In such cases the Hon'ble Supreme Court in **Haryana Urban Development Authority Vs. Diwan Singh, (2010) 14 SCC 770** has observed that such subsequent buyer are entitled to receive interest only after the date of endorsement in their favour.

26. Based on the above discussion, the complaints are allowed as under:-

ORDER

CC 3881/2017, CC 3816/2017, CC 1176/2018 & CC 2564/2017

- i) Complete the construction work and handover the physical possession of the flat complete in all respects as per agreement till 30th September 2020 after obtaining occupancy certificate.
- ii) The OP Three C Shelters Pvt. Ltd. shall pay interest @ 6% p.a. on the deposited amount by the complainant till the due date of possession from the due date of possession till the actual date of possession. For the amounts paid after the due date of possession, the interest shall be payable from the date of completion of one year from the date of deposit till the date of physical possession. The receivables of compensation in the form of interest @6% p.a. shall be adjusted at the time of possession before any due amount is taken from the complainant by the Ops.
- iii) If the possession is not delivered till 30.09.2020, the complainant shall be at liberty to take refund of the total deposited amount (Rs.89,24,429/- in CC 3881/2017, Rs.89,46,793/- in CC 3816/2017, Rs.49,14,784/- in CC 1176/2018, Rs.76,07,661/- in CC 2564/2017) along with interest @ 9% p.a. from the date of respective deposits till actual payment. OP Three C. Shelters Pvt. Ltd. shall be liable to pay the same within a period of six weeks after receiving the request letter from the complainant. If the complainant does not ask for refund, he shall be entitled to get interest @ 6% p.a. as already ordered till possession is handed over.

CC 1175/2018

- i) Complete the construction work and handover the physical possession of the flat complete in all respects as per agreement till 30th September 2020 after obtaining occupancy certificate.
- ii) The OP Three C Shelters Pvt. Ltd. shall pay interest @ 6% p.a. on the deposited amount by the complainant till the due date of possession from the due date of possession till the actual date of possession. For the amounts paid after the due date of possession, the interest shall be payable from the date of completion of one year from the date of deposit till the date of physical possession. The receivables of compensation in the form of interest @6% p.a. shall be adjusted at the time of possession before any due amount is taken from the complainant by the Ops.
- iii) If the possession is not delivered till 30.09.2020, the complainant shall be at liberty to take refund of the total deposited amount Rs.78,58,465/- along with interest @ 9% p.a. from the date of respective deposits till actual payment subject to the restriction that no interest shall be payable for period before 28.01.2013. OP Three C. Shelters Pvt. Ltd. shall be liable to pay the same within a period of six weeks after receiving the request letter from the complainant. If the complainant does not ask for refund, he shall be entitled to get interest @ 6% p.a. as already ordered till possession is handed over.

CC 3815/2017, CC 337/2018 & CC 1972/2017.

Opposite party Three C. Shelters Pvt. Ltd. shall refund the amount of Rs.72,45,394/- in CC 3815/2017, in CC 337/2018 amount of Rs.90,42,210/- and in CC 1972/2017 amount of Rs.75,38,995/- along with interest @ 9% p.a. from the date of respective deposits till actual

payment to the complainant. This order be complied with within a period of 45 days from the date of receipt of this order. Opposite party Three C. Shelters Pvt. Ltd. shall also pay Rs.10,000/- in each complaint case to the complainant(s) as cost of litigation.

CC 2781 of 2017

The opposite party Three C. Shelters Pvt. Ltd. shall refund the amount of Rs.73,45,239/- along with interest @9% p.a. from the date of respective deposits till actual payment to the complainant subject to the restriction that no interest shall be payable for the period before 31.03.2014. This order be complied with within a period of 45 days from the date of receipt of this order. Opposite party Three C. Shelters Pvt. Ltd. shall also pay Rs.10,000/- to the complainant(s) as cost of litigation.

PREM NARAIN
PRESIDING MEMBER