NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 307 OF 2013

1. SURENDRA KAPUR
S/o late Shri Jai Narayan Kapur, 3, Union Cooperative Insurance Building, 3rd Floor, 23, P. M. Road,
MUMBAI - 400001. ....Complainant(s)

Versus

1. M/s PUJA CONSTRUCTION LTD. & 3 ORS.,
Regd. Office: C-24, Bhagwan Dass Road, C-Scheme,
JAIPUR - 302001.
2. Shri Girish Chand Agarwal,
Puja Construction Ltd., C-24, Bhagwandas Road, C-Scheme,
JAIPUR - 302001.
3. Mrs. Agarwal,
Puja Construction Ltd., C-24, Bhagwandas Road, C-Scheme,
JAIPUR - 302001.
4. Ms. Puja Agarwal,
Puja Construction Ltd., C-24, Bhagwandas Road, C-Scheme,
JAIPUR - 302001. ....Opp.Party(s)

BEFORE:
HON'BLE MR. C. VISWANATH,PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA,MEMBER

For the Complainant : Mr. Anoop Bose, Advocate
Mr. Rishad A. Chowdhury, Advocate
Ms. Muskan Nagpal, Advocate

For the Opp.Party : Ms. Ankit Chaudhary Rathi, Advocate
Ms. Archana Pathak Dave, Advocate
Mr. Kumar Prashant, Advocate
Mr. Avnish Dave, Advocate

Dated : 03 Nov 2022

ORDER

1. The present Complaint is filed under Section 21(a)(1) of the Consumer Protection Act, 1986.

2. Opposite Party No.1 is a company registered under the Companies Act, 1956. Opposite Party No.2 is the Director of Opposite Party No.1. Opposite Parties Nos.3 & 4 are wife and daughter of Opposite Party No.2. The case of the Complainant is that the Complainant and the Opposite Party No.1 entered into a Settlement Agreement dated 21.11.2006, whereby the Complainant was promised a residential duplex flat in a real estate project labelled as Rajmahal Royal Residency Project, for his personal use. Despite several communications and assurances, the Opposite Parties failed to hand over possession of the said residential duplex flat to the Complainant.

3. The Complainant on being approached with respect to a proposed investment opportunity by Opposite Party No.2 and his father, decided to invest an amount of Rs.17,00,000/- on the basis of a Memorandum of Understanding for Joint Venture Project. The Complainant sent a further draft of Rs.25,00,000/-, along with letter dated 05.11.1996, wherein it was stated that a further payment of Rs.20,00,000/- would be made upon

execution of the Agreement as envisaged in the Memorandum of Understanding. Opposite Party No.2 however, unilaterally changed the amount from Rs.20,00,000/- to Rs.25,00,000/- and terms of the Agreement. Thereafter, the Complainant, vide letter dated 31.08.1998, expressed his disinterest in the Project and requested Opposite Party No.2 to refund his money with interest. After repeated attempts to resolve the matter, the Complainant requested Opposite Party No.2 to refund his deposit of Rs.42,00,000/- with compound interest @ 24% p.a., vide letter dated 22.07.1999.

4. With a view to discharge and satisfy the amount owed to the Complainant, Opposite Party No.1 and 2 entered into a Settlement Agreement dated 21.11.2006 wherein the Complainant was promised a residential duplex flat for his personal use in the Rajmahal Royal Residency Project located at Goner Road, Jaipur. The terms of the settlement was confirmed in a letter dated 21.11.2006 sent by Opposite Party No.1 to the Complainant. Subsequently, the Complainant and his wife submitted two separate deposit Registration forms along with a cheque of Rs.10,00,000/- pertaining to two separate flats promised by Opposite Party No.1. Opposite Party No.1 sent letter dated 21.11.2006 to the Complainant acknowledging the entire payment against booking of the said flats and stating that there were no past dues left from either side and full and final receipt of payment for the said flats was confirmed. Opposite Party No.2 assured the Complainant over telephone that significant progress had taken place in the construction of the project and that he would be sending photographs as proof. The Complainant, however, did not receive any proof of construction. The Complainant, vide letter dated 12.12.2012, informed Opposite Party No. 2 regarding his visit to Jaipur and noticed that no work was being done on the project even after 5 years from the date of Settlement. The Complainant sought refund of the full value of the said flats with interest, amounting to Rs.3,20,00,000/-. The Complainant further demanded punitive damages of Rs,1,80,00,000/- from the Opposite Parties for compelling him to occupy costly alternative accommodation.

4. In spite of the written demand, vide the letter dated 12.12.2012, Opposite Party No.2 failed to return the money owed to the Complainant. Thereafter, the Complainant sent Legal Notice dated 28.03.2013 claiming an amount of Rs.5,00,30,000/-. In response to the said Legal Notice, Opposite Party No.1, sent reply dated 13.04.2013 to get the sale deed executed. Further, an Arbitrator was appointed by Opposite Party No.1 to resolve the dispute between the Parties. In response to the reply dated 13.04.2013, the Complainant sent another communication dated 15.07.2013 denying the contents of reply stating that the Complainant had never consented for Arbitration to resolve any dispute. Alleging deficiency in service on the part of the Opposite Parties, the Complainant filed the instant Consumer Complaint with the following prayer:-

> *"a. Allow the instant Complaint filed by the Complainant;*
>
> *b. Pass an order holding that the Opposite Parties are liable for breach of contract and deficiency of service.*
>
> *c. Pass an order directing the Opposite Parties to forthwith pay to the Complainant a total sum of Rs.5,00,30,000/- (Rupees Five Crores and Thirty Thousand only) together with simple Interest @ 18 percent p.a. from March 28, 2013 till the date of payment;*
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> *d. Pass an order calling upon the Opposite Parties to certify and transmit all necessary records relating to the case before this Hon'ble Commission or cause them to be produced at the time of hearing so that conscionable justice may be done to the Complainant;*
>
> *e. Pass an order awarding the costs of the present proceedings in favour of the Complainant and against the Opposite Parties;*
>
> *f. Pass such other or further order or orders, direction or directions as may be considered fit and expedient In the facts and circumstances of the case."*

5. The Opposite Parties resisted the Complaint by filing written statement on the ground that the Complaint is barred by limitation under section 24-A of the Consumer Protection Act, 1986 as it was filed after 2 years from the date of the alleged cause of action. There was also no relationship of Consumer and service provider between the Parties. The Complainant had initially entered into the Joint Venture agreement with Opposite Party No.1 for profit motive and thereafter agreed to take flat in lieu of the investment made

by him with the sole intention to earn profit by disposing off the same. Further, the Complainant is seeking 12% annual compoundable interest on the amount and is thus acting as a money lender who could not be considered to be a Consumer as defined under Section 2 (d) of Consumer Protection Act 1986. It had been specifically mentioned in clause 14 of the registration form that any dispute or difference between the Applicant/Buyer and the Opposite Parties shall be resolved through arbitration in terms of Arbitration and Conciliation Act, 1996. The matter required detailed evidence and the proceedings before this Commission are summary in nature.

6. On merits, Opposite Party No.1 and 2 stated that there was no deficiency on their part and whatever delay had occurred in completion of the construction of the project was beyond the control and power of the Opposite Parties. The delay occurred due to the restraint order passed by the High Court of Rajasthan in Civil Writ Petition No. 5702/2006 and not due to any fault or negligence on the part of the Opposite Parties and as such the Opposite Parties could not be held liable. It was submitted that initially the Complainant was allotted a duplex flat but later the Complainant opted for two residential flats admeasuring 1480 sq. feet each. Accordingly, the Complainant had filled two forms for allotment of two flats of 1480 sq. feet, instead of duplex flat. There was no deficiency in service on the part of the Opposite Parties, rather, immediately after completion of the project, Opposite Parties offered the flats to the Complainant, vide letter dated 13.04.2013. Despite that, the Complainant did not come forward to take possession of the flats and instead filed the present Complaint just to harass the Opposite Parties.

7. Heard the Learned Counsel for the Parties and carefully perused the record. Learned Counsel for the Complainant stated that the original reason why the sum of money was paid by the Complainant was irrelevant, but, the Settlement dated 21.11.2016 whereby the said amount were agreed to be *"accounted against"* the contractual promise to deliver to the Complainant a duplex residential flat for his personal use and enjoyment is not disputed. The amount paid along with the interest accrued on the same was the consideration of the flat and the debt was discharged by the Opposite Parties through the promise to deliver the residential, duplex flat to the Complainant. Hence, the Complainant falls within the ambit of the Consumer Protection Act, 1986. The amount was paid by the Complainant in 1996. The value of Rs.42 lakhs was Rs.1.4 Crores at the time of the Settlement on 21.11.2006. The Complainant paid an additional amount of Rs.10,00,000/- because the value of duplex flat was Rs.1.5 crores. Further, an examination of the public record appears to indicate that the Writ Petition referred to in the Written Version (Civil Writ Petition 5702/2006) was dismissed by the High Court of Rajasthan on 29th January, 2009 and therefore the effect of the interim order dated 05.09.2008 had come to an end by that time. Thus, if at all the interim orders restrained the Opposite Parties from continuing with construction with respect to this particular project, the said restraint could not have operated for a period of more than four-and-a-half months, being the time period between the order dated 05.09.2008 and the dismissal of the Writ Petition on 29.01.2009. The Opposite Parties, therefore, have no valid justification for the unreasonable delay in handing over possession of the residential duplex flat to the Complainant. Due to this inordinate delay, the Complainant lost confidence that the flat would ever be made available to him, and has accordingly prayed for payment of Rs.5,00,30,000/-.

8. Learned Counsel for the Opposite Party submitted that the Complaint was time barred and is liable to be dismissed. It was also stated that the Opposite Parties have not committed any deficiency in service and the Complaint is devoid of merit. This Commission did not have the jurisdiction to entertain the present Complaint as the Complainant was not a Consumer and the allegations made needs to be examined requiring detailed evidence by both the Parties. Moreover, the Complaint was not maintainable as the parties had agreed to resolve all their disputes through the medium of Arbitration.

12. Preliminary objection raised by the Opposite Parties is that the Complainant was not Consumer as he was acting the capacity of money lender and claimed interest on the money invested by him. In this regard, para 3 of the Complaint is relevant, which reads as follows: -

> *"3. The Complainant is a respected citizen and enjoys an enviable and unimpeachable reputation as a businessman. His credentials are impeccable and he is well respected, well acknowledged, well recognized and well accepted in his field of business. He has a reputed standing in business circles. During his business career, spanning a period of several long years, the Complainant has earned a blemish-less reputation for care, caution, diligence,*

thoughtfulness, circumspection, prudence and, sound judgment. He has a record of honesty, integrity and fair play both in his business and otherwise."

It is his own admission that the Complainant is a businessman and spent several long years in the business. Further, in para 5 a. of the Complaint, it is stated that the Complainant had invested the money. It is not the case of the Complainant that he booked the house for residential purpose. Para 5 a reads as follows: -

> "*In and around October, 1996, the Complainant, on being approached by and relying upon tacit assurances given by Opposite Party No.2 and his father with respect to a proposed investment opportunity, decided to invest an amount of Rs.17,00,000/- (Rupees Seventeen lakhs only) on the basis of Memorandum of Understanding which was intended to be used for the purpose as decided between the Parties."*

Admittedly, the Complainant invested the amount in the project as a partner. Subsequently the Complainant withdrew as a partner and requested Opposite Party No.2 for refund of his investment amount with interest. As Opposite Parties failed to refund the amount, the Complainant entered into an agreement dated 21.11.2006 wherein he was promised that he would be given a duplex flat in the project against his money invested in the project. As the project got delayed, the Complainant sought refund of the amount invested by him.

From the aforesaid sequence we find that the Complainant made investment of his money as a partner in the project and now he is seeking refund of that investment amount. The entire transaction between the Complainant and the Opposite Parties is commercial in nature. Refund of the amount sought by the Complainant is only extension of initial investment made by him, which is purely commercial in nature. By the Complainant's own admission, vide settlement dated 21.11.2016 the said amount was agreed to be 'accounted against' the contractual promise for delivery to the Complainant of a duplex flat. The amount paid alongwith accrued interest was the consideration for the flat and the debt was discharged by the Opposite Parties through the promise to deliver the duplex flat to the Complainant. Entering into agreement for a duplex flat is only a sequence for realizing the invested amount with interest. Claim made by the Complainant is only for furtherance of gain for the original investment made. The Complainant being an investor is not a "Consumer" under the provisions of Consumer Protection Act, 1986. The Consumer Complaint is accordingly dismissed as not maintainable with liberty to the Complainant to approach the appropriate Forum.

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C. VISWANATH
PRESIDING MEMBER

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SUBHASH CHANDRA
MEMBER