

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 75 OF 2022

1. AMARJEET SINGH GADHOK & 10 ORS.

.....Complainant(s)

S/o Mr. Avtar Singh Gadhok, R/o D - 5, Mogul Garden Lane 5,
Koregaon Park,

PUNE

MAHARASHTRA

2. ANJULI SIVARAMAKRISHNAN

W/o Mr. Vikram Sivaramakrishnan R/o A 93/3, SFS Flats,
Saket, Near PVR Anupam,

NEW DELHI 110017

3. VIKRAM SIVARAMAKRISHNAN

S/o Mr. Sivarama Sivaramakrishnan R/o A 93/3, SFS Flats,
Saket, Near PVR Anupam,

NEW DELHI - 110017

4. ANSHU SARIN

D/o Premnath Sarin R/o Jumbo Building, Flat 22, 1st Road,
Bandra,

MUMBAI

MAHARASHTRA

5. ASEEM KASHYAP

S/o Mr. Asha Ram Kashyap R/o 1827, Sector -22B,

GURGOAN

HARYANA

6. YANDANA KASHYAP

W/o Mr. Aseem Kashyap R/o 1827, Sector -22B,

GURGOAN

HARYANA

7. EVNEET BHATIA

W/o Navdeep Singh Bhatia R/o 402, Sunbreeze Tower III,
Sector IV, Vaishali,

GHAZIABAD

UTTAR PRADESH

8. NAVDEEP SINGH BHATIA

S/o Mr. Harlochan Singh Bhatia R/o 402, Sunbreeze Tower III,
Sector IV, Vaishali,

GHAZIABAD

UTTAR PRADESH

9. HIMANI PUSHKARNA

W/o Devinder Nath Pushkarna R/o D-1/1176, Vasant Kunj,

NEW DELHI

10. DEVINDER NATH PUSHKARNA

S/o Yoginder Nath Pushkarna R/o D-1/1176, Vasant Kunj,

NEW DELHI

11. RENU PUSHKARNA

S/o Mr. S.B. Soni R/o E 2/3, DLF, Phase-I,
GURGOAN

Versus

1. RAHEJA DEVELOPERS LIMITED

Through its Directors Having its Registered Office at : W4D,
204/5, Keshav Kunj, Cariappa Marg, Western Avenue, Sainik
Farms,
NEW DELHI - 110062

.....Opp.Party(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE COMPLAINANT : MR.ADITYA PAROLIA, ADVOCATE
MR. PRANJAL MISHRA, ADVOCATE
MS. SUMBUL ISMAIL, ADVOCATE

FOR THE OPP. PARTY : MR. SIDDHARTH BANTHIA, ADVOCATE
MR. SARIM KHAN, ADVOCATE
MR. ABHISHEK DAGAL, ADVOCATE

Dated : 08 August 2024

ORDER

1. The present Consumer Complaint (CC) has been filed by eleven Complainants (pertain to 7 units) against Opposite Party (OP) as detailed above for delay in construction of the Project, inter alia praying for directions to the OP to:-

i) hand over the possession of the Unit(s) to the Complainants, complete in all respect and in conformity with the Agreement(s) and for the consideration mentioned therein, with the additional facilities and as per quality standards promised and execute all necessary and required documents in respect of the said Unit(s) in favour of the complainants by September 2022 or as this Commission deems fit.

(ii) pay interest @ 12% per annum as delayed possession compensation from the promised date of possession as per the Agreement(s) till the date the actual possession is handed over by the Opposite Party along with all necessary documents and common areas and facilities as promised during the initial booking made by the Complainants;

(iii) refund of the total amount paid by the Complainants along with a penal interest of 18% per annum from the date of receipt of payments made to the OP in

the event that absolute, complete and final possession of the Unit cannot be handed over by September 2022 or as this Commission deems fit and appropriate;

(iv) pay compensation of Rs.5,00,000/- to the Complainants towards mental agony, harassment, discomfort and undue hardship caused to the Complainants as a result of the above acts and omissions on the part of the Opposite Party and

(v) pay a sum of Rs. 1,00,000/- to the Complainants towards litigation costs.

2. Notice was issued to the OP. Parties filed Written Statement/Reply, Rejoinder, Evidence by way of an Affidavit and Written Arguments/Synopsis etc. The details of the flats allotted to the Complainants/other relevant details, based on pleadings of the parties and other records of the case are also given in the Table below:

Sr.No.	Name of Allottees	Unit No.	Date of Booking	Date of Allotment letter	Date of Agreement	Promised Date of possession	Total Cost	Amount Paid
1.	Amarjeet Singh Gadhok	IF16-04, 3 rd Floor, Block IF16-04	03-May-11	30-June-11		30-June-13	73,30,875/-	68,37,231/-
2.	Anjuli Sivaramakrishnan & Vikram Sivaramakrishnan	IF6-03, 2 nd Floor, Block 6	04-Mar-11	15-Jul-11	15-Jul-11	15-Jul-13	95,01,350/-	89,06,965/-
3.	Anshu Sarin	IF15-05, 4 th Floor, Block IF-15	15-Mar-11	07-Jul-11	07-Jul-11	07-Jul-13	96,73,925/-	90,85,059/-
4.	Aseem Kashyap and Vandana Kashyap	IF6-01, Floor, Block IF-6	-	08-Dec.-17	08-Dec.-17	08-Dec.-19	1,54,07,780/-	1,54,07,780/-
5.	Evneet Bhatia and Navdeep Singh Bhatia	IF19-05, 4 Floor,	28-Sept-09	12-Aug-12	12-Feb-10	12-Aug-14	68,65,748/-	65,09,569/-

		Block IF-19						
6.	Himani Pushkarna and Devinder Nath Pushkarna	IF 14-03, 2 Floor, Block IF-14	29-Mar-11	12-Jul-11	12-Jul-11	12-Jul-13	87,75,850/-	89,52,797/-
7.	Renu Pushkarna	IF2-03, 2 Floor, Block IF-2	27-Mar-11	30-Jun-11	30-Jun-11	30-Jun-13	1,03,74,529/-	88,44,240/-
		Total amount					6,79,30,057/-	6,45,43,641/-

3. Brief facts of the case, as emerged from the pleadings of the parties and other case records are that: -

The present complaint has been filed jointly by the above detailed 11 complainants, who had booked Units in the Project “Raheja’s Shilas” at Sector-109, Gurgaon, based on various advertisements, assurances, promises and luring by the OP and its representatives in the year from 2009 to 2011. After collecting a substantial amounts (Rs.6,45,43,641/-) towards the total consideration of the Units (Rs.6,79,30,057/-), the complainants were issued Allotment Letters (between 2011-2017), whereby the Complainants were allotted Unit(s) in Independent Floors in the said Project of the OP. The parties entered into Flat Buyer’s Agreements from the year 2011-2017. As per the Agreement, the possession was to be given to the allottees within 24 months from the date of Agreement with a grace period of 6 months. The OP failed to offer the possession in time. Hence, the complainants are before this Commission.

4. The OP in their written statement/reply stated that:

(i) At the time of launch of booking, abundant precautions were taken and as such categorical clarifications were given to all the allottees including complainants by OP at two stages i.e. 1st in its Application Form (Clause 3) and 2nd its Flat Buyer Agreement (Clause 4.3) that the intending allottee(s) would not claim any compensation for delay/non-provision of infrastructure facilities and/or consequent delay in handing over the possession of the applied apartment(s) in the project. The above two clauses in two different documents shared with the allottees including complainants with full transparency as true declaration executed between the parties as

different dates/times and even before accepting the booking or any payments clarify that OP had honestly and adequately explained the risks of non-availability of infrastructure at the time of handing over of possession for the reason best known to them. The reasons of booking in the project despite having risks of non-availability of infrastructure at the time of handing over of possession may be that complainants might have wished to hedge it with price and opportunity. The complainants entered into the agreement having full knowledge about the factual position about possible risks. Due to Dwarka Expressway got entangled into land acquisition litigation before the Pb. & Haryana High Court, the Govt. Agencies could not acquire the entire land for development of the Dwarka Expressway and other connecting major roads for almost 10 years and thus the Govt. Agencies failed to provide basic infrastructure facilities such as road, sewerage, water and electricity supply etc. despite the fact that EDC, IDC etc. running into thousands of crores of rupees have been deposited by various license holders including OP. The OP has deposited full EDC, IDC etc. for its said project. The basic infrastructure like water, electricity, sewerage system etc. could not be provided and further social infrastructure such as public transport government hospitals, school and colleges community and religious buildings, street and traffic lights etc. also could not be developed.

(ii) Vide order dated 31.07.2012 in Sunil Singh V/s Ministry of Environment & Forests and others, Hon'ble High Court banned the use of underground water for construction purpose resulting certain delay in completion of various projects. The allottees were also informed that external and infrastructural services in the said project was to be provided by the HUDA. Despite having knowledge of the same, Complainants had filed the complaint and raising frivolous allegations against the OP. The allegations with respect to terms of agreement are also denied. The Agreement contains fair clauses which involve rights and obligations governing both the parties. It punishes both the parties in case of their respective defaults in discharging contractual obligation. The OP has further contended in its written version that the construction of the apartment in question is already completed and OP has applied for grant of OC and the same is pending for adjudication. The government (DHVBNL) changed the policy in April 2015 and as per the policy decision, it was informed that instead of 11 KVA, 33 KVA electrical set up was made necessary. On account of the same, the cost of Unit has increased and therefore, the OP opposed the same with DHVBNL. Domestic connection was denied on this basis and demand of Bank Guarantee of Rs.4.75 crore was raised. The expenditure incurred in 11 KVA has become waste due to the change of policy. Only on the issue of deposit of alleged Bank Gurantee the OC is on hold. Hence, the time wasted by the government authority should be questioned by this Commission and request is also made to add them also as party. It is also contended that the dispute arising in respect of an agreement to sell an apartment does not relate to rendering of any service within the meaning of Section 2(1)(o) of the Act.

(iii) Allegations by the complainants are of contractual nature and parties are bound by the terms of the Agreement and cannot be considered under the Consumer Protection Act.

(iv) It is further contended by the OP that compensation under the C.P. Act can only be given if loss due to 'Negligence' is established. The act specifically provides that compensation can only be granted, in a case where there is a specific allegation with particulars and proof that loss is caused on account of 'negligence'.

(v) Since the allegation in the present complaint only relates to deciding the action of OP in accordance with the agreed terms and condition. The same can only be adjudicated by a Civil Court after calling for detailed evidence and upon examining the same.

(vi) Since the clauses of the agreement were brought to the knowledge of the Complainant in the year when booking Application form was executed and thereafter the agreement was executed, the complaint in relation to the said clauses or action taken in relation thereto can only be made within two years before this Commission. The same had already expired at the time of filing the complaint.

(vii) The complainants are not consumers as the complainants booked the unit in addition to the already occupied house at Mumbai as indicated in the Affidavit supporting the complaint.

(viii) It is the complainant's case that as per Clause 4.3 of the Agreement, the due date for handing over possession expired much before the filing of the complaint even before 2 years limitation period, hence, sought refund. The complainants have erroneously interpreted the said clause.

5. Complainants in their rejoinder stated that:

The complainants have denied the contents of the reply filed by the OP is not only misconstrued but also baseless. The OP has made all possible efforts to deviate from the contents of the averments made in the Consumer Complaint. The complainants pleaded in their rejoinder that they had booked the units for residential

requirement of themselves and their family and not for any commercial purposes in the project. Thus, the complainants are bonafide 'consumers' within the meaning of the Act. It is also averred by the Complainants that the grievances of the complainants have already been adjudicated upon in a similar case of the same Project of the OP and the complainants have relied upon the judgment dated 28.01.2022 of this Commission in CC/728/2020 titled as **Charu Sharma vs. Raheja Developers Ltd. & Other connected matters**. The OP failed to provide any reason or force majeure or excusable delay conditions responsible for the delay in offering possession as per the Agreement. The OP, in order to cover its tracks of defaulting in delivering timely possession of the allotted Units has raised frivolous and arbitrary contentions, which is totally denied by the Complainants. The OP failed to draw a nexus between the factors stated by the OP and delay in execution of the project. The complainants have denied the averments made by the OP in their reply.

6. Heard learned counsels for both sides. At the outset, learned counsel for OP stated that the complainant herein have also approached NCLT, New Delhi, although he admits that the said complaint is yet to be admitted and IBC proceedings have not commenced yet leading to any moratorium. He further states that even before NCLT the main issue is with respect to Occupation Certificate (OC) and NCLT also issued notice to the DTCP. Learned counsel for OP states that OC was applied as early as in 2019, but till date the same has not been issued and according to him the main reason is dispute with respect to certain payment and not any reason with respect to violations of the approved plan etc.

7. In the present case, the main prayer of the complainants (11 complainants for 7 units) is for possession with refund as an alternate prayer. Learned counsel for OP states on instructions that his client is confident of getting the OC within 5 months from today and they would be in a position to hand over the possession. He fairly concedes that they will have no hesitation in paying the delay compensation @ 6% per annum, while handing over the possession which is the usual rate of interest awarded by this Commission in delay compensation cases. He further states that in case they fail to hand over the possession in another 5 months, they will have no hesitation in refunding the entire principal amount with interest @ 9%, which is the usual rate of interest awarded by this Commission in refund cases.

8. Learned counsel for complainant, on instructions, states that they are agreeable to possession even if it is delivered within a maximum of 6 months from today. However, placing reliance on the judgement of this Commission in CC/728/2020 and related case dated 22.02.2022 in **Charu Sharma Vs. Raheja Developers Ltd.**, which concerned the same OP and the same project, he pleads that the delay compensation should be @ 8% per annum. On the other hand, learned counsel for OP placing reliance on judgement of this Commission in CC/186/2020 dated 06.07.2023 in **Raj Kumar Mittal & Ors. Vs. Raheja Developers Limited** concerning the same project contends that delay compensation should be only @ 6%. Learned counsel for complainant further states, relying on the judgement on Hon'ble Supreme Court in Civil Appeal No. 8418 of 2022 dated 25.07.2023 **Santosh Narasimha Murthy and Ors. Vs. Mantri Castles Private Limited & Anr.** that in case

delay compensation is awarded @ 6% per annum, it should be in addition to the delay compensation payable under the Builder- Buyer Agreement.

9. Although both sides are agreeable on the broad contours of the prayer with respect to possession within 6 months with delay compensation and refund in case of failure of possession in 6 months with interest @ 9%, the only difference is with respect to the quantum of delay compensation, whether @ 6% or @8% or 6% plus the rate mentioned in the Builder-Buyer Agreement. Further the learned counsel for complainant also contends that in case of failure of possession, refund should be within a reasonable period of about one month from the expiry of 6 months with 9% and after that it should carry a higher rate of interest than 9%.

10. For the reasons stated hereinabove, and after giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised by the learned Counsel for the Parties, the Consumer Complaint is allowed/disposed off with the following directions/reliefs: -

(i) The OP(s) shall obtain a valid O.C. from the competent authority within 4 months of this order (which gives them about 8 months from the date of hearing i.e. on 05.04.2024, when they committed to obtain O.C. within 5 to 6 months) and hand over the actual physical possession of the unit in question to the complainants, complete in all respects as per specifications and alongwith all the facilities/amenities as promised in the brochure/agreement subject to the complainants paying the balance amount as per agreement, if any, within 30 days of demand. OP(s) shall also, on getting a valid OC, issue an offer of possession along with demand letter, stating the balance payable amount by the Complainants, if any and arrange joint inspection of the unit with the complainants/their representative to satisfy them about the completeness of the unit as per the specifications and alongwith amenities/facilities as per brochure/agreement. If any deficiencies are noticed as a result of such joint inspection, the same shall be got rectified within 30 days of date of such joint inspection.

(ii) OP(s) shall also be liable to pay delay compensation in the form of simple interest @ 6% from the Committed date of possession as per agreement i.e. 30 months from the agreement in each case till the date of actual possession with a valid O.C. This compensation @ 6% p.a. will be over and above the delay compensation already paid by the OP in accordance with the agreement, if any.

(iii) The OP(s) shall pay a sum of Rs.25,000/- as cost of litigation to the complainants.

(iv) Amounts payable by OP to Complainants towards delay compensation etc. as per this order shall be duly adjusted while calculating the balance amount payable by the Complainants, if any. If any amount becomes payable by OP to Complainants as a result of such calculations as per this order, same shall be paid within three months from the receipt of OC, failing which, it will carry interest @ 9% p.a. till the date of actual payment.

(v) In case OP fails to obtain OC, within 4 months from the date of this order and handover the possession as per this order, Complainants, in their discretion, will have the option to seek refund of the amount paid by them. This refund, if sought, shall be paid by OP, along with interest @9% p.a., w.e.f. date of each deposit till the date of actual payment, within 30 days of seeking the refund in writing, failing which, amount payable at the expiry of 30 days shall carry interest @12% p.a. from the expiry of 30 days till the date of actual payment.

11. The pending IAs, in the Consumer Complaint, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER