

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 2916 OF 2017

1. B.K. MALHOTRA

.....Complainant(s)

Versus

1. IREO GRACE REALTECH PRIVATE LIMITED & 4 ORS.

2. .

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.....Opp.Party(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE COMPLAINANT : MR. CHANDRA SHEKHAR, ADVOCATE
MR. PRABHAT RAI, ADVOCATE
MR. PRASHANT SHEKHAR, ADVOCATE
MR. ASHWANI SAINI, ADVOCATE
MR. B. K. MALHOTRA, IN PERSON

FOR THE OPP. PARTY : MR. SAMEER CHAUDHARY, ADVOCATE
MR. GAURAV SHARMA, ADVOCATE (OP-1,2&4)
MR. RHYTHM KATYAL, PROXY COUNSEL WITH
MR. AUTHORITY LETTER FOR
MS. ARCHANA YADAV, ADVOCATE (OP-3)

Dated : 10 April 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. The complaint was originally filed before the learned State Commission, Delhi but the same was returned to the complainant for lack of pecuniary jurisdiction in view of three judges bench decision of this Hon'ble Commission in the case of **Ambrish Kumar Shukla & 21 Ors. vs. Ferrous Infrastructure Pvt. Ltd. (I) 2017 CPJ 1 (NC)**.

2. Thereafter, the above said complaint has been filed under section 21(a)(i) of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") before this Commission seeking following reliefs.

i). Direct the opposite parties to refund Rs. 29,21,976/- to the complainant; and

ii) Direct the opposite parties to pay the interest @20% P.A. (same as demanded from the complainant) from the date of each payment till the date of refund.

- iii) Direct the opposite parties to pay Rs. 20,00,000/- for compensation for mental agony & physical sufferings sustained in ailing old age; and
- iv) Direct the opposite parties to pay Rs. 2,00,000/- the cost of litigation; and
- v) Pass any other and further such other order(s) as this Hon'ble Forum may deem just and proper on the facts and in the circumstances of the present matter.

3. The complainant stated that the opposite parties were company, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project and selling its unit to the prospective buyers. The opposite party launched a group housing project, in the name of "The Corridors" at villages Dhumaspur and Maidwas, Golf Course Extension Road, Sector 67-A, Gurgaon, in the year 2012 and made wide publicity of its facilities and amenities. The complainant booked a 2BHK + study flat, super area of 1540.42 sq. ft. and deposited Rs. 12,00,000/- as booking amount on 10.03.2013. Upon encashment of the cheque, the representative of the opposite party got blank papers signed from the complainant at his residence when he is suffering from severe eye problems. Thereafter, he paid a sum of Rs. 17,21,976/- towards second instalment against the said property. It is alleged by the complainant that he received by post an offer of allotment dated 07.08.2013 accompanied with payment plan showing the total consideration of the flat at Rs. 1,51,58,046.12. The allotment letter dated 07.08.2013 mentions basic sale price at the rate of Rs. 9200/- per sq. ft. and Club Membership charges of Rs. 2,50,000/-. Thereafter, on 24.03.2014, the complainant received the copy of the builder-buyer's agreement. However due to his eye problem, which are duly supported by medical papers, he could not go through and had not signed the same. The complainant protested that the opposite party unilaterally choose to allot an apartment no. CD-C-5-01-104 to the complainant without any consultation. As per the complaint, the complainant did not sign the builder buyer's agreement as he came to know that the company is actually a consortium and the agreement was tripartite between the opposite party, complainant and four other entities.

In view of the fact that the opposite party was neither owner of the land nor the developer of the project and that the clearances for the project were received after the allotment had been granted, he lost faith in the project and sought refund of the amount paid along with interest at the rate of 20% per annum.

4. The opposite parties filed its reply on 30.07.2018 in which the booking of the flat on payments made by the complainant, issue of offer allotment letter dated 07.08.2013 and the fact that the builder buyer agreement was never signed, has not been denied. The opposite party has also filed a copy of an undated application for booking of the apartment duly signed by the applicant. The application form is accompanied by Schedule-I which gives "key indicators from the terms and conditions of the apartment buyer's agreement." Reminders for payment of the third instalment were sent on 13.04.2004 and 04.05.2014. Reminders were sent for signing copies of the builder buyer's agreement on 28.05.2014 and again on 17.07.2014. Thereafter, the final notices were sent on 29.08.2014 and on 08.09.2014. Due on non-payment as also non-execution of apartment buyer's agreement, the

allotment was cancelled and the total amount paid was forfeited. It was stated in the reply that neither there was any defect in the right, title or interest nor any unfair trade practice or deficiency in service on their part.

5. The complainant has filed rejoinder and evidence by way of affidavit. The opposite party has filed evidence by way of affidavit. The complainant and the opposite party have filed written synopsis in the matter.

6. The written synopsis has been filed by the opposite party no. 3 in the matter stating therein that there is no privity of contact between the complainant and the opposite party no. 3, therefore, the opposite party no. 3 cannot be held liable under the Consumer Protection Act, 1986.

7. We have heard the arguments of learned counsel for the parties and examined the record.

8. The opposite party no. 1 has taken a ground that since the complainant has booked two flats, he is not a consumer but an investor. However, no details or evidence of second flat so booked by the complainant have been provided by the opposite party no. 1. In view of this Commission's judgment in *Kavita Ahuja Vs. Shipra Estate Ltd. and Jaikrishan Estate Developers Pvt. Ltd. and Ors., I (2016) CPJ 31 (NC)* the onus of proof to prove the same lies upon the opposite party which has not been discharged.

Further, the complaint has been filed with the prayer that the entire money deposited should be refunded to the complainant along with interest on the ground that it was only after payment of the second instalment, the complainant became aware that the opposite parties were in consortium and there was defect in the title and that no builder buyer agreement was ever signed in this case.

9. It has been submitted that in regard to the title, "IREO" signified an agglomeration of companies under a captive management with a common purpose. As a business model IREO has various captive Associates / Companies / Entities which keep buying land and applying for development licenses which are later carved out into specific projects. Such a business model is legally permissible. It is further stated that the project in question has received all clearances including environmental and fire and pollution control board in 2013. Further, the occupation certificate for 700 apartments in Towers A6 to A10, B1 to B4, C3 to C7, EWS, convenient shopping, two level basement, has been granted on 31.05.2019. Also, the occupation certificate for phase – 2 apartments in Tower A1 to A5, B5 to B8, C8 to C11, EWS Building No. 2 was granted on 27.01.2022. Hence, the case set up by the complainant that the opposite party has no title or is doing some illegal activity is not liable to be accepted.

10. It is admitted by the complainant that he did not pay the subsequent instalments and wanted to opt out of the project. The letters of demand issued including the final notice and the cancellation of the letter issued by the opposite party are also admitted.

11. The only question that remains in this complaint is regarding the refund of the forfeited amount.

12. It is seen from the offer of allotment dated 07.08.2013 admitted by the complainant in para 3 that ‘The Company shall be entitled to reject and refuse to execute any Agreement wherein the Proposed Allottee has made any corrections / cancellations / alterations / modifications to the Agreement. In case the Proposed Allottee fails to execute and return the Agreement within the stipulated period of 30 days of its dispatch, then this Offer of Allotment may be treated, as cancelled at the sole discretion of the Company and in the event that the Company exercises its option to cancel this Offer of Allotment, all sums paid by the Proposed Allottee to the Company till date including the booking amount shall be forfeited in favour of the Company. Thereafter the Proposed Allottee shall be left with no right, claim or lien in the said Apartment or against the Company in any manner whatsoever.’

Further, it is seen from the clause 7 of Schedule I accompanied with the application that ‘I/We understand that the Booking Amount is non-refundable and in the event I/We withdraw our application or if I/We do not accept the allotment made by the Company on my/our Application or I/we do not execute the Apartment Buyer’s Agreement within the time stipulated by the Company for this purpose or I/we fail to make the payment of the due instalment as per the Payment Plan, then my/our entire Booking Amount shall be forfeited to the Company and I/We shall be left with no right, interest, claim or lien on the said proposed Apartment or its booking or otherwise on the Company in any other manner whatsoever.’

13. Although the terms as quoted in para 12 talks of entire forfeiture, however, the Hon’ble Supreme Court, in **Maula Bux Vs. Union of India, (1970) 1 SCR 928** and **Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136**, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of Section-74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damage. After cancellation of allotment, the flat remains with the developer as such there is hardly any actual damage. This Commission in CC/438/2019 Ramesh Malhotra Vs. EMAAR MGF Land Ltd. (decided on 29.06.2020), CC/3328/2017 Mrs. Prerana Banerjee Vs. Puri Construction Ltd. (decided on 07.02.2022) and CC/730/2017 Mr. Saurav Sanyal Vs. M/s. IREO Grace Pvt. Ltd. (decided on 13.04.2022) held that 10% of basic sale price is reasonable amount to be forfeited as “earnest money”.

14. In view of the above discussion, the complaint is partly allowed. The opposite party is directed to refund balance amount, after forfeiting 10% of basic sale price, with interest at the rate of 9% per annum from 08.09.2014 till the date of payment, within a period of two months from the date of this judgment, failing which, the interest at the rate of 12% per annum shall be paid.

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**SUBHASH CHANDRA
 PRESIDING MEMBER**

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**DR. SADHNA SHANKER
 MEMBER**