

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 272 OF 2019**

1. VIKAS GARG

R/o Flat No-57/401, NRI Complex, Phase-2, Seawoods, Nerul

Sector-54, 56, 58,

NAVI MUMBAI - 400706

MAHARASHTRA

.....Complainant(s)

Versus

1. ESTATE OFFICER (HOUSING)

Greater Mophali Area Development Authority (GMADA),

PUDA Bhawan, SAS Nagar, Sector-62,

MOHALI - 160062

PUNJAB

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE SUDIP AHLUWALIA,PRESIDING MEMBER**

FOR THE COMPLAINANT : MR. TANISHQ TYAGI, ADVOCATE  
MR. DEVESH PRATAP SINGH, ADVOCATE

FOR THE OPP. PARTY : MR. ASHISH KUMAR, ADVOCATE  
MS. ARUSHI MAKKER, ADVOCATE.

**Dated : 03 April 2024**

**ORDER**

JUSTICE SUDIP AHLUWALIA, MEMBER

This Complaint has been filed under Section 21(a)(i) of the Consumer Protection Act, 1986 alleging deficiency in service and unfair trade practice on the part of the Opposite Party and seeking refund of the deposited amount along with ancillary reliefs.

2. The factual background, in brief, is that in the year 2011, the Opposite Party advertised about its Project-"Puram Premium Apartments" in Sector 88, SAS Nagar, Mohali, enticing potential buyers with promises of high-end living. Responding to these representations, the Complainant applied for a Flat for his residential use in the general category, submitting Earnest money of Rs. 6,90,000/- on 25.05.2012. Following his success in the draw of lots on 20.05.2012, the Opposite Party issued a Letter of Intent (LoI) to the Complainant on 23.05.2012, indicating a tentative flat price of Rs. 69,00,000/-. Additionally, the LoI outlined maintenance charges at Rs. 1.25 per sq.ft. super area per month for the initial three years, along with a 2% contribution of the Flat's sale price as corpus in the Society before possession. Subsequently, the Complainant deposited Rs.13,80,000/- on 22.06.2012 and Rs.42,60,750/- on 21.07.2012 into the Axis Bank account of GMADA, fulfilling 95% of the tentative price. As per the LoI, the Opposite Party was committed to delivering possession within 36 months from the LoI issuance. However, a delay of over 13 months ensued, and the Complainant received the Allotment Letter and offer of possession for Flat No. 1501, Tower 6, Block B, Floor 14, Type 4 on 24.06.2016, which was received on 30.06.2016. Upon visiting the premises, the Complainant found the same to be uninhabitable, compounded by

the project's significant size reduction of over 50% without the Allottees' consent, leading to increased super area for Allottees. Citing deficiency in services and unfair trade practices, the Complainant requested surrender of the Apartment and refund of deposited money with compounded interest @18% p.a., as per Clause 2 of Page No. 9 of the Brochure-cum-Application form of Puram Premium Apartments, in a letter dated 20.07.2016 to the Estate Officer, GMADA. However, a response was received on 12.09.2016 from the Opposite Party which stipulated a 10% deduction under PAPRA, 1995, for the surrender. Aggrieved by these circumstances, the Complainant lodged his complaint before this Commission.

3. In view of the aforesaid facts, the Complainants have prayed as following -

- “a) To pay the Complainant/Allottee herein amount deposited, penalty for delay in handing over possession of the flat, in terms of the letter of intent, at the rate of 18% (compounded) from the date of each payment by the Complainant till the date of actual payment;
- b) To pay an amount of Rs. 10,00,000/- to the Complainant and all similarly situated buyers to Opposite Party on account of harassment, mental agony, loss of time and money suffered at the hands of Opposite Party
- c) Make a payment of Rs. 3,00,000/- towards litigation expense;”

4. Ld. Counsel for Complainant has argued that the Opposite Party failed to obtain the completion certificate before offering possession, contravening established legal precedents in “GMADA v. Anupam Garg, FA No. 1852 of 2018” and “GMADA v. Rajiv Kumar, FA No. 1853 of 2018” where the Commission specifically noted instances of offering paper possession without the completion certificate; That possession was offered on an "as is where is" basis, pressuring Allottees to take possession within 30 days despite project incompleteness, indicative of the Opposite Party's attempt to evade its contractual obligations; That demands for maintenance charges and welfare society corpus were raised while the project remained unfinished, as evident from the pleadings and subsequent developments; That this Commission had appointed a Local Commissioner in “Group Captain Bhupinder Singh v. Chief Administrator, GMADA, AE No. 210 of 2018” to inspect the development work, and this Commission should inspect the Local Commissioner's report for project completion assessment in the present case; That incomplete possession was offered by the Opposite Party which is substantiated by letters filed along with the Rejoinder Affidavit indicating project incompleteness; That the Opposite Party is obligated to pay interest at 18% p.a., mirroring the interest rate charged to Allottees for delayed payments as per the LoI. Therefore, the Complainant is entitled to equitable compensation without any arbitrary distinction.

5. Ld. Counsel for Opposite Party has argued that the Complainant does not qualify as a 'Consumer' under the Act as the Complainant's participation in the apartment draw was solely for investment purposes, without evidence of personal residential need. The Complainant's intention was speculative, aimed at future profit which is evident from the fact that his residence was in Delhi at the relevant time, and current residence is in Navi Mumbai; That regarding the alleged illegal forfeiture of Earnest money, Clause 7(ii) of the LoI stipulates forfeiture of the same in case of refusal to accept allotment within 30 days of the offer. As the Complainant requested surrender of the apartment after the offer was made, the forfeiture of Earnest money is justified; That the Complainant's attempt to evade financial obligations is evident from correspondence acknowledging his inability to fulfill financial obligations due to personal constraints. The Hon'ble Supreme Court's in “Ireo Grace Realtech (P) Ltd. v. Abhishek Khanna, (2021) 3 SCC 241” has held that even if there was a delay in the offer of possession, refusal by Allottees is untenable if possession is offered with an Occupation

Certificate; That regarding the Completion Certificate, the Opposite Party is exempt under Section 44 of the Punjab Apartment and Property Regulation Act (PAPRA), 1995, as an Urban Development Authority, absolving it from the requirement of obtaining a Completion Certificate from external authorities. Thus, the Opposite Party seeks dismissal of the Complaint on these grounds.

6. This Commission has heard both the Ld. Counsel for Complainant and the Opposite Party, and perused the material available on record.

7. The basic controversy in the matter is whether the letter by which the Complainant had sought refund of the amount paid by him to the Opposite Party (GMADA) alongwith 18% interest was actually an option to withdraw from the Scheme, or was a plain and simple "Surrender of Apartment", which was highlighted as 'Subject' of the same. The contention of the Opposite Party is that since it was a 'Surrender' of his allotted property in terms of the Letter of Intent issued in his favour way back in the year 2012, so on account of such 'Surrender', he would be entitled to only to refund of the money deposited by him after forfeiture of 10% of the Earnest money in terms of Clause 7(II) of the Letter of Intent. On the other hand, the Complainant has relied upon Clause 3(II) which provides as under –

### “3. OWNERSHIP AND POSSESSION

(I) Allotments shall be on free hold basis.

(II) Possession of apartment shall be handed over after completion of development works at site in a period of 36 months from the date of issuance of Letter of Intent. In case for any reason, the Authority is unable to deliver the possession of apartments within stipulated period, allottee shall have the right to withdraw from the scheme by moving an application to the Estate Officer, in which case, the Authority shall refund the entire amount deposited by the applicant along with 8% interest compounded annually. Apart from this, there shall be no other liability of the Authority.....”

8. There is nothing on record to show that the development works had been completed within the period of 36 months from the date of issuance of the Letter of Intent (which was in the year 2012), and towards which the Complainant had deposited 10% of the Apartment price, being Rs. 6,90,000/- against the total price of Rs. 69,00,000/- on 23.5.2012. The Opposite Party/ Authority was also required to deliver possession of the Apartment within the stipulated period failing which the Allottee had the right to withdraw from the scheme by moving an application of Clause 3(II) already re-produced above.

9. Now, in his letter dated 20.7.2016 (Annexure-P5), the Complainant has also specifically mentioned –

“.....Following are the key points due to which we would like to withdraw from the scheme:

1. Delay in delivery of apartment within stipulated period of 36 months from the date of issuance of Letter of Intent dated 23 May, 2012 to us. Accordingly, the project was to be completed by 22 May, 2015....”

He had also mentioned in detail how the basic facilities including the amenities as mentioned in the original Brochure had not been provided even till the date of his letter.

10. He was therefore certainly justified in seeking to withdraw from the scheme in terms of Clause 3(II) of the Letter of Intent. If possession was not offered to him in accordance with the promised amenities in the original Brochure. So the mere usage of the word "Surrender of Apartment..." as used in the 'Subject' heading of the letter cannot be used against him, since he has also specifically mentioned elsewhere in the letter that he wants to withdraw from the scheme on account of the delay in delivery of the Apartment, which in any case was not in a habitable condition, and the allotment letter/offer of possession issued to him for that

purpose was itself beyond time, having been issued in the month of June, 2016 which was 4 years and 4 months after the date of deposit of the Ernest money by him in 2012 and was therefore well beyond the stipulated period of 36 months.

11. He was therefore justified in seeking refund of the Ernest Money paid by him on account of the delay in the offer of possession, which was well above One year from the stipulated date, and according to him, even the property itself was not in a complete/habitable condition, although its actual condition would not be very relevant for consideration, in view of the undeniable delay in the offer of possession, for which the Complainant was well within his right to withdraw from the scheme and seek the refund.

12. He is consequently found entitled to refund of his money deposited with the Opposite Party/GMADA along with interest @ 8% per annum compounded annually in terms of Clause 3(II), of the Letter of Intent issued by the Opposite Party. For the same reason, the Complainant is not liable for any deduction in the Ernest Money paid by him, as he had rightfully exercised his option to withdraw from the scheme.

13. The Complaint is, therefore, allowed. The Opposite Party is directed to refund the amount paid by the Complainant towards the property in question along with interest @8% per annum to be compounded annually, in accordance with the relevant Clause of the Letter of Intent. Such payment shall be made within 3 months framed from the date of this Order, failing which, any outstanding amount shall attract interest @ 10%, per annum to be compounded annually, till the date of its final realisation.

14. Parties to bear their own costs.

15. Pending applications, if any, automatically stand disposed off as having been rendered infructuous.

.....J  
**SUDIP AHLUWALIA**  
**PRESIDING MEMBER**