

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 1037 OF 2017**

1. KULDEEP SINGH & ANR.

S/o. Sh. Jaibir Singh, R/o. VPO Kirodi, Tehdil - Barwala,

HISAR

HARYANA

2. JITENDER

S/o. Sh. Prem Singh, R/o. Village Rojkhera, PO - Ghoria, Tehsil - Narwana,

JIND

HARYANA

.....Complainant(s)

Versus

1. DLF HOMES PANCHKULA PVT. LTD. & ANR.

Through its Authorized Representative SCO no. 190-191-192, Sector-8-C,

CHANDIGARH

2. DLF HOMES PANCHKULA PRIVATE LIMITED

Regd. office at 2nd Floor, DLF Gateway Tower, DLF City, Phase - III, National

Highway - 8,

GURGAON

HARYANA

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT**

FOR THE COMPLAINANT :

MR. HARENDER SINGH, ADVOCATE

FOR THE OPP. PARTY :

MR. PRAVIN BAHADUR, ADVOCATE

MR. PRABHAT RANJAN, ADVOCATE

(THROUGH V. C.)

MR. ASHRAY BHATIA, ADVOCATE

**Dated : 22 July 2024**

**ORDER**

1. This is a Complaint alleging deficiency in service on the part of the Opposite Parties in having failed to deliver the possession of a plot that had been booked by the Complainant in DLF Valley Panchkula with a booking amount of Rs.12,00,000/-. The Complainant alleges that the total cost of the plot was Rs.1,78,10,452.51/- that was to be paid under a two year payment plan. According to the Complainant a receipt was issued for Rs.12,00,00,000/- on 31.03.2012 followed by a letter acknowledging the booking receipt and allotting the Plot No. DVP – F4/9 Block No. R1 at DLF Valley Panchkula. The same was under a two year payment plan and it also refers to the terms and conditions of the Application Form. The payment chart along with the same demonstrates that the payment was to be made in 11 parts commencing with the booking amount and ending with the offer of possession. The Complainant states that further amounts were paid which is acknowledged by the receipts dated 01.02.2013 and 30.04.2013 for different amounts. The last payment according to the Complainant was made on 23.08.2013 which he alleges that was as per the payment plan.
2. Learned Counsel for the Complainant submits that the Application form which has been filed by the Opposite Parties as Annexure-OP/1 contains one sided and unilateral terms and conditions but at the same time it categorically records that a Plot Buyer's Agreement had to be executed as envisaged therein. It is clearly averred that the Opposite Parties were to dispatch the Plot Buyer's Agreement which had to be executed and returned within 30 days or else that would invite forfeiture and other consequences. It is also urged that the agreement was understood to be binding and it is for this reason that the terms and conditions also referred to the Plot Buyer's Agreement (PBA). It has been pointed out that this fact has also been stated in Clause 8 of the said agreement that envisages forfeiture.
3. It is the contention of the Complainant that no agreement was either offered or sent and therefore this was the first deficiency that was noticed by the Complainant. The Opposite Parties never furnished the said performa of the Plot Buyer's Agreement as promised and the reason for the same was for that the Opposite Parties were deceitly planning to deprive the Complainant of a valid transaction after completing all legal formalities that was required to be done keeping in view the various legal provisions that had not been fulfilled by the Opposite Parties. The development also had not been carried out timely. It was on account of such deficiencies that the Opposite Parties failed to execute the Plot Buyer's Agreement and then surreptitiously proceeded to cancel the plot on 18.11.2014. Learned Counsel submit that this cancellation is also not a valid document as it recites the cancellation of the Property Buyer Agreement which was never executed. In the absence of any such agreement there was no occasion for the Opposite Party to have invoked the forfeiture clause as it is the Opposite Parties who have defaulted by not executing the agreement.
4. Learned Counsel therefore submits that therefore this is not a case where the forfeiture clause would apply at all. Not only this the said cancellation letter mentions realization of interest on delayed payment which has been charged excessively to deprive the Complainants of his legitimate amount at the rate of 24% which is otherwise not attracted on the facts of the present case.
5. Learned Counsel submits that this act on the part of the Opposite Parties is atrocious and seemingly arbitrary with a view to forfeit the hard earned money of the Complainant. Learned Counsel has then invited the attention of the Bench to Clause 8, 13 and 19.
6. An objection had been taken by the Opposite Parties regarding the delay in the filing of the Complaint inasmuch as cancellation had taken place in 2014 and the present Complaint was filed in 2017. To this learned Counsel for the

- Complainant urged that a legal notice had been served on the Opposite Parties in 2016 itself and the Complainants filed the Complaint before the State Consumer Disputes Redressal Commission, UT, Chandigarh that was not entertained on account of pecuniary jurisdiction with liberty to the Complainant to approach before the appropriate Forum. The Order dated 17.10.2016 is at Page No. 38 of the Complaint. Learned Counsel for the Complainants submits that the Complainants did not waste any time and on the passing of the said order immediately rushed to file this Complaint that was tendered in 2017. Thus, there is no delay on the part of the Complainants.
7. It is also urged that the default is clearly writ large inasmuch as the Complainants had sent reminders on 30.07.2016, 02.09.2016, 14.09.2016 and 19.09.2016 but the Opposite Parties have failed to return the amount of Rs.61,64,228/- which the Complainant is entitled for refund together with 18% interest.
  8. Mr. Pravin Bahadur appearing on behalf of the Opposite Parties has urged that the Complainants have not stated correct facts inasmuch as firstly the terms and conditions filed along with application form are independently binding even if the Plot Buyer's Agreement was not executed. The terms and conditions stipulated therein have been violated by the Complainant inasmuch as the payment plan which had been given to the Complainant, the Complainant complied only with the payment of the booking amount and other 3 installments for which receipts had been issued. The rest of the installments have been defaulted and not paid. Learned Counsel submits that the installments which fell due in July, 2013 onwards have been admittedly not paid and consequently the Complainants were issued notices that have been brought on record. According to Mr. Pravin Bahadur the notice were sent earlier 2013 and similar other notices in 2014 indicating to the Complainant that in case the Complainant does not respond to making the payments defaulted, it will not be possible to accommodate the Complainant for long and cancellation would be invoked.
  9. It is waiting for a response for a long time that a cancellation letter was issued on 18.11.2014. Thus, the said cancellation was resorted to on account of the default of the Complainant and hence the default invited the forfeiture clause which has been correctly invoked for the deductions made.
  10. Learned Counsel for the Complainant has responded to these arguments by contending that in view of the default of the Opposite Party in not entering into the agreement, followed by non-delivery of the possession of the plot, disentitles them to invoke the forfeiture clause and obliges them to refund the entire amount with interest. Learned Counsel for the Complainant submits that the plot had not been developed nor its possession had been offered within the time prescribed and hence the Complainant is entitled for refund of the entire amount together with interest as claimed with respect from the date of deposits till actual payment.
  11. Mr. Pravin Bahadur learned Counsel for the Opposite Party contends that even assuming for the sake of arguments that the Complainant is entitled to any refund then at the same time the terms and conditions binds the Complainant to suffer forfeiture as his non-payment has prejudiced the development work of the Opposite Party.
  12. At the outset the first issue is with regard to the contention raised by the Opposite Parties regarding delay in filing of the Complaint. The facts as have been pleaded demonstrate that the Cancellation Notice is alleged to have been issued on 18.11.2014. The Complainants allege that it is in 2015 that he came to know that the Opposite Parties had virtually closed the aforesaid Project and that the plots would not be allotted. It is then that the Complainants vide their letter dated 28.12.2015 sought refund of their amount. Having not received any response to the said letter, the Complainants served a Legal Notice on the Opposite Parties on 15.03.2016 and it is also alleged that they met the Opposite Parties on several occasions but except an assurance nothing more was done. The assurances were false and hence reminders were sent by the Complainants on 30.07.2016, 02.09.2016, 14.09.2016 and 19.09.2016.
  13. It is, thereafter, since no option was left, the Complainants resorted to filing CC No.686 of 2016 before the State Consumer Disputes Redressal Commission, Chandigarh. The said Complaint was dismissed for want of pecuniary jurisdiction with liberty to the Complainants to approach the National Commission. This Order was passed on 17.10.2016. The present Complaint was then instituted before this Commission and according to the stamp available on the first page of the compilation; the Complaint appears to have been filed on 13.04.2017.
  14. It is evident from the facts narrated above, that even though the cancellation was resorted to by the Opposite Parties on 18.1.2014, the Complainants sought refund through the letter dated 28.12.2015, which was not responded to by the Opposite Parties. A copy of the said letter, which is by e-mail, is at Page-31 of the Paper-Book. The Legal Notice was tendered on 15.03.2016. On 30.07.2016, the Complainants dispatched a letter requesting the Opposite Parties to provide a copy of the letter of allotment as the same had been misplaced. A reminder was sent to the Opposite Parties on 02.09.2016, which was also not replied to. It is then that the Complainants approached the State Commission and lodged the Complaint that was dismissed on 17.10.2016 by the following Order:-

***“The cost of plot purchased by the complainant was Rs.1,78,10,452.51. As per ratio of the judgment passed by Hon’ble National Consumer Disputes Redressal Commission, New Delhi in the case of Ambrish Kumar Shukla & 21 Ors. Vs. Ferrous Infrastructure Pvt. Ltd., Consumer Case No.97 of 2016, decided on 07.10.2016, the relief claimed by the complainant may be less, however, to entertain the complaint, the entire value of the product has to be seen.***

***In the face of the ratio of the judgment, referred to above, this complaint is not maintainable and the same stands disposed of, giving liberty to the complainant to avail proper remedy before the proper Fora.***

***Certified copies of the order be sent to the parties free of charge.”***

15. The fact that the Complainants had sent a letter dated 28.12.2015 has been categorically stated in Paragraph-15 of the Complaint and as noted above, a copy of the same has been filed at Page-31 of the Paper-Book. There is no specific denial about the letter dated 28.12.2015, a copy of which has been filed on record with the Complaint. The Opposite Parties even though had denied the contents of Paragraph-13 but there is no recital in their reply about the letter dated 28.12.2015. The only inference therefore, which can be drawn is that the Complainants had demanded refund through the said letter to which no response was given by the Opposite Parties.

16. The serving of the Legal Notice on 15.03.2016 in Paragraph 17 has not been denied except the contents of the Legal Notice. Thus, the sending of the Legal Notice also stands admitted.
17. The fact that the Complainants then filed a Complaint before the State Commission that was dismissed on account of lack of pecuniary jurisdiction with an observation to approach the appropriate fora has not been denied, which is evident from a perusal of Paragraph 27 of the Reply, except the fact that this Commission does not have the jurisdiction.
18. The question as to whether there was a bar of limitation as envisaged under Section 24-A of the Consumer Protection Act, 1986, as this is case under the old Act, has to be tested on various decisions rendered by the Apex Court. One of the judgments is in the case of ***State Bank of India Vs. B.S. Agriculture Industries (I)*** reported in **(2009) 5 Supreme Court Cases 121**. The Apex Court held that the issue of limitation is a mandate, which has to be decided in terms of the statute, which prevents the Commission from entertaining a Complaint beyond the period of two years unless sufficient cause is shown and accepted by the Commission for filing of a Complaint beyond the said period. No doubt in this case the cancellation did take place in November, 2014, but the Complainants had sought refund through the letter dated 28.12.2015 to which no response was given by the Opposite Parties. Consequently, the cause of action to the Complainants arose after the Opposite Parties failed to response to the demand of refund by the Complainants. This claim of refund, therefore, continued and in this view of the matter, the Complainants on this cause of action had rightly dispatched a Legal Notice to the Opposite Parties, which was also not responded to. The failure to refund the amount was therefore a continuing cause of action.
19. It is in this desperate situation that the Complainants lodged their Complaint before the State Commission that was dismissed on the ground of pecuniary jurisdiction on 17.10.2016 with liberty to approach the appropriate forum. This entire chain of events, therefore, demonstrates that the Complainants were bonafidely and genuinely pursuing their remedy claiming refund from the Opposite Parties and, therefore, this was a continuing cause of action that had not become dead. The Apex Court in a later judgment while interpreting Section 24-A of the 1986 Act found that if the Promoter and the Builder had failed to secure the requisite documents including a Completion/ Occupation Certificate, then in that event the same would give rise to a continuing cause of action as the wrong also continued. This decision is reported as ***Samruddhi Cooperative Housing Society Limited Vs. Mumbai Mahalaxmi Construction Private Limited*** reported in **2022 SCC OnLine SC 35**.
20. Applying the ratio of the said judgment on the facts of the present case, it is evident that the Complainants were seeking refund after their plot was cancelled by the Opposite Parties themselves. Thus, the cause of action was continuous and no delay, therefore, can be gathered for all the reasons noted above so as to non-suit the Complainants on the ground of limitation.
21. It is also the correct that the Complainants has questioned the forfeiture demanded by the Opposite Parties of the booking amount and also the interest charged by the Opposite Parties on the ground of delay in payment of installments, but the same is being questioned on the ground of non-fulfillment of the terms and conditions contained in the Booking Application Form and further the fact that the Opposite Parties have failed to enter into any Plot Buyer Agreement with the Complainants. In view of the findings that are being recorded hereinafter, the said cause also cannot be divorced from the relief of refund claimed by the Complainants and, therefore, the same being interlinked the bar of limitation would not apply on this ground as well.
22. Coming to the merits of the claim, the facts as unfolded through the pleadings needs narration and analysis to appreciate the arguments advanced by the learned Counsel for both parties.
23. The Opposite Parties through their Reply have filed the documents leading to the booking and ending with the cancellation of the plot. The Complainants have filed the letter dated 10.04.2012 as an Annexure C-1. This letter of allotment was issued after the Complainants had tendered a cheque of Rs.12 lakhs dated 31.03.2012 for which the Opposite Parties issued a receipt that has been placed at Page 60 of the Reply. The receipt is of some significance and, therefore, is being mentioned. The receipt has a recital, after mentioning the fact that the property was being agreed to be sold as per Terms and Conditions being Plot No.DVP-F4-9 Area 2600.53 sq. ft. Just below the said description is the Column reciting "Buyers Agreement No.....Dated.....". This fact is being mentioned because the case of the Complainants is that there was no Buyers Agreement in existence nor was any Plot Buyer Agreement sent by the Opposite Parties for being signed by the Complainants. Infact no such Agreement exists even though it was promised by the Opposite Parties themselves. This has been made the principal ground of attack alleging deficiency and unfair trade practice in the present Complaint that in the absence of any such Agreement, the Opposite Parties could not have either resorted to any forfeiture of the booking amount or imposition of interest on the alleged delayed payment of the installments by the Complainants.
24. The said contention, on facts, appears to be correct as no Buyer Agreement number or date has been mentioned in the receipt quoted above, and during the course of arguments also, learned Counsel for the Opposite Parties could not dispute this position that there is no Plot Buyer Agreement entered into between the Parties. However Mr. Bahadur reiterated that the terms and conditions as agreed are part of the application which is binding on the Complainant
25. After having paid the booking amount, the Complainants were given a payment plan alongwith the booking letter, which is the same payment plan that has been appended to the complete copy of the Application Form said to have been signed by the Complainants, which runs into almost 27 pages. A copy of the said Application Form, which bears the signatures of the Complainants has been filed with the Reply as OP/1. The said Application Form contains certain terms and conditions, which need to be referred and are, therefore, narrated hereinafter or quoted as reliance has been placed by the Parties on the said document.
26. The first page of the Application Form, which mentions the receipt of the booking amount of Rs.12 lakhs states that this would be subject to terms and conditions of the Booking Application as well as the Plot Buyers Agreement, which shall be tendered to the Complainants to be returned back within 30 days of its dispatch. The recital also states that if the Complainants fail to execute and return the Agreement to the Company within 30 days, consequences would follow. It is, thus clear from the said recital in the letter of booking on the first page that it clearly stipulates the dispatch of a Plot Buyers Agreement to the Applicant with a further recital that it is only after the execution of the Plot Buyers Agreement that the allotment shall be final and binding on the Opposite Parties. This recital, therefore, is a pre-condition for a final allotment or agreement. The fact remains that such an agreement format was never sent by the Opposite Parties to the Complainants nor it was entered into or signed.

27. The second significant factor is that the said Application is accompanied by receipts of the documents as also the terms and conditions appended to the said Application Form as relied on the by the Opposite Parties. The said Application Form has no where been signed by the Opposite Parties or their officials including Annexures appended thereto except the receipt of the application, which was meant for office use only. The said receipts are at Page 39 and 40 respectively dated 30.03.2012. Interestingly, the said receipts have been signed by the Broker of the Opposite Parties namely M/s Nisha Estate. The booking, therefore, was done through the Broker and not directly by the Opposite Parties. The Terms and Conditions appended thereafter are unilaterally signed by the Complainants and not by the Opposite Parties.
28. Coming to the Terms and Conditions, the preamble recites that the Terms and Conditions would be binding subject to other conditions, which might be comprehensively set out in the Plot Buyers Agreement, which upon execution shall supersede the Terms and Conditions set out in the Application Form. It is thus clear that the said Terms and Conditions were also made subject to the Plot Buyers Agreement to be executed between the parties.
29. Clause 2 of the Agreement makes recitals but the recital necessary for the present controversy in the said clause is extracted herein under:-

***“Clause 2-.....The Applicant (s) further confirm (s) that Applicant (s) are fully aware that by executing this Application, it would become binding on the Applicant (s) and that the company will be fully entitled to forfeit the Earnest Money if the Applicant (s) default (s) in complying with the terms of this Application and Payment Plan.”***

30. The Terms and Conditions reiterate that upon payments being received, the allotment is only provisional and would be more clearly defined in the Plot Buyers Agreement. This is evident from Clause 3. Again the Plot Buyers Agreement is mentioned Clause 4 (a).
31. Clause 8 of the said Terms and Conditions defines that the booking amount paid by the Complainants along with the Application, which is a sum of Rs.12 lakhs would be the Earnest Money, which can be forfeited in case of non-fulfillment of the Terms and Conditions contained therein or the Plot Buyers Agreement. Clause 8 is extracted hereinunder:-

***“8. The Company and the Applicant(s) hereby agree(s) that the Earnest Money for the purpose of this Application (and Plot Buyers’ Agreement) shall be the booking amount paid by the Applicant(s) along with this Application. The Applicant(s) hereby authorize(s) the company to forfeit this Earnest Money along with the interest on account of delayed payments, brokerage, other charges, and taxes, if any incurred by the company, etc., and/or in case of non-fulfillment of the terms and conditions herein contained and as may be contained in the Plot Buyers’ Agreement.”***

32. Clause 13 in addition thereto also makes a provision reciting that the possession of the plot would be delivered within 24 months from the date of the Application. Clause 13 is extracted herein under:-

***“Clause -13.The Company shall endeavour to offer possession of the plot, as may be allotted, within 24 (Twenty Four) months from the date of this Application subject to timely payment by the Applicant (s) of the Total Price, stamp duty and other charges due and payable according to the Payment Plan/ this Application.***

***In the event of the Applicant (s) failure to take possession of the plot, as may be allotted, within 90 (ninety) days from the date of intimation in writing by the Company offering possession, then the same shall be at Applicant (s) risk and cost and the Applicant (s) shall be liable to pay to the Company holding charges at the rate of Rs.50/- per sq. mtr. per month (Rs.42/- sq. yd approx. per month) for the entire area of the plot for the entire period of such delay.If the Applicant (s) fail (s) to come forward to take possession of the plot for a period of six (06) months from the date of offer of possession by the Company, then the Company shall be entitled to cancel the allotment of the plot and refund all monies paid by the Applicant (s) after deducting there from Earnest Money along with the interest on delayed payments, brokerage, other charges, and taxes if any incurred by the Company.The payment of holding charges shall be made prior to the conveyance of the plot.The holding charges shall be a charge for delay in taking over the possession and it shall be in addition to maintenance, and other charges, and shall not be adjustable or substitutable with any other charges as provided in this Application and/ or as may be provided in the Plot Buyers’ Agreement.***

***In the event the Company fails to offer possession of the plot as may be allotted within 24 (Twenty Four) months from the date of this Application, then after 90 days from the expiry of the said 24 (Twenty Four) months, subject to the Applicant (s) having made all payments as per the Payment Plan, and subject to the terms, conditions of this Application and the Plot Buyers’ Agreement and barring force majeure circumstances, the Company shall pay compensation to the Applicant (s) @ Rs.50/- per sq. mtr. per month (Rs.42/- per sq. yd. approx. per month) of the area of the plot which both parties have agreed is just and equitable estimate of the damages that the Applicant (s) may suffer and the Applicant (s) agrees that they shall not have any other claims/ rights whatsoever.The adjustment of compensation shall be done at the time of execution of the conveyance deed.”***

33. The other relevant Clause regarding forfeiture is contained in Clause 19, which is extracted herein under:-

***“Clause -19. It shall be incumbent on the Applicant (s) to comply with the terms of the payment and/ or other terms and conditions of this Application/ Plot Buyers’ Agreement failing which the Applicant (s) shall forfeit to the Company the entire amount of Earnest Money, interest on delayed payment, brokerage, service tax, other charges and taxes, if***

***any incurred by the Company, etc. and the Application/ Plot Buyers' Agreement shall stand cancelled and the Applicant (s) shall be left with no lien, right, title, interest or any claim of whatsoever nature in the plot."***

34. With the aforesaid Terms and Conditions as contended by the Opposite Parties, the Complainants proceeded to make the payments and then defaulted. According to learned Counsel, the payment that were made by the Complainants, the amount whereof has already been indicated, was only part of the payment and the Complainants voluntarily stopped making payments thereafter hence there was a clear default.
35. To understand this factual controversy, as indicated above, a sum of Rs.12 lakhs through a cheque was paid on 31.03.2012. The balance over and above Rs.12 lakhs, that has been paid by the Complainants, has been indicated in the Complaint. It appears that when the Complainants stopped making payment, then a letter was sent on 02.01.2013 alleging default and again on 23.03.2013. However, there is a receipt date 01.02.2013 for a payment of Rs.7,21,028/-, which again refers to a blank recital regarding Buyers Agreement. Neither the details of any such Agreement or date is mentioned therein, which confirms that there was no written Agreement entered into. This was followed by a letter dated 12.04.2013 and again a demand notice on 09.09.2013 with a reminder on 20.09.2013. This was followed by a reminder dated 29.10.2013 and 20.11.2013.
36. In the coming year again reminders were sent on 07.02.2014, 21.02.2014, 10.03.2014, 08.05.2014, 23.05.2014, 10.06.2014, 06.10.2014 and finally the cancellation letter dated 18.11.2014.
37. As indicated above, even though the letters and reminders recited the existence of an Application/ Agreement, the fact remains that there was no Plot Buyers Agreement. The relevant portion of the cancellation letter dated 18.11.2014 is extracted herein under:-

***"We invite your kind attention to the Final Notice dated 06.10.2014 requesting you to clear the outstanding payments, i.e. Rs.11,496.862.08 to reach us positively by 10.10.2014. We checked our records and find that, as on date, we have not received the said payment and hence we left with no other option but to send you this letter of Cancellation.***

***In terms of clause no.19 of the terms and conditions of the application for allotment, the amount forfeitable, as detailed herein ... shall stand forfeited and the balance will be refunded to you.***

***Amount, so far, received from you. Rs.6,156,228.00***

***Less:***

***Forfeitable Amount***

***i) Earnest money (Including Service Tax)***

***Rs.1,348,320.00***

***(ii) Interest on delayed payments (Including Service Tax) Rs.1,793,486.00***

***(iii) Brokerage & Incentive (if any) paid (Including Service Tax) Rs.0.00***

***Total Forfeitable Amount Rs.3,141,806.00***

***Balance refundable Rs.3,014,422.00***

***In case the property has lien on it, the refundable amounts shall be refunded accordingly after receiving necessary information from the Bank/ Financial Institution.***

***With the above, all original Receipts as well as the Property Buyers Agreement stands cancelled and you do not have any lien/ ...whatsoever on the captioned property."***

38. Learned Counsel for the Complainants contended that it erroneously mentioned cancellation of the Property Buyer Agreement and not the cancellation of the allotment. Learned Counsel submits that if there was no Agreement, the same could not have been cancelled and the recital in the letter is not about the cancellation of the allotment. It is, therefore, submitted that the letter has no impact and no consequences follow of either forfeiture or imposition of interest on delayed payments on the strength of such a document. Even otherwise if there is no Agreement then the forfeiture could not have been made on the strength of a letter of allotment dated 30.03.2012, which has not been signed by the Opposite Parties. The contention is that there is no binding contract insofar as the imposition of forfeiture or interest on delayed payment is concerned. In the background once the payments made by the Complainants have not been denied, the same deserves to be refunded without any forfeiture.
39. In the backdrop of the terms and conditions as recited hereinabove, the fact remains that no Plot Buyers Agreement was executed between the parties and as a matter of fact, the Opposite Parties have been unable to deny the fact that they have failed to send the Plot Buyers Agreement for signatures to the Complainants. In the absence of any such step having been taken by the Opposite Parties, which they were obliged to do under the terms and conditions of the Application Form, there is no Agreement executed between the parties as such except the Application Form and the terms and conditions appended thereto. The Complainants are, therefore, correct in asserting that there is no Plot Buyers Agreement between the parties. This deficiency on the part of the Opposite Parties is therefore established as they failed to carry out their obligation as noted above.

40. Coming to the Terms and Conditions of the Application Form, it is evident that it has not been signed by the Opposite Parties and as indicated above, the receipt of the said Application Form has been signed by the Broker namely M/s Nisha Estate. There is, therefore, no formal Plot Buyers Agreement with the Opposite Parties.
41. Nonetheless, looking to the terms and conditions, it is obvious that according to Clause 13 the plot had to be allotted within 24 months from the date of the Application subject to timely payments by the Applicants. The payments were coupled with the obligation of the signing of the Plot Buyers Agreement. The Opposite Parties have been unable to explain as to why they did not tender the signed Plot Buyers Agreement to the Complainants for their counter signatures. This omission on the part of the Opposite Parties is, therefore, a clear deficiency and the Complainants cannot be said to be unjustified in apprehending future complications. The Complainants have come out with a case that in the absence of the offer of the land upon its completed development there was no hope of receiving the land nor was it offered within two years of the date of the Application, as such no further payments were made. The contention is that the offer had to be made by February, 2014, which was not done and in effect the Opposite Parties do not seem to have been in a position to handover possession to the Complainants.
42. The Opposite Parties contend that it is the Complainants who failed to make timely deposit of the dues and on their failure to do so, the plot was cancelled on 18.11.2014.
43. The Complainants cannot be blamed as there is no explanation about the delay in handing over the possession by the Opposite Parties. It appears that since there was no hope in the offing, that the Complainants stopped making the payments and consequently the Opposite Parties resorted to cancel it. It is correct that the cancellation order was preceded by several notices but the fact remains that the cancellation went on unmindful of the fact that the Plot Buyers Agreement had not been executed by the Opposite Parties themselves. "The cancellation letter also erroneously mentions the cancellation of the property buyer agreement" as indicated above there was no agreement at all and the cancellation letter at best would be referable to the booking application. In the absence of any agreement there is no question of its cancellation.
44. In the absence of an Agreement, which was promised to be executed, the Opposite Parties could not have compelled the Complainants to make the balance of the payments. The payments, therefore, even though defaulted were clearly on account of the apprehensions expressed by the Complainants.
45. The cancellation forfeits the entire earnest money and then also imposes interest on delayed payment. Once there was no Agreement and the plot was not delivered to the Complainants on the pretext of not having paid their installments, then in that event the Opposite Parties were not entitled to impose any liability of payment of interest on the delayed amount. The deficiencies therefore are an outcome of the conduct of the Opposite Parties.
46. The question of forfeiture has also been dealt with in several cases holding that forfeiture cannot be resorted to in excess of 10%. Reference we had to the observations made and the ratio of the Order of this Commission in the case of ***TDI Infrastructure Limited Vs. Bipin Gupta*** passed in FA No.1117 of 2023 decided on 05.06.2024. The relevant Paragraph 8, which is extracted herein under:-
47. ***However, the opposite party had not refunded the balance amount after forfeiting 'earnest money' as per clause-9 of the agreement as such cancellation of the allotment was not complete and the complaint filed on 17.01.2013 was not time barred. As the complainant was defaulter, his 'earnest money' was liable to be forfeited. Supreme Court in Fateh Chand Vs. Balkishan Das, AIR 1963 SC 1405, Maula Bux Vs. Union of India, (1969) 2 SCC 554 and Kailash Nath Associate Vs. Delhi Development Authority, (2015) 4 SCC 136, held that forfeiture of earnest money for 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 will remain with the opposite party 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 Mr. Saurav Sanyal Vs. M/s. Ireao Grace Pvt. Ltd. (decided on 13.04.2022) held that 10% of basic sale price is reasonable amount to be forfeited as "earnest money".***
47. A similar Order had been passed on forfeiture stating that only 10% of the total consideration could be forfeited in the case of ***Urmil Galhotra Vs. M/s Puri Construction Pvt. Ltd.*** passed in ***CC No.171 of 2019*** decided on 28.10.2022. The recital contained in the said Order of this Commission is extracted herein under:-

***"9. .... No doubt the complainant may have genuine personal reasons, but such delay on her part is not making timely payments are not acceptable. Hence, considering all the facts and circumstances of the case, we find that it would meet the ends of justice for both the parties, if OP is allowed to deduct/ forfeit only 10% of the total sale consideration of Rs.11,27,525/- as earnest money and refund the balance amount, i.e. Rs.17,95,811/- with interest @ 6% p.a. from the date of deposit till the date of refund."***

48. The aforesaid Order of this Commission has been upheld by the Apex Court vide Order dated 03.01.2023, which is extracted herein under:-

***"Delay condoned.***

***We find no ground to interfere with the impugned order passed by the National Consumer Disputes Redressal Commission. The civil appeal is, accordingly, dismissed.***

***Pending interlocutory application (s), if any, is/ are disposed of."***

49. The question of forfeiture therefore would arise only if it is found that the Complainants had defaulted and delayed in making the payment. Learned Counsel for the Opposite Parties has relied on the same judgments as well as following other judgments to contend that even assuming the Complainants were entitled to any refund the same would not attract the interest as claimed.
50. It is, therefore, submitted by the learned Counsel for the Opposite Parties that 10% amount is liable to be forfeited and the refund, if any, to be adjusted keeping in view the interest that has accrued due to delayed payment.
51. Having analyzed the facts and legal aspects of the matter, it is obvious that there was no binding contract entered into between the parties in the shape of a plot buyer agreement. Even though such an agreement was envisaged in the booking allotment letter. The only document therefore on the basis whereof the matter has to be looked into is the application form which is on record and is said to be dated 30.03.2012. The application form is unilaterally signed by the Complainant without mentioning the date and place thereon but the Opposite Parties have also placed on record the receipt which is for office use only which bears the date of 30.03.2012 with the signatures of the Complainants. As already mentioned above, the said receipt is signed by the broker M/s Nisha Estates and not by the Opposite Parties. The terms and conditions accompanying the said form provides that the Company will be entitled to forfeit the earnest money in case the applicants default in making payments according to the payment plan. Clause 2 read with clause 8 of the said application form envisages forfeiture of the earnest money which is defined as the booking amount paid by the applicants. The booking amount of Rs.12 lakhs as paid is entered into application form. The cancellation letter proceeds to forfeit the amount as referred to therein. The letter has been extracted in paragraph 36 hereinabove.
52. The forfeiture is of the earnest money together with interest on delayed payments. The Opposite Parties had failed to offer and execute the agreement and therefore the Complainants had every reasonable apprehension of not getting possession of the plot or its development or it being delivered after being developed. They were therefore justified in withholding payments and it is evident that the plot was not offered within the stipulated time. This therefore was a situation created by the Opposite Parties themselves and therefore the Complainants were justified in withholding future payments. The default therefore is not of the Complainants entirely. In this view of the matter, the Opposite Parties have unfairly sought forfeiture of the interest on delayed payments as per the recital in the cancellation letter dated 18.11.2014, which cannot be permitted. The deficiency on the part of the Opposite Parties as analyzed above is established and therefore they cannot claim forfeiture by deducting interest on delayed payment. The cancellation coupled with a huge deduction and forfeiture as reflected in the letter dated 18.11.2014 is unjust and is unilaterally arbitrary. The Complainant cannot be penalized for payment of interest when the opposite party failed to execute the agreement. The cancellation through the letter dated 18.11.2014 is untenable and cannot be sustained and, therefore, stands annulled.
53. Coming to the forfeiture part, the law as discussed hereinabove does not allow forfeiture beyond 10% of the booking amount. The clause in the terms and conditions of the letter authorizing forfeiture of the entire booking amount is therefore unjust and contrary to the law as referred to hereinabove. Even assuming for the sake of arguments that there was a withholding of the payments by the Complainants, then too even a forfeiture of more than 10% of the booking amount cannot be permitted which amounts to only Rs.1,20,000/-.
54. As Against this, the amount deposited by the Complainants has not been disputed and therefore the refund of the said amount together with 6% interest is desirable on the facts of the present case.
55. In order to compensate the deficiencies, in the absence of any agreement, and the fact that the forfeiture clause in the terms and conditions of allotment for forfeiting the entire booking amount is arbitrary, it would be appropriate given the circumstances of this case where the payments were stopped by the complainants, that a sum of only Rs.1,20,000/- is deducted towards forfeiture. Even though, there is a justification for the Complainants to have not made further payments apprehending non-delivery of the possession of the plot, accordingly to adjust the equities, since the Opposite Parties are not entitled to claim any deduction on account of the interest on delayed payment, the forfeiture made through the letter dated 18.11.2014 is annulled except to the extent of Rs.1,20,000/-.
56. The entire balance amount as deposited by the Complainants shall be refunded to them together with 6% interest thereon from the date of respective deposits till the date of actual payment. This order has been passed on the peculiar facts of this case. The Complaint is allowed accordingly.
57. In the event, the payments are not made within three months from today the same shall carry an enhanced interest of 12% p.a.

.....J  
**A. P. SAHI**  
**PRESIDENT**