

MS. JAKKIDI LAKSHMI REDDY & ANR. VS. EMAAR MGF LAND LTD.

IN THE STATE CONSUMER DISPUTES REDRESSAL

COMMISSION

Date of Institution:03.03.2020

Date of Hearing: 30.05.2024

Date of Decision:08.07.2024

COMPLAINT CASE NO. - 145/2020

IN THE MATTER OF

- 1. MRS. JAKKIDI LAKSHMI REDDY,**
W/O MR. JAKKIDI VENKATESHWAR REDDY,
R/O 501-C BLOCK, SOLANKI'S GULMOHAR APARTMENTS,
1-10-36 TO 372, BHRAMANWADI,
BEGUMPET, HYDERABAD-500016.

- 2. MR. JAKKIDI VENKATESHWAR REDDY,**
R/O 501-C BLOCK, SOLANKI'S GULMOHAR APARTMENTS,
1-10-36 TO 372, BHRAMANWADI,
BEGUMPET, HYDERABAD-500016.

(Through: Mr. Anurag Pratap & Rishiraj, Advocates)

...Complainants

VERSUS

EMAAR MGF LAND LIMITED,
306-308, SQUARE ONE C-2,
DISTRICT CENTRE, SAKET,
NEW DELHI.

(Through: LAWYERS INC, Advocate)

...Opposite Party

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)**

Present: Mr. Anurag Pratap, Counsel for the Complainants.

Mr. Sunil Kumar, Counsel for the Opposite Party.

**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)****JUDGMENT**

1. The present complaint has been filed by the Complainants before this Commission alleging deficiency of service and unfair trade practice by the Opposite Party and has prayed the following reliefs:
 - a) *“Direct the Respondent to refund the amount of Rs. 14,67,574/- (Fourteen Lakhs Sixty Seven Thousand Five Hundred Seventy Four).*
 - b) *Direct the Respondent to pay the Complainants an interest on the deposited sum at the rate of 18% p.a. calculated from the date of the Agreement i.e. 26.12.2018.*
 - c) *Pay damages to the Complainants by the Respondent for mental and physical trauma and harassment etc. suffered by the Complainants amounting to Rs. 7 lakhs only.*
 - d) *Direct the Opposite Party to pay legal expenses to the Complainants which they incurred herein.*
 - e) *Pass such further orders as this forum may deem fit and proper in the given facts and circumstances of the case.”*
2. Brief facts necessary for the adjudication of the present complaint are that the Complainants vide application dated 08.09.2017, booked a flat bearing no. GGN-04-1101 admeasuring 153.29 sq. mtrs (1650 sq. ft.) in the project of the

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Opposite Party namely “Gurgaon Green/Group Housing Colony” situated at Gurugram, Haryana. Thereafter, Builder Buyer’s Agreement dated 26.12.2018 was executed between the Complainants and Opposite Party after a long delay of almost 15 months from the date of application. As per the agreement, the Opposite Party assured the Complainants that the possession of the flat shall be offered on or before 31.12.2018. However, the Opposite Party failed to offer the possession within assured time and gave excuses for the delay. As per Email dated 10.05.2019, executive of the Opposite Party told the Complainants that they will receive the Occupation certificate by the end of May, 2019 which was further extended by the Opposite Party till August, 2019 vide Email dated 09.05.2019.

3. The Complainants continued making payment in accordance with the schedule of payments attached with the Agreement totalling to Rs.14,67,574/- and the remaining amount of Rs. 78,52,107/- was to be paid by the Complainants at the intimation of possession. However, the Opposite Party kept of delaying the possession on different pretexts but kept on raising undue claims against the Complainants without meeting their own obligations as per the terms of the Contract. Fed-up with the facts stated above, the Complainants sent an email dated 09.05.2019 to the Opposite Party asking for termination of the Builders Buyer’s Agreement and also sent a legal notice dated 30.05.2019 demanding refund of the amount of Rs. 14,67,574/- paid by them but no satisfactory reply was given by the Opposite Party. Aggrieved by the facts stated above, the Complainants have approached this Commission.
4. The Opposite Party has contested the present case and raised some preliminary objections as to the maintainability of the complaint case. The counsel for the Opposite Party contended that the Complainants have no cause

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of action in filing the present Complaint. The counsel for the Opposite Party further contended that there is no deficiency of service exists on the part of Opposite Party. Pressing the aforesaid contentions, the counsel appearing on behalf of the Opposite Party prayed that the present complaint should be dismissed.

5. After the filing of written statement, the Complainants were directed to file Rejoinder in order to rebut the contentions raised by the Opposite Party. However, vide order dated 28.03.2023, the counsel for the Complainants submitted that they do not wish to file the Rejoinder. Further, Evidence by way of affidavit and written arguments on behalf of both the parties were duly filed and have been perused.
6. We have perused the material available on record and heard the counsels who appeared on behalf of the Complainants and the Opposite Party.
7. The fact that the Complainants had booked a flat bearing no. GGN-04-1101 in the project 'Gurgaon Greens' of the Opposite Party is evident from the Builder Buyer's Agreement dated 26.12.2018 annexed with the present Complaint.
8. Before delving into the merits of the case, we deem it appropriate to adjudicate the preliminary issue involved in the present matter.
9. The *preliminary question* for consideration before us is *whether the Complainants have cause of action to approach this Commission*.
10. To answer this question, it is imperative to refer to Section 24A of the Consumer Protection Act, 1986 wherein it is provided as under:-

“24A. Limitation period.-

(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed

within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the Complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint as this such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.”

11. Analysis of Section 24A of the Consumer Protection Act, 1986 leads us to the conclusion that this Commission is empowered to admit a complaint if it is filed within a period of two years from the date on which cause of action has arisen. It is clear in the present case that the Opposite Party had assured the Complainants to offer the possession of the flat on or before 31.12.2018. However, the Opposite Party has failed to offer the possession within such time period. We further deem it appropriate to refer to *Mehnga Singh Khera and Ors. Vs. Unitech Ltd.* as reported in I (2020) CPJ 93 (NC), wherein the Hon’ble National Commission has held as under:

“It is a settled legal proposition that failure to give possession of flat is continuous wrong and constitutes a recurrent cause of action and as long as the possession is not delivered to the buyers, they have every cause, grievance and right to approach the consumer courts.”

12. Applying the above settled law, it is clear that failure to deliver possession being a continuous wrong constitutes a recurrent cause of action and, therefore, so long as the legal possession is not delivered to the Complainants,

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the Complainants are within their right to file the present complaint before this Commission.

13. Having discussed the preliminary objections raised on behalf of the Opposite Party, the *next question* for consideration before us is ***whether the Opposite Party is deficient in providing its services to the Complainants.***
14. The expression Deficiency of Service has been dealt with by the Hon'ble Apex Court in *Arifur Rahman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. and Ors.* reported at **2020 (3) RCR (Civil) 544**, wherein it has been discussed as follows:

"23.The expression deficiency of services is defined in Section 2 (1) (g) of the CP Act 1986 as:

(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

24. A failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within a contractually stipulated period amounts to a deficiency. There is a fault, shortcoming or inadequacy in the nature and manner of performance which has been undertaken to be performed in pursuance of the contract in relation to the service. The expression 'service' in Section 2(1) (o) means a service of any description which is made available to potential users including the provision of facilities in connection with (among other things) housing construction. Under Section 14(1)(e), the jurisdiction of the consumer forum extends to directing the Opposite Party inter alia to remove the deficiency in the service in question. Intrinsic to the jurisdiction which has been conferred to direct the removal of a deficiency in service is the provision of compensation as a measure of restitution to a flat buyer for the delay which has been occasioned by the developer beyond the period within which possession was to be handed over to

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the purchaser. Flat purchasers suffer agony and harassment, as a result of the default of the developer. Flat purchasers make legitimate assessments in regard to the future course of their lives based on the flat which has been purchased being available for use and occupation. These legitimate expectations are belied when the developer as in the present case is guilty of a delay of years in the fulfilment of a contractual obligation.”

15. At this stage, we deem it appropriate to refer to the clause 7 of the Builder Buyer’s Agreement dated 26.12.2018, it is clear that the Opposite Party assured the Complainants that the within 60 days from the date of issuance of the Occupation Certificate, offer of possession will be handed over to them. Further, it is also stated that the offer of possession shall be issued on or before 31.12.2018. Further, we find that the Occupation certificate in the present case has been issued by the concerned authorities on 16.07.2019. Additionally, as per the submission of the Opposite Party, it had applied for the Occupation Certificate on 11.02.2019 i.e. after the delay of one month from the assured date of offer of possession, however, no documentary evidence has been placed on record by the Opposite Party in support of such submission. It reflects that there is a delay on the part of Opposite Party for applying the Occupation certificate before the concerned authorities. Also, no explanation has been provided by the Opposite Party for such delay. Therefore, the deficiency on the part of Opposite Party is proved from its lackadaisical approach in applying for the Occupation Certificate.

16. Further, as per clause 7 (b) of the agreement it has been stated:

“7 (b) Subject to Clause 7 (a) above, in the event the Company fails to offer possession of the Unit to the Allottee within the time lines stipulated in clause 7 (a), the Allottee may either:

a. xxxx xxxx xxxx xxxx xxxx

b. Alternatively, the Allottee may seek termination of this Agreement by written intimation to the Company. In such an event, the Company shall be liable to refund to the Allottee, the actual amounts paid by it along with the Delay Payment Charges (excluding any interest paid/payable by the Allottee on any delayed payment and paid up taxes) within 90 (ninety) days of it becoming due. No other claim, whatsoever, shall lie against the Company nor be raised otherwise or in any other manner by the Allottee.”

17. The aforesaid clause reflects that the Allotees have right to seek termination of the agreement in case the Builder has failed to issue offer of possession on the assured date. Therefore, in accordance with the aforementioned clause, the Complainants vide Email dated 09.05.2019 asked for the termination of the agreement and sought refund from the Opposite Party. However, the Opposite Party has failed to do so but had arbitrarily cancelled the allotted flat and forfeited the entire amount paid by the Complainants which is unjust and arbitrary on the part of Opposite Party.
18. Lastly, the question left before us is to how much amount is to be refunded to the Complainants as it is in dispute that as per the Complainants, total amount of Rs. 14,67,574/- has been paid by them to the Opposite Party, however, as per the Opposite Party in para 8 of the Reply on merits, only an amount of Rs.14,45,830/- has been paid by the Complainants towards the consideration amount for the flat in question. Additionally, we find that the Opposite Party has annexed the copy of Statement of Account (*Annexure 1 of the written statement*) which reflects that an amount of Rs. 14,45,830/- has been paid by the Complainants. Since, the Rejoinder has not been filed by the Complainants in order to rebut the submissions of the Opposite Party,

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therefore, in absence of any evidence, we tend to rely upon the statement of accounts filed by the Opposite Party.

19. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Party to refund an amount paid by the Complainants i.e., **Rs.14,45,830/-** along with simple interest as per the following arrangement:

- A. An interest @ **6% p.a.** calculated from the date on which each installment/payment was received by the Opposite Party till **08.07.2024** (being the date of the present judgment);
- B. The rate of interest payable as per the aforesaid clause (A) is subject to the condition that the Opposite Party pays the entire amount on or before **08.09.2024**;
- C. Being guided by the principles as discussed above, in case the Opposite Party fails to refund the amount as per the aforesaid clause (A) on or before **08.09.2024**, the entire amount is to be refunded along with an interest @ **9% p.a.** calculated from the date on which each installment/payment was received by the Opposite Party till the actual realization of the amount.

20. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party is directed to pay a sum of:

- A. Rs. 1,00,000/- as cost for mental agony and harassment to the Complainants; and
- B. The litigation cost to the extent of Rs. 50,000/-.

21. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
22. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
23. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)

PRESIDENT

(J.P. AGRAWAL)

MEMBER (GENERAL)

Pronounced On:

08.07.2024

LR-AJ