

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1023 OF 2015

1. ANKUR ARORA

129, SADBHAVANA APARTMENTS, 13, I.P. EXTENTION,
PATPARGANJ,
DELHI-110092

.....Complainant(s)

Versus

1. JAYPEE SPORTS INTERNATIONAL LIMITED & ANR.

SECTOR-128,
NOIDA-201304

U.P.

2. JAI PRAKASH ASSOCIATES LIMITED

SECTOR-128,
NOIDA-201304

U.P.

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

FOR THE COMPLAINANT : MR. AMARDEEP SINGH, ADVOCATE WITH
MR. S.P. GUPTA, COMPLAINANT NO.3

FOR THE OPP. PARTY : MR. PARAS CHOUDHARY, ADVOCATE
MR. SARTHAK GARG, ADVOCATE
MR. SUMEET SHARMA, ADVOCATE (VC)

Dated : 14 June 2024

**ORDER
JUDGMENT**

1. Heard Mr. Amardeep Singh, Advocate, for the complainants and Mr. Paras Choudhary, Advocate, for the opposite parties.
2. Mr. Ankur Arora and Mrs. Rashi Arora and Mrs. Poonam Gupta and Mr. Satya Prakash Gupta have filed the above complaint for directing the opposite parties to (i) refund Rs.4550227/- to Mrs. Poonam Gupta and Mr. Satya Prakash Gupta and Rs.4523662/- to Mr. Ankur Arora and Mrs. Rashi Arora with interest @ 12% per annum from the date of respective deposit till the date of refund, (ii) pay Rs.250000/- to each set of the complainants as compensation for mental agony and harassment, (iii) Rs.250000/- to each set of the complainants towards punitive damages (iv) Rs.250000/- as litigation costs and (v) any other relief which is deemed fit and proper in the facts of the case.
3. The complainant stated that the opposite parties were the companies registered under the Companies Act and engaged in the business of development and construction of group housing project. Opposite party no.2 launched a township and plotted colony in the name of

'Jaypee Greens Sports City', situated at Yamuna Expressway, Noida' in the year 2012 and made wide publicity of it. The brochure published by the opposite party subsequently mentioned following amenities and facilities:

- a. Integrated sports complex with facilities such as cricket stadium, tennis court complex, swimming pool, diving area and multi-purpose indoor Stadium;
- b. Enveloping acres of landscaped greens and thematic gardens, gated community;
- c. That there is an adjoining 15 km green boulevard of life which is 80-200 meters wide greens caped tree-lined thoroughfare curving through all the major areas of the Sports City and that it will have multi-lane roads, dedicated lanes for pedestrians, bicycles and mass transit systems;
- d. Commercial zone having central business district comparable to international downtowns having a financial centre with business office, restaurants, convention and exhibition centers;
- e. Regional centre for music and outdoor sculpture, entertainment district having civic centers with convenience and contemporary amenities having a mixture of commercial/retail/residential/ industrial uses, featuring signature buildings, cultural and civic arts Centre with modern infrastructure;
- f. Schools, colleges, community shopping centers, Civic Centre, cultural city centre, road network, Hotels;
- g. World class higher educational facilities, universities, medical centres, research and development Park, etc. etc.

4. Allured by the representation of the opposite party, Mrs. Rashi Arora and Mr. Ankur Arora jointly booked a plot and deposited the booking amount on 22.09.2012. Mrs. Poonam Gupta and Mr. Satya Prakash Gupta jointly booked another plot on 22.09.2012 and deposited the booking amount. As per the payment plan, Mrs. Rashi Arora and Mr. Ankur Arora deposited Rs.4423662/- and Mrs. Poonam Gupta and Mr. Satya Prakash Gupta deposited Rs.4450227/-. The opposite parties, vide the provisional allotment letter dated 17.10.2012, allotted plot no. J-045, area 175 sq. mtrs. to Mrs. Rashi Arora and Mr. Ankur Arora and plot no. J-043, area 173 sq. mtrs. to Mrs. Poonam Gupta and Mr. Satya Prakash Gupta. As per allotment letter, the possession of developed plot has to be handed over within 18 months. Alongwith the allotment letter, the opposite party has also supplied standard terms and conditions in which 90 days' grace period has been provided. The due date of possession expired on 17.07.2014 but the opposite party has neither developed the township nor offered possession to the complainants. The opposite party issued a demand letter dated 22.10.2014 in respect of Rs.581791/- from Mrs. Poonam Gupta and Mr. Satya Prakash Gupta and Rs.589522/- from Mrs. Rashi Arora and Mr. Ankur Arora. Then the complainants visited the site on 01.11.2014. The complainants found that no road work have been completed in the area where the plots have been allotted to them. All the roads were kutchha. In some places, even no kutchha foundation could be seen. The plotted area did not have any facilities or amenities as promised in the brochure, therefore, the demand raised by the opposite party

was found to be inappropriate. Thereafter, the complainants requested to refund their money by letter dated 29.11.2014. The opposite party gave reply dated 07.01.2015 and stated that they have offered possession and denied for refund of the money. Since the opposite party has not developed the plot as per specifications, even primary amenities for raising construction were not developed, therefore, the above complaints have been filed seeking refund of their money.

5. The opposite party filed their written reply on 03.12.2015 and contested the complaint. The opposite party has admitted launching of plotted project, booking of the plots by the complainants and deposits made by them. However, the opposite party stated that National Green Tribunal has imposed ban for extracting ground water in District Gautam Budh Nagar in the year 2013 due to which, the project was delayed for a short period. The opposite party was entitled for extension of the period as per terms and conditions of the standard terms and conditions. The opposite party developed the project and offered possession on 02.04.2015 alongwith the last demand. The complainants instead of depositing the balance amount and taking possession of the plot, have malafidely filed this complaint for refund of their money. As per terms and conditions of the provisional allotment letter and the terms and conditions attached with it, the complainants were bound to take possession and not entitled for refund of the money, the relief for refund is liable to be rejected. The opposite party raised preliminary objection that the complaint was time barred and the complainants were not consumers. The total cost of the flat was around Rs.67 lacs and if the two complainants were separated, then the complaint does not fall within the pecuniary limits of this Commission. The two sets of allottees have been malafidely joined in this complaint in order to file this complaint before this Commission.

6. The complainants filed affidavit of evidence of Mr. Ankur Arora and affidavit of evidence of Mr. Satya Prakash Gupta and documentary evidence. The opposite parties have filed affidavit of evidence of Mr. Manoj Dembla. Both the parties have filed their written synopsis.

7. The complainants relied upon the brochure of the opposite party as well as judgment of the Supreme Court in **Arifur Rahman Khan & Ors. Vs. DLF Southern Homes Pvt. Ltd. & Ors. (2020) 16 SCC 512** in which it has been held that the builder invited prospective flat purchasers to invest in the project 'Westend Heights' on the basis of clear representation that the surrounding area of new town situated on 80 acres was being developed to provide a wide range of amenities including a shopping centre, healthcare facilities and an early learning play school. The developer has failed to provide these amenities. The developer must be held accountable to its representation. A flat purchaser who invests in a flat does so on an assessment of its potential. The amenities which the builder has committed to provide impinge on the quality of life for the families of purchasers and the potential for appreciation in the value of the flat. The representation held out by the developer cannot be dismissed as chaff. True, in a situation such as the present it may be difficult for the court to quantify the exact nature of the compensation that should be provided to the flat buyers. The general appreciation in land values results in an increase in the value of the investment made by the buyers. Difficulties in determining the measure of compensation cannot however dilute the liability to pay. A developer who has breached a clear representation which has been made to the buyers of the amenities which will be provided to them should be held accountable to the process of law. To allow the developer to escape their obligation would put a premium on

false assurances and representations made to the flat purchasers. Hence, in factoring in the compensation which should be provided to the flat buyers who are concerned in the present batch of appeals, we would necessarily have to bear this issue in mind.

8. Counsel for the opposite party however, relied upon the judgment of this Commission dated 24.08.2022 passed in **FA/322/2020 Jaiprakash Associates Ltd. Vs. Arjun Prasad Pathak & Anr.** which is related to the same project and it was found that when the Advocate Commissioner inspected the spot on 24.09.2019, various amenities were developed on the spot. This judgment is not reliable inasmuch as in this judgment, the report of Advocate Commissioner at the time of inspection dated 24.09.2019 was considered while in the present case, the possession was offered on 02.04.2015. The complainants have filed various photographs of the project alongwith the complaint showing that even the metal road has not been constructed on the spot. The complainant has subsequently stated that there is no continuity of kutchha road. The buyer purchased a plot for raising construction over it. Therefore, the basic amenities of road, water and electricity which are necessary for raising construction, are required to be developed on the spot. Since on the date of offer of possession, basic amenities were not developed, only the sewer line and electric poles were laid therefore, offer of possession was not as per allotment letter and the complainants are not bound to take possession of it. So far as objection relating to pecuniary jurisdiction is concerned, in view of judgment of Supreme Court in **Brigade Enterprises vs. Anil Kumar Virmani (2022) 4 SCC 138**, two sets of allottees have legally joined in this complaint and their aggregate claim exceeded Rs.1 Crore. In view of unreasonable delay in offer of possession, the complainants were entitled to seek refund.

ORDER

In the result, the complaint is allowed in part. The opposite party is directed to refund the entire amount deposited by the complainants with interest @9% per annum from the date of respective deposit till the date of refund, within a period of two months.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER