

**THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION,  
NEW DELHI**

**CONSUMER COMPLAINT NO.873 OF 2019**

1. Nitin Sharma S/o Mr. Anil Kumar Sharma R/o BG-1/262, Block BG-1, Paschim Vihar, New Delhi-110063.
2. Meenoo Sharma D/o Raghunandan Kumar Sharma R/o BG-1/262, Block BG-1, Paschim Vihar, New Delhi-110063. ... Complainants.  
Versus
1. Godrej Projects Development Pvt. Ltd. Godrej One, 5<sup>th</sup> Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai-400079.  
Also at: 3<sup>rd</sup> Floor, UM House Tower-A, Plot No.35, Sector-44, Gurgaon-122002, Haryana.
2. Magic Info Solutions Pvt. Ltd. C-10, C-Block Market, Vasant Vihar, New Delhi-110057. ... Opposite Parties

**BEFORE**

**HON'BLE MR. JUSTICE RAM SURAT RAM (MAURYA), PRESIDING MEMBER  
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER**

For the Complainants : Mr. Aditya Parolia, Advocate  
Ms. Sumbul Ismail, Advocate  
Ms. Pranjal Mishra, Advocate  
Ms. Anvita Priyadarshi, Advocate

For Opposite Parties : Mr. Sudhir Makkar, Sr. Advocate with  
Mr. Kapil Madan, Advocate  
Ms. Aadhya, Advocate  
Mr. Akshit Narula, Advocate  
Mr. Akshit Narula, Advocate  
Mr. Amit K., AR

Pronounced on: 11/10/2024

**J U D G E M E N T**

**(PER MR. JUSTICE RAM SURAT RAM (MAURYA), PRESIDING MEMBER)**

1. Heard Mr. Aditya Parolia Advocate for the complainants and Mr. Sudhir Makkar, Senior Advocate, assisted by Mr. Kapil Madan, Advocate for the opposite parties.



2. Nitin Sharma and Meenoo Sharma have filed above complaint for directing the opposite parties to (I) refund Rs.7524953/- with interest @ 18% per annum from the date of receipt of each payment till the actual date of payment; (II) pay Rs.10/- lacs as compensation for mental agony, harassment discomfort and undue hardships caused to the complainants; (III) pay Rs.one lac towards hardship, injury and agony caused to them; and (IV) any other relief which this Commission may deem fit in favour of the complainants.

3. The complainants submitted that in the year 2011 opposite parties announced a residential housing project in the name 'Godrej Summit' in Sector-104, Gurgaon, Haryana. It was advertised that the project will be having luxurious and modern amenities like modular kitchen, carpet flooring, balcony area, swimming pool, 80% open green space and various other recreational facilities at attractive price. It was also advertised that there will be 24 hours manned security on entrance gate, water supply through underground pipelines and overhead tanks, storm water drainage system integrated with rainwater harvesting, fire detection as per safety norms, electrical wiring in concealed conduits with modular switches and power backup. The key selling feature of the project was that the project is 500 metres away from Dwarka Expressway and is connected through 24 meters wide road. Allured by the assurances and representations made by the opposite parties the complainants booked unit No.G-702, 7<sup>th</sup> floor, Tower-G having super built up area of 1269 sq. ft. for a total consideration of Rs.7768510/- inclusive of car parking charges on 11.09.2012. The complaints paid an amount of Rs.10/- lacs (12.5% of the total sale consideration) as booking amount. 7.5% was to be paid within 60 days of booking and remaining 80% was payable at various intervals during the construction of the unit. The complainants were allotted the above unit vide allotment letter dated 23.01.2013. Apartment Buyer Agreement (ABA) was executed between the parties on 22.04.2013. The complainants opted for construction linked payment plan and made all the payments well within time and when demanded by the opposite parties. The complainants had taken housing loan



from HDFC Bank Limited and a tripartite agreement was also executed in 2015 for an amount of Rs.55/- lacs. In spite of receiving a substantial amount the opposite parties failed to deliver the possession of the unit in the stipulated time. The opposite parties issued possession intimation letter dated 07.10.2017 stating that they have received the occupancy certificate and the possession will be offered soon. Although the unit and the project are not fit for habitation, the opposite parties issued intimation of possession. The opposite parties have completely changed the layout plan without intimation or consent of the complainants. The opposite parties arbitrarily have changed the entry and exit points and there was no 24 meter wide road connecting the project with Dwarka Expressway. The project was more than 1.5 kilometres from Dwarka Expressway and connected through village rasta and slums. There was also lack of water supply and the water was being supplied through tankers. There was no proper electricity and the electricity was supplied through generators. The opposite parties have obtained invalid fire safety and environmental approvals which were obtained on the basis of approved site plan showing entry and exit through 24 meter road. On 20.06.2017, the complainants sent an email to the opposite parties objecting the payment of instalment. They also requested the opposite parties to allow them to make an inspection of the unit which the opposite parties refused. The opposite parties in the email dated 10<sup>th</sup> October 2007 have incorrectly stated the outstanding amount of Rs.792536/- whereas in the possession notice issued in May 2017 the outstanding amount is stated to be Rs.456364/-. The complainants have made payment of a substantial amount of Rs.7524953/- and there are several deficiencies in the project. Thus, alleging deficiency in service and unfair trade practises on the part of the opposite parties the complainants have filed the above complaint on 23.05.2019.

4. The complaint was resisted by the opposite parties by filing the separate written versions. OP-1 in its reply stated that there is no privity of contract between the complainant and OP-1 and OP-1 is not even signatory of the agreement. Thus, the complaint qua OP-1 is not maintainable and is liable



to be dismissed. OP-2 filed its separate reply wherein allotment of the unit, payments made by the complainants and execution of the ABA, have not been disputed. The OP stated that the complainants have made false and frivolous allegations in order to avoid payment of last instalment as well as late payment interest. Urban Estate-Cum-Town and Country Planning, Haryana notified a comprehensive development plan for Gurgaon Manesar Urban Complex. M/s. Magic Info Solutions Pvt. Ltd. applied for grant of licence for development of group housing colony on 22.123 acres land at Sector 104, Gurgaon on 19.02.2011. Director General, Town and Country Planning, Haryana granted Licence No.102 of 2011 dated 07.12.2011 to M/s. Magic Info Solutions Pvt. Ltd. The Director, Town and Country Planning, Haryana approved Zoning Plan, vide Drawing No.2921 dated 08.12.2011, prepared by the authorities wherein they reserved the land for construction of 24 meters wide sectorial road connecting the project land to Dwarka Expressway. The said 24 meters wide road connecting Sector 104, Gurgaon with Dwarka Expressway was projected again in Development Plan for the year 2025 as well as for the year 2031. The Director, Town and Country Planning, Haryana sanctioned layout plan for the project "Godrej Summit", vide Memo No.17360 dated 05.09.2012, in which, a condition was put upon the OPs to pay proportionate cost for construction of 24/30 mtrs. wide road/major external road as and when finalized and demanded by the Director General, Town and Country Planning, Haryana. M/s. Magic Info Solutions Pvt. Ltd. entered into a development agreement with Godrej Properties Limited and also executed a power of attorney in this regard. Godrej Properties Limited assigned its rights under the development agreement in favour of its subsidiary Godrej Premium Builders Pvt. Ltd., vide deed of substitution dated 27.12.2011. Godrej Premium Builders Pvt. Ltd. merged with Godrej Properties Development Pvt. Ltd. (OP) w.e.f. 21.08.2015 in terms of the order of High Court of Bombay in Company Petition No.154/2015. It is the responsibility of the state government to construct the road. Since the government has not constructed 24 meters wide road which was outside the project, the OPs provided an additional



access on the revenue 'rasta' to ensure a tentative access to the flat owners. The OPs have filed Writ Petition No.6187 of 2018 before the Punjab & Haryana High Court seeking direction to the government authorities to construct 24 meters sectorial road. The OPs have already constructed internal 24 meters road within the periphery of the project. The OPs obtained Fire NOC dated 09.01.2017 and 26.05.2017. The OPs applied for sanction of electricity connection under IIT Bulk Supply Domestic Category to Dakshin Haryana Bijli Vitran Nigam, which was sanctioned and partial load of 980 KW was released, for which, requisite amount was deposited by the OPs and connection has been provided to the project. The OPs have applied to Dakshin Haryana Bijli Vitran Nigam for extension of the load to 4490 KW on 08.06.2017. The OPs have applied for regular water connection to Haryana Urban Development Authority (HUDA) of 700 KLD and deposited requisite money. HUDA provided water supply to the OPs at boosting station, section 16 and Basai WTP, Gurugram and vide letter dated 27.03.2017 informed that regular water supply of 700 KLD would be given after completion of water supply line, which would take one year or as per availability of clearance of land. The OPs are ensuring water supply as per directions issued by HUDA through tanker. HUDA apprised the OPs vide letter dated 07.11.2017 that the work of laying down master water supply line was in progress. Further there is structure in alignment of pipeline near junction at Daulatabad Flyover Road and NPR in Sector 103 due to which approximately 110 meter (1200mm dia) is not laid. The OPs also initiated work in this regard and incurring additional amount due to apathy of the government only to satiate its home buyer and ensure that basic services are unhampered. The water supply can be provided only after laying down external infrastructure by HUDA. The OPs have provided adequate capacity sewage treatment plant (STP) with consequential batch reactor technology as per approved plan. STP installation certificate has also been obtained by the OPs. ABA was executed on 22.04.2013 and its validity cannot be challenged in the complaint filed on 23.05.2019. There is no deficiency in service on the part of the OPs within the



meaning of Section 2 (1) (g) of the Consumer Protection Act, 1986. The complainants filed IA/16739/2017 an application for impleadment in CC/1052/2017. After filing the above complaint, the complainants have filed an application IA/9982/2019 for withdrawal of impleadment application, which is still pending. Thus, the present complaint is not maintainable and is liable to be dismissed.

6. The complainants filed Rejoinder and Affidavit of Evidence of Nitin Sharma and Meenoo Sharma as well as documentary evidence. OP-1 filed Affidavit of Evidence of Anindo Vyas, Additional Affidavit of Evidence of Surbhi Kapur and documentary evidence. OP-2 filed Affidavit of Evidence of Brajesh Chandra Tripathi, and documentary evidence. OP-1 filed additional documentary evidence through IA/6125/2023. Both parties also filed short synopsis of their arguments.

7. The counsel for the OPs argued that the OPs completed construction in time as stipulated in the ABA, obtained 'occupation certificate' on 07.04.2017 offered possession vide letter dated 07.10.2017. This Commission in Vineet Kumar Vs. DLF Universal Limited, 2019 SCC OnLine NCDRC 9, Pramod Kumar Madan Vs. DLF Limited, 2021 SCC OnLine NCDRC 924, Supreme Court in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna, (2021) 3 SCC 241, held that if possession is offered after obtaining 'occupation certificate' then the home buyer is obligated to take possession after deposit of balance consideration. Basic amenities, necessary for habitation are being provided. The OPs have applied for regular water connection with HUDA and deposited the required money. The OPs are supplying water through tankers till the regular water supply is obtained. Right of the parties has to be adjudicated in terms of the contract and the consumer commission cannot rewrite a contract. 24 meters wide road, connecting Dwarka Expressway has to be constructed by the State Government and inaction of the government in delaying construction of the road cannot be said to be deficiency in service on the part of the OP. The OPs have challenged judgment of this Commission in CC/278/2018 Rajeev Singhal vs. Godrej Project Development Pvt. Ltd., before



Supreme Court in appeal, which has been admitted as such in view of judgment of Supreme Court in **Union of India Vs. West Coast Paper Mills Ltd., (2004) 2 SCC 757**, it has no binding effect and this case be decided on its own merit. The complainants booked the flat in the project "Godrej Summit" for commercial purpose with speculation of price rise and earn profit from it. As the price in real estate has gone down they are seeking refund. They are not consumer. The complaint is liable to be dismissed.

8. We have considered the arguments of the counsel for the parties and examined the record. So far as preliminary issue raised by the OPs that the complainants are not consumers, is concerned, Supreme Court in **Shriram Chits (India) (P) Ltd. Vs. Raghachand Associates, 2024 SCC OnLine SC 851**, held that structurally, there are three parts to the definition of a consumer. We can deconstruct Section 2(7)(i) as a matter of illustration. The first part sets out the jurisdictional prerequisites for a person to qualify as a consumer - there must be purchase of goods, for consideration. The second part is an 'exclusion clause' ['carve out'] which has the effect of excluding the person from the definition of a consumer. The carve out applies if the person has obtained goods for the purpose of 'resale' or for a 'commercial purpose'. The third part is an exception to the exclusion clause - it relates to Explanation (a) to Section 2(7) which limits the scope of 'commercial purpose'. According to the said explanation, the expression, 'commercial purpose' does not include persons who bought goods 'exclusively for the purpose of earning his livelihood, by means of self-employment'. The significance of this structural break down will be discussed shortly.

As we have shown above, the definition of consumer has three parts. The significance of deconstructing the definition into three parts was for the purpose of explaining on whom lies the onus to prove each of the different parts. There can hardly be any dispute that the onus of proving the first part i.e. that the person had bought goods/availed services for a consideration, rests on the complainant himself. The carve out clause, in the second part, is invoked by the service providers to exclude the complainants from availing



benefits under the Act. The onus of proving that the person falls within the carve out must necessarily rest on the service provider and not the complainant. This is in sync with the general principle embodied in Section 101 and 102 of the Evidence Act that 'one who pleads must prove'. Since it is always the service provider who pleads that the service was obtained for a commercial purpose, the onus of proving the same would have to be borne by it. Further, it cannot be forgotten that the Consumer Protection Act is a consumer-friendly and beneficial legislation intended to address grievances of consumers. Moreover, negative burden cannot be placed on the complainant to show that the service available was not for a commercial purpose.

9. Supreme Court in **Lilavati Kirtilal Mehta Medical Trust Vs. Unique Shanti Developers, (2020) 2 SCC 265**, held as follows:-

“19. To summarise from the above discussion, though a strait jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is “for a commercial purpose”:

19.1. The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, *ordinarily*, “commercial purpose” is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities.

19.2. The purchase of the goods or service should have a close and direct nexus with a profit-generating activity.

19.3. The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

19.4. If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the





question of whether such a purchase was for the purpose of “generating livelihood by means of self-employment” need not be looked into.”

The OPs did not adduce any evidence to prove that the complainants are engaged in the business of purchasing and selling flat. In the absence of any evidence that Flat No.G-702 was purchased for earning profit, the preliminary issue raised by the OPs is rejected.

10. Supreme Court in **Arifur Rahman Khan v. DLF Southern Homes (P) Ltd., (2020) 16 SCC 512**, held that a deficiency under Section 2(1)(g) means a fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance. This may be required to be maintained under law or may be undertaken to be performed in pursuance of a contract or otherwise in relation to any service. The developer invited prospective flat purchasers to invest in the project on the basis of a 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 school. The developer has failed to provide these amenities. In other words, what the developer holds out as a defence is that though there has been a failure on their part to provide the amenities, the flat buyers have the benefit of facilities in the surrounding area which has become urbanised. We cannot agree with this line of submissions. The reply of the developer seeks to explain the failure to construct the facilities on the ground that the “existing population cannot sustain these facilities” — a school, commercial complex and healthcare facilities. This is a case involving an experienced developer who knew the nature of the representation which was being held out to the flat purchasers. Developers sell dreams to homebuyers. Implicit in their representations is that the facilities which will be developed by the developer will provide convenience of living and a certain lifestyle based on the existence of those amenities. Having sold the flats, the developer may find it economically unviable to provide the amenities. The flat purchasers cannot be left in the lurch or, as in the present case, be told that the absence of facilities which were to be provided by the developer is compensated by other



amenities which are available in the area. 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.

11. In **Debashis Sinha v. R.N.R. Enterprise, (2023) 3 SCC 195**, held that the complaint of the appellants was that the respondents have not provided playground, community hall, beautified lake, landscape gardening, generator backup, multi-gymnasium, etc. as mentioned in the brochure/advertisement pursuant to which they expressed interest to purchase flats in the project and, thus, defaulted in providing services in relation to housing construction. Be that as it may, what NCDRC omitted to bear in mind was that the appellants were allured to purchase flats of the nature and kind together with facilities and amenities as attractively published in the brochure/advertisement; hence, whether the project was huge or otherwise was absolutely beside the point. It was the duty of NCDRC to ascertain, based on the materials on record, whether if at all and to what extent facilities and amenities as promised were offered and/or whether there was any deficiency of service.

12. Before issue of offer of possession letter, there was no occasion for the complainants to raise objection regarding 24 meters wide road connecting Dwarka Expressway. Otherwise, also till possession is not offered to the home buyer, they cannot bother/question for the amenities. It is only, when the possession is offered, the home buyer will look, whether promised amenities are complete or not. The complaint has been filed on the allegation that OP made a representation that there was 24 meters wide road from the project to Dwarka Expressway and the project is 500 meters away from Dwarka Expressway (northern peripheral road). In fact, the project is connected to Dwarka Expressway through a 10.06 meters wide road only and the distance from the project to Dwarka Expressway is 2 kms. This 10.06 meters wide road has been encroached by the street vendors also. On 10.06 meters wide road,



the OP has constructed an alternative entrance and exit gate to Parcel-A. In order to reach to the flats in Parcel-B & C, the buyers will have to enter through the gate of Parcel-A and travel across the narrow road of Parcel-A. Initially the OP represented that there are separate direct entrance and exit gates to all 3 Parcels from 24 meter wide road. Clause 34.6.1 of the National Building Code stipulates that for high-rise buildings the width of the main street on which the building abuts shall not be less than 12 meters and one end of this street shall join another street not less than 12 m in width. In case of emergency, it is impossible for the fire brigade or an ambulance to reach conveniently to the project.

The OP stated that Director, Town and Country Planning, Haryana approved Zoning Plan, vide Drawing No.2921 dated 08.12.2011, prepared by the authorities, wherein they reserved the land for construction of 24 meters wide sectorial road connecting the project land to Dwarka Expressway. The said 24 meters wide road connecting Sector 104, Gurgaon with Dwarka Expressway was projected again in Development Plan for the year 2025 as well as for the year 2031. The Director, Town and Country Planning, Haryana sanctioned layout plan for the project "Godrej Summit", vide Memo No.17360 dated 05.09.2012, in which, a condition has been put upon the OP to pay proportionate cost for construction of 24/30 mtrs. wide road/major external road as and when finalized and demanded by the Director General, Town and Country Planning, Haryana. As the government has not constructed 24 meters wide road which was outside the project, the OP provided the additional access on the revenue 'rasta' to ensure a tentative access to the flat owners. The OP has filed Writ Petition No.6187 of 2018 before the Punjab & Haryana High Court seeking direction to the government authorities to construct 24 meters sectorial road. It was the responsibility of the state government to construct the road and cannot be treated as deficiency of the OP.

13. Even after offer of possession, 7 years have expired, but 24 meters wide sectorial road has not been constructed on the spot. Expensive flats were sold, representing that the project is connected with Dwarka Expressway



through 24 meters wide road and is at a distance of 500 meters from it. Initially the OP represented that there are separate direct entrance and exit gates to all 3 Parcels from 24 meter wide road. The home buyer agreed for sale price on these prime features. Now the OP has constructed an alternative entrance and exit gate to Parcel-A on 10.06 meters wide revenue road, which too is under encroachments. In order to reach to the flats in Parcel-B & C, the buyers will have to enter through the gate of Parcel-A and travel across the narrow road of Parcel-A. Thus there is shortcoming in fulfilling the obligations as per brochure, which amounts to deficiency in service. The decision of the home buyer, seeking refund does not amount to breach of contract on the part of the home buyer. Supreme Court in **Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711, Fortune Infrastructure Vs. Trevor D' Limba, (2018) 5 SCC 442, Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, (2019) 5 SCC 725, Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, 2019 (6) SCALE 462** and has held that the buyer cannot be made to wait for indefinite period for possession.

#### ORDER

In view of the aforesaid discussions, the complaint is allowed. The OP-1 is directed to refund 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.



Sd/-

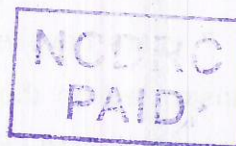
( **RAM SURAT RAM (MAURYA), J. )**  
**PRESIDING MEMBER**

Sd/-

( **BHARATKUMAR PANDYA** )  
**MEMBER**

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