

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, REWARI.

1. Consumer Complaint No: 127 of 2023.
Date of Institution: 07.02.2023.
Date of Decision: 24.05.2024.

Ram Rati wife of Shri Devender Kumar aged 52 years, resident of village
Parkhotampur, P.O. Jatusana, Tehsil and Distt. Rewari.

.....Complainant.

Versus

Manager / General Manager, Jan Awas Project, site address: Rabarka pin
no. 301707 Tapukhera, Khushkhera, Mega Highway Bhiwadi (Raj), Near
Honda Car Plant).

.....Opposite Party

2. Consumer Complaint No: 128 of 2023.
Date of Institution: 07.02.2023.
Date of Decision: 24.05.2024.

Mahabir Singh son of Shri Bhana Ram, aged 64 years, resident of village
Parkhotampur, P.O. Jatusana, Tehsil and Distt. Rewari.

.....Complainant.

Versus

Manager / General Manager, Jan Awas Project, site address: Rabarka pin
no. 301707 Tapukhera, Khushkhera, Mega Highway Bhiwadi (Raj), Near
Honda Car Plant).

.....Opposite Party

Complaint Under Section 35 of Consumer Protection Act, 2019

Before: Shri Sanjay Kumar Khanduja.....President.

Shri Rajender Parshad..... Member.

Present : Shri Subhash Yadav , Advocate for complainant(s).
Shri Puran Singh, Advocate for opposite party (s).

ORDER

{ *Per Sanjay Kumar Khanduja ,President* }

These present complaints have been filed by complainant (s) against the opposite party (for short the OP) under Section 35 of The Consumer Protection Act, 2019 alleging deficiency in services on its part.

2. Before proceeding further in the matter, it deserves mention here that this consolidated order shall decide the fate of aforesaid two complaints in view of common questions of law and facts involved and further in order to save the precious time of this Commission.

3. The consolidated facts are as under :-

4. Complainants in this case seek the refund of Rs. 1,04,000/- each. The booking amount of Rs. 7,000/- each was deposited on 22.2.2019 with the OP. According to complainants, they had booked one flat each in the project of OP situated in Bhiwadi Khushkhera, Mega Highway Bhiwadi (Raj.) with the total value of Rs. 9,70,000/- each. Complainants had deposited 10% each of the said amount i.e. Rs. 97,000/- on 16.3.2019 after the flats were allotted to them. They had applied on 22.2.2019 by submitting the applications by depositing Rs. 7,000/- each vide cheques. According to

the complainant, despite escalating the issue with the OP repeatedly, the possession of the flat (s) could be given to them as construction could not be raised due to the breakout of pandemic Covid-19. According to complainants, the OP has cancelled the allotment and has not returned their deposited amount of Rs. 1,04,000/- each. Hence, this complaint to return the said deposited amount with interest besides paying them Rs. One lac each as compensation for harassment and Rs. 25,000/-each as litigation expenses.

5. In the reply filed by the OP, the claim of the complainants has been controverted. It is submitted that the OP had issued several demand notices to the complainant on 15.10.2019, 6.12.2019, 5.3.2020 to pay the outstanding amount but despite that, the complainants could not deposit the said amount. Resultantly, the cancellation letters dt. 16.3.2020 were sent to the complainants through registered post. Therefore, booking of the allotment of the flats has been cancelled. Hence, the complainants have no right to seek any amount from the complainant.

6. Both the parties in support of their respective case tendered in documentary evidence their respective affidavits and adduced certain documents. Reference of relevant record shall be given in this order.

7. We have heard both the counsel for the parties and gone through the case file thoroughly and after hearing the rival contentions of both the

counsels for the parties, we are of the convinced view that the present complaints have merit and the same deserve acceptance for the reasons mentioned hereinafter.

8. Shri Subhash Yadav, learned counsel for the complainants submits at Bar that the OP deliberately delayed the construction of the project and did not co-operate with the complainants in order to arrange finance from the financial institutions/ Banks in order to enable the complainants to pay the instalments of flats pertaining to payment plan of construction linked project. Thus, onus was upon the OPs to place on record the Builder Buyer Agreement, wherein the detailed terms and conditions of the allotment were mentioned in order to prove that the OP has right to completely forfeit the deposited amounts, of the complainants. Said contentions have been repelled by learned counsel for OP.

9. Significant aspect of the matter as apparent in this case is that no Builder Buyer Agreement could be executed between the parties, leave alone its registration. As per the notification of Govt. of Rajasthan Urban Development Department, Jaipur under Real Estate (Regulation and Development) Act, 2016 , the rules have been framed by Govt. of Rajasthan and as per Section 7.5 under the heading Cancellation by Allottee, the allottee (s) shall have the right to cancel /withdraw his allotment in the project

as provided in the Act, which is reproduced s under :-

“7.3. Cancellation by Allottee: Provided that where the Allottee(s) proposes to cancel / withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the booking amount paid for the allotment, the balance amount of money paid by the allottee(s) shall be returned by the promoter to the allottee(s) within 45 days of such cancellation.”

10. Thus upon the proper interpretation, of the Rule of Cancellation by allottee of flats, it is apparent that where an allottee proposes to cancel or withdraw from the project, without any fault of promotor, then the promotor is only entitled to forfeit the booking amount paid by the complainants and the balance amount of money paid by the allottee / allottees is required to be returned by the promotor to the allottees within 45 days of the cancellation.

11. In this case, the OP has forfeited the entire amount deposited by the complainants on 16.3.2019. As per the said provisions of law, which is binding upon the OP, it could have forfeited only booking amount of Rs. 7,000/- each deposited by both the complainants . The remaining amount of Rs. 97,000/- each ought to have been returned to the complainants.

12. The complainants’ counsel submitted that because of the financial crunch and due to breakout of pandemic (Covid-19) the

complainants could not pay the remaining price of the flat, the OPs could not have forfeited the entire amount. No doubt, the OP kept demanding the remaining outstanding payments from the complainants by issuing multiple the demand letters,

13. Under the aforesaid circumstances, we are constrained to hold that it was unfair trade practice on the part of the OP in forfeiting the payment of Rs. 97,000/- each without executing the Builder Buyer agreement, wherein the detailed terms and conditions of the allotment of the flats of the complainants had to be settled. No doubt, the OP on 16.3.2020 vide letter Ex. CW-8 has cancelled the flats allotted to the complainants for want of payment of the outstanding money. The said letter, in our considered opinion is illegal, null and void, as the same has the impact of forfeiting the first instalment of Rs. 97,000/- each from both the complainant.

14. Hence, as an upshot of our above discussion, the present Complaints are allowed against opposite party, whereby it is directed to refund the amount of Rs. 97,000/- each, to the complainants alongwith interest @ 9 % per annum with yearly rests from the date of filing of this complaint till the expiry of period of 45 days from today, failing which the said amounts shall fetch interest @ 12% per annum with yearly rests from the date of filing of the complaint till realization. That apart, complainants are

also allowed compensation of Rs. 25,000/- each on account of mental agony and harassment and Rs. 11,000/-each as litigation expenses to be paid to them within the above stipulated period of 45 days from today, failing which the said amounts shall also carry interest @ 9% per annum with yearly rests from the date of filing of the complaint till realization.

15. If the order of this Commission is not complied with, then the complainant shall be entitled to file execution petition under section 71 of Consumer Protection Act, 2019 and in that eventuality, the opposite party may also be liable for prosecution under Section 72 of the said Act, which envisages punishment of imprisonment, which may extend to three years or fine upto Rs. one lac or with both. Copies of this order be sent to the parties free of costs as per rules and this order be promptly uploaded on the website of this Commission. A copy of this order be placed on the connected file under the signatures of undersigned. File be consigned to the record room after due compliance.

Announced
24.5.2024.

President,
District Consumer Disputes
Redressal Commission, Rewari.

Member,
DCDRC, Rewari.

(Nisha Yadav,S/Grapher)