

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1951 OF 2016

1. BHRIGU KAUSHIK & 14 ORS.

S/o. Sh. S P Kaushik, R/o. 13/45, Sunder Vihar, Pachim
Vihar,

New Delhi - 110 087.

2. SOVAN CHATTERJEE

S/o. Sh. Raghubir Chhatterjee, R/o. B-180, 2nd Floor,
C.R. Park,

New Delhi - 110 019

3. MOHD. AMMAD KHAN

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4. HARISH CHANDRA

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5. AMIT CHANDRA

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6. SMITA AGARWAL & RAVINDRA NATH
AGARWAL

.

7. USHA CHANDRA & HARISH CHANDRA

.

8. ALKA DHINGRA

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9. DHARMENDRA KUMAR GAUR

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10. PREM NARAYAN SHUKLA

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11. MR. ANAND SHUKLA

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12. ALOK SHUKLA

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13. MANU BHARDWAJ

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14. COL. PREM PRAKASH RAJPUROHIT

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15. COL. PREM PRAKASH RAJPUROHIT

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16. COL. PREM PRAKASH RAJPUROHIT

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- 17. SUCHITRA SURI
- .
- 18. NEHA MISHRA
- .
- 19. PUSHP LATA
- .
- 20. ANIL KUMAR JHA
- .
- 21. ADITI RAINA
- .
- 22. SAROJ THAPAR
- .
- 23. MADHU MALIK
- .
- 24. VISHRAM SINGH
- .
- 25. VIJAY
- .
- 26. BABU KURIAKOSE
- .
- 27. PARTHA PRATIM BHATTACHARYA
- .
- 28. CHHANDITA ROY CHOUDHARY
- .
- 29. KRISHAN KUMAR PAHUJA
- .
- 30. RAKHI WADHWA
- .
- 31. GAURAV TANDON
- .
- 32. ARVIND KUMAR GAUR
- .
- 33. MANVI WAHI
- .
- 34. RATAN KUMAR VAISH
- .
- 35. ASTHA AGRAHARI VAISH
- .
- 36. .
- .

37. SANJAY PURI

.....Complainant(s)

Versus

1. M/S. ANSAL HI TECH TOWNSHIP LTD.
(Represented By Directors/Officer Concerned) Office At
115, Ansal Bhavan, 16-Kasturba Gandhi Marg,
New Delhi - 110 001.
2. Sh. Vinod Fotedar
R/o. D-605, Satisar, Plot No. 6, Sector-7, Dawarka,
New Delhi- 110 075.
3. Ashok Advani
S/o. Sh. Lt. Vehromal Advani, R/o. 39/24, Old Rajinder
Nagar,
New Delhi -110060.
4. Sh. Parveen Kumar Sardana
R/o. 3/43, Old Rajinder Nagar,
New Delhi - 110 060.
5. Prateek Tanwar
R/o. WZ-300, Naraina,
New Delhi -110028.
6. Sh. Sunny Kumar
R/o. 371, Pardhan Marg, Nirankari Colony,
New Delhi -110009
7. Sh. Raj K Gulati,
W/o. Sh. Ashok Kumar Gulati, R/o. 1-B/18, Single
Storey, Ramesh Nagar,
New Delhi -110015.
8. Sh. Mohan Prakash Sharma
S/o. Sh. Om Prakash Sharma, R/o. IC-31, Near Dhauri
Pyau, Chandan Van, Phase - I,
Mathura
U.P. 281001
9. Sh. Manoj Kumar Gupta
R/o. House No. C-2319, Sushant Lok-1,
Gurgaon
Haryana-122009.
10. Sanjay Kumar Sharma
S/o. Sh. Omkar Nath, R/o. 674 Pocket-1, Pachim Puri,
New Delhi - 110063.
11. Smt. Geeta Gogia,
R/o. 4/57, First Floor, Old Rajinder Nagar,

New Delhi - 110060.

12. Sh. Yatender Singh Yadav,
R/o. 109/85B, Nehru Nagar,
kanpur

U.P. 208012.

13. Sh. Kunal Upadhyay
R/o. RZ-27-B/335, Jagdamba Vihar West Sagar Pur,
New Delhi - 110 046.

14. Sh. Gaurav Kumar Tyagi
R/o. B-400, Patelnagar-II,
Ghaziabad
U.P. 201 001.

15. Ms. Divya Jain
R/o. 52 8th B Main Koramangala, 4th C Block,
Bangalore - 560034.

16. KAMAL GUPTA

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.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE V.K. JAIN,PRESIDING MEMBER

For the Complainant : Mr. Saurabh Jain, Advocate
Mr. Aditya Parolia, Advocate
Mr. Nithin Chandran, Advocate
Ms. Sumbul, Advocate
Mr. Rahul Kumar, Advocate

For the Opp.Party : Mr. Rakesh Kumar, Advocate

Dated : 16 Oct 2020

ORDER

**HON'BLE MR. JUSTICE V.K.JAIN, PRESIDING
MEMBER (ORAL)**

An entity by the name 'Uttam Steel & Associates' (hereinafter referred to as 'Consortium/Developer Company) was selected by Government of Uttar Pradesh for development of a township namely 'Sushant-Megapolis' comprising of plots, flats etc. in Greater Noida. The Consortium members formed an SPV under the name & style of 'Ansal Hi-Tech Township Ltd.' which is the OP in this complaint. The detailed project report for the township was approved on 08.02.2008 and detailed lay-out plans were also approved by the Nodal Agency pursuant to

which, a development agreement was signed between the Nodal Agency and the Consortium/Developer Company. The OP invited applications inter-alia for allotment of plots in the proposed township. A large number of persons including the complainants herein, booked residential plots in the above referred project and executed agreements with the OP. No time frame for delivering possession of the plots to the allottees was incorporated in the agreements but the case of the complainants is that verbally they were told that the possession would be handed over within 36 months from the execution of the agreement. The allotments of plots were made and agreements in respect thereto, were executed between 2008 and 2014. The case of the complainants is that the township has not been developed by the OP and the possession has not been offered to them as well as other similarly situated allottees. The complainants therefore, approached this Commission by way of a class section u/s 12(1)(c) of the Consumer Protection Act seeking refund of the amount paid by the aforesaid allottees to the OP alongwith compensation etc. Vide order dated 19.09.2017, this Commission granted permission in terms of Section 12(1)(c) of the Consumer Protection Act to the complainants to institute this complaint on behalf of all such allottees who wanted refund of the amount paid to the OP. Pursuant to the grant of permission, public notice in two newspapers, circulated in Delhi/NCR were published and several allottees were permitted to join this complaint.

2. The complaint has been resisted by the OP which has taken a preliminary objection that the complaint is barred by limitation. On merits, the defence of the OP is contained in the affidavit dated 05.03.2020 filed by Mr. F.N. Rai, Authorized Representative of the company. In nutshell, the following are the grounds taken in the said affidavit:

- (a) Due to protest by farmers who were dissatisfied with the orders passed by the Hon'ble High Court and the Hon'ble Supreme Court in land acquisition cases, they were unable to acquire the land and develop it as per approved DRP.
- (b) As per the agreement between the parties, the lay-out plan design could be changed and modified and the location of the plot allotted to a person could be changed due to unavoidable circumstances. In such a case, the allottee was required to accept equivalent alternative arrangement made by the developer.
- (c) All the fourteen original complainants have settled the matter with the OP.
- (d) The OP is also in the process of settling with the other allottees who have subsequently been impleaded in this complaint.
- (e) There were some land parcels in between the project which the developer had not purchased and which were required to be acquired by the Government.
- (f) There was no inordinate delay in the project and complainant no.1 had made multiple bookings. It is also alleged that the project was delayed due to Court orders and farmers' agitation. Reliance is placed upon the decision of the National Green Tribunal on 21.08.2013 and 12.09.2017 in O.A. No. 121 of 2013.
- (g) The land owners had not sold their land to the OP despite 56 of them having agreed to do so at a particular rate.

3. As far as the preliminary objection is concerned, the OP having not completed the development and having not offered possession of the allotted plots to the allottees, they had a recurrent cause of action to file the Consumer Complaint. A reference in this regard may be made to the decision of the Hon'ble Supreme Court in **Meerut Development Authority Vs. Mukesh Kumar Gupta IV (2012) CPJ 12 (SC)** . Therefore, I find no merit in the contention that the complaint is barred by limitation.

4. As regards the change in the location of the plots, it would be noted from the agreement executed between the parties that the location could be changed due to unavoidable reasons. No unavoidable reasons for change of the location have been disclosed in the written version filed by the OP. More importantly, the written version does not even disclose as to who were the persons location of whose plots was changed, when the said change happened, whether any alternative plots were offered, and if so, to how many of them. It is also not disclosed what was the location of the alternative plot if any, offered by the OP and what was the price at which the alternative plots were offered. In the absence of such particulars, the plea taken in this regard remains ambiguous and wholly unsubstantiated. In any case, the change in the location, as noted earlier, could have happened due to unavoidable reasons and such change in my opinion, could have been made only within a reasonable time of the approval of the lay-out plans. It would also be pertinent to note that the lay-out plans had already been approved by the time the agreements were executed with the allottees and this was specifically recorded in the said agreements.

5. As regards the alleged delay on account of protest by the farmers, the learned counsel for the complainants have drawn my attention to a letter dated 22.07.2011 sent by the OP to the allottees of the above referred project. The said letter, to the extent it is relevant, reads as under:

Due to recent adverse publicity in the Media regarding various development works taken up by some builders in 'Noida Extension, Greater Noida, Yamuna Express-way Township and other areas, we felt necessary to communicate with you and explain the status of our township of which you are" a privileged allottee. You are aware that in Sushant – Megapolis we

have purchased lands on market rates with the consent of the land owners and farmers and there is no dispute on the lands in your project whatsoever. This is not the case off compulsory acquisition and our project is not affected by the recent rulings given by the Hon'ble Allahabad High Court as well as by Supreme Court of India. Your project is rather now the most liked system of developments and persons adversely affected by the recent decisions of the Courts are approaching us in larger numbers for finding place in our area free from legal complexities and controversies.

Due to above development, demand of plots & houses in our township has further increased resulting in increase in market prices.

It is evident from the aforesaid communication sent by none other than the OP that there was no dispute with the farmers as far as the land comprised in the project namely 'Megapolis'

was concerned, the said land having been purchased by the complainant on market rate with the consent of the land owners, this not being a case of compulsory acquisition of land by the State Government. The above referred letter belies the plea taken by the OP in its affidavit.

6. It appears from a perusal of the agreement executed between the parties that the project proposed to be developed by the OP was a large project spread over more than 2500 acres of land and that the bulk of the land was purchased by the OP directly from the farmers. There could be some patches of land in between which required acquisition by the State Government in case the complainant was not able to purchase them directly from the land owners. The OP having advertised the project and having executed the agreements for development and sale of plots, it was for them to purchase those small patches of land from the land owners at a negotiated price even if they had to pay a price higher than the price they were willing to pay. Alternatively, it was for them to ensure that those parcels of land were compulsorily acquired by the Government. In any case, there is no evidence on record to prove that the residential plots allotted by the OP could not have been developed on the land which the OP had directly purchased from the land owners. Therefore, it cannot be said that the non-acquisition of such small parcels of land had delayed the project.

Even if the plea taken by the OP with respect to non-acquisition of those small parcels of land is accepted on its face value, the allottees cannot be made to suffer for the inability of the OP to acquire those land parcels. They having made substantial payment to the OP and having waited for many years, cannot be compelled to wait for an indefinite period till the OP is able to complete the project and is able to offer possession of the allotted plots to them. This is more so when the sale of the plots started way back in the year 2008 and twelve years have since expired but it is not known whether the OP will at all be able to complete the development work and if so, when the said development work would be completed.

7. The OP has, in its affidavit, placed reliance upon the orders passed by the National Green Tribunal to justify the delay in development of the project. There is a reference to the orders dated 21.08.2013 and 12.09.2017 passed by National Green Tribunal in O.A. No.121 of 2013 which is Ex-OP/2. The order passed by the National Green Tribunal on 21.08.2013, to the extent it is relevant, reads as under:

1. We hereby restrain Respondent No.3, 6 & 7 from raising any construction or reclaiming any land or in any way interfering with the wetlands as well as its catchment area.

2. They shall not carry on all the above activities within 500 mtrs from the periphery of highest water level in wetland.

The above referred order, according to the learned counsel for the OP, was vacated on 12.09.2017 with a finding that the land of this project was not a wet land. It is evident from the order itself that it pertained only to the wet land and catchment area. The case of the OP was that the land of this project did not form part of the catchment area nor was it a wet land. Therefore, the interim order passed by the National Green Tribunal did not prevent the OP from continuing with the development work. More importantly, more than three years have already passed since

the interim order was vacated by National Green Tribunal, but the development work has not been completed till date. Therefore, the above referred orders of the National Green Tribunal do not justify the abnormal delay on the part of the OP in completing the development.

As regards the OP having settled with the original complainants, that in my opinion, would not be material in a class action and such an action cannot be closed or dismissed merely because the developer settles with the allottees who had initiated the class action. If such a course of action is allowed, it would result in a situation where the builder may settle the matter with those who invoke the jurisdiction of this Commission by way of a class action and may jeopardize the case of those who have subsequently joined the complaint or who do not join the complaint considering that the order in the class action would be for the benefit of all the members of the class including those who do not join the class action. The learned counsel for the complainant states that they have also settled with eleven allottees other than the original complainants and they are in negotiations with thirteen other allottees. Even if this is so, that would not lead to the dismissal of the class action. Once the jurisdiction of this Commission by way of a class action is invoked, the Commission is required to take the matter to its logical conclusion unless the matter is settled with each and every member of the class. This is not the case of the OP that it has settled with each and every allottee of a residential plot in this project.

Though no specific time period for completing the development and offering possession to the allottees was indicated in the agreement, that would not entitle the builder to prolong the development work to an indefinite period. In such a case, the development work must necessarily be completed within a reasonable time period. As far as the development of plots is concerned, such a work does not require as much time as required for construction of group housing flats in multistoried buildings. At best, the development work of the plots, even on a large scale, must be completed within a period of three years from the approval of the lay-out plans. As noted earlier, in this case, the lay-out plans had been approved even before the agreements with the OP were executed.

8. A reference can appropriately be made to the decision of the Hon'ble Supreme Court in **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan & Connected Matter (2019) 5 SCC 725** and the decision of the Hon'ble Supreme Court in **Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra II (2019) CPJ 29 (SC)**.

In **Devasis Rudra (supra)**, the possession was offered to the complainant/appellant during the pendency of the complaint before the State Commission and it was contended that the said builder having made substantial investment in terms of the agreement, a direction for refund was not warranted. In the Consumer Complaint filed in **Devasis Rudra (supra)**, the complainant/appellant had prayed for possession of the house and in the alternative, for refund of the amount paid by him to the developer. In view of the said prayer made in the Consumer Complaint, it was argued on behalf of the builder that he should be made to accept possession of the allotted house and refund and not be allowed to him. The complainant, on the other hand, contended that at the time the Consumer Complaint was filed, he was ready and willing to accept the possession, but seven years having elapsed, he was not more willing to accept possession. Allowing the appeal, the Hon'ble Supreme Court inter-alia held as under:

“ It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was

received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund.”

In the present case, the possession is not offered till today to all the allottees and the development is still not complete.

In Pioneer Urban Land & Infrastructure Ltd. (supra), the builder submitted before this Commission itself that since the construction of the apartment was complete and Occupancy Certificate had been obtained, the flat purchaser must be directed to accept the possession instead of directing refund of the amount deposited. In that case, there was a delay of about three years in offering possession and the flat purchaser had submitted that he was not interested in taking possession after delay of about three years. He also stated that he had taken an alternative property in Gurgaon. This Commission having allowed refund to the complainant/respondent, the appellant before the Hon’ble Supreme Court inter-alia contended that as per the terms of the agreement executed between the parties, the flat purchaser could claim refund only after expiry of twelve months from the grace period by terminating the agreement but the Consumer Complaint had been filed even before the said twelve months period after the grace period had come to an end. It was also submitted on behalf of the builder that this Commission had erred in granting interest at the rate of 10.7% per annum to the complainant when the agreement between the parties provided for payment of interest @ 6% per annum in case of delay in handing over possession. Rejecting the contentions advanced by the builder, the Hon’ble Supreme Court inter-alia held as under:

6.1. In the present case, admittedly the Appellant – Builder obtained the Occupancy Certificate almost 2 years after the date stipulated in the Apartment Buyer’s Agreement. As a consequence, there was a failure to hand over possession of the flat to the Respondent – Flat Purchaser within a reasonable period. The Occupancy Certificate was obtained after a delay of more than 2 years on 28.08.2018 during the pendency of the proceedings before the National Commission.

In Lucknow Development Authority v. M.K. Gupta,² this Court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a “service” as defined by Section 2 (o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.

In Fortune Infrastructure & Anr. v. Trevor D’Lima & Ors.,³ this Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

6.2. The Respondent – Flat Purchaser has made out a clear case of deficiency of service on the part of the Appellant – Builder. The Respondent – Flat Purchaser was justified in terminating the Apartment Buyer’s Agreement by filing the Consumer Complaint, and cannot be compelled to accept the possession whenever it is offered by the Builder. The Respondent – Purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation.

9. As noted earlier, in this case development of all the plots is not complete even in 12 years. The learned counsel for the OP submits that they had to revise the lay-out plan 2-3 times which had contributed to the delay in possession of the plot. Such a plea does not find mention in the affidavit filed by the OP and in any case, it is too vague even to be considered since neither the reasons for the revision of the lay-out plans have been stated nor has it been informed as to how much was the delay which happened on account of revision of the lay-out plans.

10. The learned counsel for the OP also states that the complainants have not discharged the onus of proving as to in which project allotments were made to them. The Consumer Complaint pertains to the allotments made in the project namely 'Sushant Megapolis' and therefore, it is obvious that the scope of this complaint is spread over to the allotments in the project namely 'Sushant Megapolis', where refund is sought.

11. For the reasons stated hereinabove, I hold that the allottees of residential plot in the project namely 'Sushant Megapolis' cannot be made to wait indefinitely for the possession of the plots allotted to them and they are entitled to refund of the amount which they paid to the OP alongwith appropriate compensation etc.

12. The learned counsel appearing for the complainants/allottees fairly submit that considering the recent erosion in interest rates and the financial difficulties created by the pandemic, they would press for refund of the principal amount paid by the allottees to the OP alongwith compensation in the form of simple interest @ 8% per annum from the date of each payment till the date of refund.

13. The complaint is disposed of with the following directions:

(i) The order passed in this complaint is limited to such allottees of residential plots in the project namely 'Sushant Megapolis' who do not want to wait any more for possession of the residential plots allotted to them by the OP and want refund of the amount paid by them to the OP alongwith appropriate compensation etc.

(ii) The OP shall refund the entire principal amount received from the allottees referred in direction (i) above to the concerned allottees alongwith compensation in the form of simple interest @ 8% per annum from the date of each payment till the date of refund.

(iii) The OP shall pay a sum of Rs.50,000/- as cost of litigation to the complainants collectively.

(iv) The payment in terms of this order shall be made within three months from today.

Dated: 22.10.2020

CORRIGENDUM

It has been reported by the P.A. who typed the judgment dated 16.10.2020 dictated in the open Court that the following paragraph was inadvertently left out by her while typing the order. The following paragraph is therefore, added as paragraph 12A in the judgment dated 16.10.2020:-

“12A. The learned counsel for the OP submits that out of the allottees, some may be those who have purchased the plots by way of transfer from the original allottees and such allottees would be entitled to interest only from the date of transfer to them and not from the date of each payment. However, no such plea has been taken in the written version filed by the OP, as far as the allottees other than those with whom the OP has already settled, are concerned.”

This corrigendum be attached to the judgment.

.....J
V.K. JAIN
PRESIDING MEMBER