

**IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION**

**JUDGMENT RESERVED ON: 27.07.2020
JUDGMENT PRONOUNCED ON: 27.07.2020**

COMPLAINT NO. 430/2018

IN THE MATTER OF:

SMT. SUNITA RAJANI
W/o SH. RAMESH KUMAR

SH. PUNEET RAJANI
S/o SH. RAMESH KUMAR

BOTH RESIDENTS OF
B-20/2, 2nd FLOOR,
DOUBLE STOREY, RAMESH NAGAR,
NEW DELHI-110015

..... COMPLAINANTS

M/S VARDHMAN BUILDTECH PRIVATE LTD
(Through Sh. Harish Aggarwal and other Directors)
C-13, COMMUNITY CENTER,
JANAKPURI
NEW DELHI-110058

VERSUS

Also at:
Vardhman Buildtech Private Ltd,
801,814, C-58, BLOCK C,
SHAHPURI TIRATH SINGH TOWER,
COMMUNITY CENTER, JANAKPURI
NEW DELHI-110058

..... OPPOSITE PARTY

CORAM:

HON'BLE DR. JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)

HON'BLE SH. ANIL SRIVASTAVA, (MEMBER)

Present: MR. G. L. VERMA, Counsel for the Complainants.
OP, EX-PARTE.



PER: Hon'ble Dr. Justice Sangita Dhingra Sehgal, President

JUDGMENT

[Via Video Conferencing]

1. The complaint has been filed before this Commission under Section 17 of the Consumer Protection Act, 1986 (the Act) by Smt. Sunita Rajani and Sh. Puneet Rajani (*hereinafter referred to as 'complainants'*) alleging deficiency of service and Unfair Trade Practice by the opposite party with respect to project "Vardhman Metropolis2 Studio Apartments" at Greater Noida, District Gautambudh Nagar, U.P and praying for relief as under:
 - i. To allot the flat admeasuring 550 sq. ft. with physical possession OR else refund the entire deposited amount of Rs. 17,87,500/- together with 15% interest per annum from 1.10.2010 (promised date of allotment) to the date of realization.
 - ii. To pay compensation amount of Rs. 1,00,000/- for causing physical, mental and financial injuries to the Complainant.
 - iii. To pay Rs. 50,000/- as cost of litigation to the Complainant.
 - iv. Any other relief/order/direction which is deemed necessary in the interest of justice.
2. Facts of the case necessary for adjudication of dispute in the present complaint are that on 16.06.2010, complainants booked a flat admeasuring 550 sq. ft. in their joint names in the project "Vardhman Metropolis2 Studio Apartments" and paid the booking amount of Rs. 17,87,500/- by way of Demand Draft dated 04.06.2010. As per the agreement dated



16.06.2010, the OP shall complete the construction of the unit on or before 30.09.2011 in all respects and shall render the Unit for occupation & possession by the said date unless the construction is stopped or delay on account of factors beyond the control of OP. However, still there is no delivery of possession of the unit.

The OP also entered into Guaranteed Leasing Agreement on 17.06.2010, in pursuance of which the OP paid Rs. 16,807/- per month through cheques to the complainant from 01.04.2011 till September, 2015. However, the last payment of Rs. 16,807/- made by OP vide cheque dated 07.10.2015 was dishonored. The complainants visited the office of the OP with regard to the payment in lieu of bounced cheque and to enquire about the status of delivery of possession of unit, but it is of no avail. The complainants further sent a legal notice dated 14.03.2018 to the OP asking for either allotment of flat or the refund of the amount already paid, but there is no response by the OP.

3. During the course of the proceedings, notice was issued to the OP on 27.04.2018 and as per order dated 06.03.2019, the notice was duly served to the OP as per track report. In spite of the notice being served to the OP, no one appeared on behalf of the OP. In pursuance to the absence of the OP, he was proceeded ex-parte vide order dated 05.08.2019.
4. Evidence by way of affidavit and written arguments are duly filed by the complainants on 28.09.2019.
5. We have heard the counsel for the complainants and perused through the material on record.
6. The fact that the complainants had booked a flat with the OP is not in dispute from the evidence on record. Payment to the



extent of Rs. 17,87,500/- by the complainant to the OP is also clear from the evidence filed by the complainants.

7. Further as per the agreement dated 16.06.2010 between the complainants and the OP, the OP had to construct the unit on or before 30.09.2011 in all respects. But the handing of possession seems to be nowhere near possibility, despite passage of about more than 9 years. In that view of the matter, the inevitable conclusion is that there was gross deficiency as defined in Section 2(1)(g) of the Act on the part of the OP in its failure to deliver possession of the apartment to the complainants in terms of the Agreement. It is trite law that where possession of property is not delivered within the stipulated period, the delay so caused is not only deficiency of service, such deficiencies or omissions as per the law settled by their Lordships in the Apex Court in the matter of **Lucknow Development Authority v. M.K. Gupta as reported in (1994) 1 SCC 243**, tantamount to unfair trade practice as defined in Section 2(1)(r)(ii) of the Act as well.

8. Further the complainant cannot be expected to wait indefinitely for the possession. Their Lordships in Apex Court in the matter of **Fortune Infrastructure and Anr. v. Trevor D'lima and Ors. as reported in II [2018] CPJ 1 (SC)** are pleased to hold as under:

“Person cannot be made to wait indefinitely for possession of flats allotted to them. They are entitled to seek refund of amount paid by them, alongwith compensation.”

9. Having arrived at the said conclusion we are of the considered opinion that the complaint deserves to be accepted to the extent that complainants are entitled to compensation for



deficiency of service and unfair trade practice on the part of OP.

10. The next question for consideration now is as to how the complainants are to be compensated for the suffering caused to them at the hands of the OP for deficiency of service and indulging in the unfair trade practice. The provisions of the Act enable a consumer to claim and empower the commission to redress any injustice done to a consumer. The commission is entitled to award compensation for the injustice suffered by him.

11. At this juncture, it is imperative to refer to the settled position of law in this regards. In **Ghaziabad Development Authority vs. Balbir Singh** reported at **AIR 2004 SC 2141**, the Hon'ble Supreme Court has held as under:

"9. That compensation cannot be uniform and can best of illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting.

But in cases where monies are being simply returned then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore the compensation in such cases would necessarily have to be higher.

Further if the construction is not of good quality or not complete, the compensation would be the cost of putting it in good shape or completing it along with some compensation for harassment. Similarly, if at the time of giving possession a higher price or other



amounts is collected unjustifiably and without there being any provision for the same the direction would be to refund it with a reasonable rate of interest. If possession is refused or not given because the consumer has refused to pay the amount, then on the finding that the demand was unjustified the consumer can be compensated for harassment and a direction to deliver possession can be given. If a party who has paid the amount is told by the authority that they are not in a position to ascertain whether he has paid the amount and that party is made to run from pillar to post in order to show that he had paid the amount there would be deficiency of service for which compensation for harassment must be awarded depending on the extent of harassment. Similarly, if after delivery of possession, the sale deeds or title deeds are not executed without any justifiable reasons, the compensation would depend on the amount of harassment suffered.

We clarify that the above are mere examples. They are not exhaustive. The above shows that compensation cannot be the same in all cases irrespective of the type of loss or injury suffered by the consumer.

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12. Taking into consideration the dicta of the Hon'ble Supreme Court in **Ghaziabad Development Authority (supra)** that where monies are being returned due to the failure of the builder to hand over the possession, the case calls for higher rate of interest, we are of the view that the interest at the rate of 6% p.a. is sufficient in the present facts and circumstances.
13. Consequently, the OP is liable to refund the entire amount of Rs. 17,87,500/- along with interest as per the following arrangement:

- A.** An interest @ 6% p.a. calculated from 01.10.2011 till 27.07.2020 being the date of order (both the dates being inclusive), in case the amount is paid by 28.10.2020;



B. In case the OP fails to refund the amount as per clause **(A)**, an interest @ 7 % p.a. calculated from 01.10.2011 till the actual realization of the amount.

14. The OP is further directed to pay to the complainant Rs.1,00,000 as compensation for mental agony and Rs. 50,000 as costs for litigation.

15. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.

16. File be consigned to record room along with a copy of this Judgment.



(DR. JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(ANIL SRIVASTAVA)
MEMBER

Pronounced On:
27.07.2020

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Registrar
Delhi State Consumer Disputes Redressal Commission
New Delhi