

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

VOLUME – XXXIV

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ADVANTAGE - VIII

Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Sub: Fraudulent & Unethical Practice done by online E-Booking site Agoda.com based in Singapore.

Respected Sir,

Please find enclosed herewith correspondence done with E-booking site Agoda.com for your kind advice and necessary action:

- (A) Room booking done online confirmation of room booked received.
- (B) My Amex Card was charged.
- (C) Suddenly received an email for cancellation of booking with more documents required – neither had we received mail or telephone for more documents requirement.
- (D) We requested for rebook and not to cover.
- (E) We sent a letter to the Ministry of Corporate affairs and the Ministry of Electronics & Information Technology. (Read the reply of both copies enclosed).
- (F) We sent them twice advocate notice –reply received (copy enclosed for your reference).

Our request to ban Agoda.com for taking further booking to stop harassing citizens of India with no office in our country. This should also be highlighted in twitter/Instagram and digital sites so that citizens of India are aware of the issues faced with companies, which do not have an office in India.

Surendra Kumar Dua
Rourkela

(To resolve the issue effectively, the matter was referred to **the Chief Commissioner, of CCPA**, who is also **the Addl. Secretary, in the Department of Consumer Affairs, New Delhi.**)

CM/UTP/14/2022-23

1st August 2022

Chief Commissioner
Central Consumer Protection Authority
NEW DELHI.

Sub: Foreign Companies, without local office, causing harassment to consumers.

Ref: Complaint received from a resident of Rourkela, Odisha.

Sir / Madam,

It has been brought to our notice by an affected individual, Sri Surendra Kumar Dua, from Rourkela, Odisha, that he had availed the online services of <https://www.agoda.com/>, on 11/04/2022, for booking a stay in a Hotel (Le Lac Sarovar Portico), at Ranchi, Jharkhand, between 20th to 21st April 2022, vide booking Id No. 676198325.

The aggrieved individual received an email from the said portal, on 16th April, that the booking had been cancelled, as he had not submitted the documents sought from him, on 14th April. The complainant informs that he had never received any such request, either through email or phone. So, he had attempted to contact the travel portal, but could not find any contact details, in India, and hence had sent an email, about his predicament. It is further alleged, that the Portal Company had not responded to him. Having encountered such an unpleasant experience, the aggrieved individual is also handicapped, to take advantage of the Consumer Courts, as the Opposite Party does not have any representative stationed in India.

In circumstances like the above one, encountered by consumers in this country, can the government initiate appropriate legal framework, so that Companies which are not having a local office or representative to cater to the residents of India, are prevented from soliciting business in this country?

It is quite relevant to remember that not long ago, the social media giant "Twitter" was made to adhere to this norm, for legal reasons.

Attached please find the Legal Notice and the response of M/s Agoda, Singapore, for kind information.

Thanking you,

With regards,

B. VAIDYANATHAN
CHIEF MENTOR

The consumer cannot be expected to wait indefinitely, and when there is inordinate delay in the delivery of the villa/property, the builder is bound to make the refund and provide compensation.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 180 OF 2020

SUNNY AHUJAComplainant(s)

Versus

RAHEJA DEVELOPERS LTD.Opp.Party(s)

BEFORE:

**HON'BLE MRS. JUSTICE DEEPA SHARMA,PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA,MEMBER**

Dated : 03 Jan 2022

ORDER

PER MR SUBHASH CHANDRA, MEMBER

The present complaint is filed under section 21 read with Section 2 (c) of the Consumer Protection Act, 1986 by the Complainant in respect of a plot allotted to him in a project known as 'Raheja Aranya City', Sector 11 and 14, Phase I, Sohna Road, Gurgaon promoted by the Opposite Party, claiming deficiency of service due to delay in handing over possession of the plot allotted and claiming refund of amount deposited with compensation.

2. The brief facts of the case are that the Complainant, in response to the advertisements of the Opposite Party, booked a plot measuring 308 sq. yards on 16.10.2012 by paying the booking amount of Rs.9,17,258/-. Plot number E – 35 was allotted to the complainant by the OP and possession of the plot was promised within 36 months, with a grace period of 6 months of the signing of the Buyer’s Agreement on 07.08.2014. Subsequent payments totalling approximately Rs.30 lakh were made between 2012-2014. In 2014, the OP informed the Complainant that in view of the fact that statutory approval for Phase I of the project, in which plot allotted to Complainant (E – 35) was located could not be obtained, Plot no. E – 70 in Phase II was being allotted to the Complainant. A fresh allotment letter dated 07.08.2014 was also issued. Payment made towards the previously allotted plot was adjusted towards the plot allotted in Phase II. Delivery was promised within 36 months with a six-month grace period, i.e., by 07.02.2018. According to the Complainant Rs.57,91,638/- was paid to the OP between 16.10.2012 to 19.03.2015 including the amount adjusted towards plot E – 35. Thereafter, no demands for payments were made by the OP. The Complainant’s averment is that there has been no progress in the project even as late as January 2020. He, therefore, does not wish to wait indefinitely and wishes to get a refund of his money. His claim is that the OP’s action constitutes deficiency in service and unfair trade practice for which he seeks to be compensated. He has also filed two police complaints against the OP on 17.01.2019 and 23.01.2019.

3. The Complainant has approached this Commission with the following prayer:

- a. *Direct the Opposite Party to refund the amount paid, i.e., Rs.1,19,88,202/- along with future interest @ 18% per annum;*
- b. *Direct OP to make payment for Rs.5,00,000/- as mental and physical agony/ harassment;*
- c. *Direct OP to make payment for Rs.50,000/- as litigation expenses;*
- d. *Grant such and further reliefs as may be deemed fit in the interest of justice.*

4. The OP has contested the complaint as being devoid of any cause of action. He avers that the Complainant is not a ‘Consumer’ as he has booked the flat for commercial gain, being a real estate speculator. He has not provided any reasons for investing in Gurgaon. It is also his averment that the complaint is without jurisdiction and, therefore, liable to be dismissed *in limine*. As the Complainant had willingly signed the agreement, the Consumer Court cannot grant him any relief. The OP further contends that it was only its endeavour to hand over possession within 36 months with six months grade period and that it should not be construed as an unequivocal promise. Also, that this was subject to *force majeure* and that lack of infrastructure by various Government agencies and statutory clearances fall under this provision. Therefore, delay cannot be interpreted as ‘deficiency in service’ on part of OP. In view of the various case law cited, time cannot be take to be of the essence as per the Buyer’s Agreement. There is no unfair trade practice as it needs to be proved that sales or services were promoted with reference to the allegations in the complaint, which has not been done. It is also contended that the remedy of arbitration, as provided under the Agreement, is available to the Complainant and that this Commission may not assume powers of a Civil Court. Finally, it is also argued that the complaint is barred by limitation as it was filed in 2020, whereas the cause of action occurred more than two years ago.

5. The Complainant in his rejoinder has contested the OP’s arguments and relied upon the ruling of the Hon’ble Supreme Court in *Kolkata West International City Pvt., Ltd., vs Devasis Rudra (CA no. 3128 of 2019)* and this Commission’s finding in *Ankur Goswami vs Supertec Ltd., (CC no. 936 of 2016)*.

6. The Complainant has filed his evidence by way of affidavit and written submissions. The Opposite Party has not done so and relied upon its reply to the complaint.

7. We have heard the arguments of parties and have perused the record carefully. The admitted facts are that the complainant booked a Villa (E-35) in a project called ‘Aranya City’ on Sohna Road, Gurgaon promoted by the OP on 16.10.2012. The Complainant commenced payments to the OP in instalments for the same. As the OP could not obtain necessary approvals for Phase I of his project, it offered another, similar plot and villa in Phase II (E- 70) to the complainant. This change was agreed to by the Complainant. Payments received by the OP for the previously allotted plot (E-35) were adjusted towards this new plot. Complainant continued to make payments as demanded till 2014. The Buyer’s Agreement dated 07.08.2014 stipulated that the project would be executed within 42 months (including six months grace period) by 07.02.2018. In view of lack of progress in execution, the complainant filed two police complaints in January 2019 and the current complaint in January 2020. OP argued on the lines of his written submissions and admitted to delay in completing the project. However, this delay is attributed it to reasons covered under *force majeure* clause of the agreement.

8. A preliminary objection raised by the OP was with regard to limitation in the filing of the complaint. From the records it is evident that the re-allotment of the plot in Phase II (E-70) was done on 07.08.2014. Accordingly, possession of this plot should have been handed over by the OP on or before 07.02.2018 after accounting for the 36 months and the grace period of 6 months. The present complaint is filed on 29.01.2020 which is within the permissible time.

9. OP has relied upon the *force majeure* clauses to explain the delay in handing over of possession, attributing the delay to lack of infrastructure and non-availability of statutory clearances and approvals. This argument is contrary to the Hon’ble Supreme Court’s orders in **NBCC (India) Limited V Shri Ram Trivedi** Civil Appeal No 274 of 2020, where, while rejecting a similar argument, the Apex Court had held that:

- *The expression ‘endeavour’ meant that the appellant would make an earnest effort to hand over possession by that date. Even if the expression does not mean an absolute commitment to hand over possession on or before a specified date, this expression has to be read in the context of the entirety of the clause. To construe the expression as leaving the date for handing over possession indefinite and at the absolute discretion of the developer would leave the purchaser at the mercy of the builder. Clause 20 must be construed to require the builder to make all reasonable efforts to comply with the duty to hand over possession by the stipulated date”.*

*The Court further observed that the appellant “being an experienced developer, must be conscious of routine delays caused by business exigencies. This would not frustrate the contract or absolve the appellant of the obligations assumed under the terms of the agreement.” There is, however, a catena of judgments of this Commission such as in **Harish Chawla v Puri Construction Private Limited &Anr.**, CC/3236/2017, **Anish Singhal v Jaiprakash Associates Ltd.**, CC/2194/2016, **Vishal Gupta &Anr. V M/S. Imperia Structures ltd.**, CC/2439/2017 **Capital Greens Flat Buyer Association v DLF Universal Limited &Anr.**, CC/351/2015, where similar delays were rejected as Force Majeure grounds.”*

The Opposite Party’s interpretation of *force majeure* is therefore fallacious and is liable to be rejected.

10. OP has also not been able to prove that the Complainants are not ‘consumers’ under the Consumer Protection Act, 1986 even though the onus to prove that they are not consumers is squarely upon the Opposite Party. The contention of the learned Counsel that the Complainant purchased the said flat for a commercial purpose is not supported by any documentary evidence. In **Rajnish Bhardwaj and Ors vs M/s CHD Developers Ltd., and Ors** in CC no. 3775 of 2017, decided on 26.11.2019, this Commission has observed as under:

“13. The first contention of the Learned Counsel for the Opposite Party that the Complainants are not “Consumers” and only “investors” is not supported by any documentary evidence. In a catena of judgments, this Commission has laid down that the onus of proof shifts to the Opposite Party to prove that the Complainant is “investor” and it is observed that the Opposite Party did not discharge their onus of proof regarding this aspect. Hence, we are of the considered view that the Complainants are “Consumers” as defined under Section 2 (1) (d) of the Consumer Protection Act, 1986”.

In CC no. 1122 of 2018, **Narinder Kumar Bairwal and Anr., vs M/s Ramprastha Promoters and Developers Pvt. Ltd., and Anr.**, dated 01.11.2019 this Commission reiterated the view of this Commission in **Kavit Ahuja vs Shipra Estates – I (2016) CPJ 31** that the contention that a flat was purchased for commercial purpose should be supported by documentary evidence to establish that the Complainant had purchased the same to indulge in the purchase and sale of the flat. As the learned Counsel for the OP has failed to do so, this contention has no merit and deserves to be rejected.

11. It is contended by the OP that the **Devasis Rudra (supra) and Ankur Goswami (supra)** cases do not apply to this case. In **Devasis Rudra**, the Hon’ble Supreme Court had observed that:

“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.”

The averments and arguments of the OP, however, do not provide any cogent arguments to support its claim except that the facts of the cases are different.

12. In the present complaint, delay in execution and delivery of the villa is evident from the facts on record. Plot no E-70 was allotted on 07.08.2014. The period of 42 month (including the grace period of 6 months) reckoned from this date of allotment expired on 07.08.2018. There is no completion certificate or offer of possession even on date. Therefore, the delay is inordinate and the consumer cannot be expected to wait indefinitely. This Commission, in **Ankur Goswami (Supra)** had also held that:

“.....in the event of default on the part of the complainant in making timely payment of the instalments, the OP was entitled to cancel the allotment itself and forfeit part of the money paid by the complainant as per the terms of the allotment. That having not been done, the OP cannot, at this stage, deny refund of the amount paid to it by the Complainant on account of the aforesaid alleged delay”.

The present complainants cannot be denied the relief of refund and compensation in light of this settled position.

13. For the aforesaid reasons, we are inclined to accept the contentions of the complaint and to order as follows:

- (i) The opposite party shall refund the entire amount of Rs.1,19,88,202/- to the Complainant with 9% simple interest from the date of respective deposits till date of payment;
- (ii) The Opposite Party shall also pay Rs.50,000/- as litigation costs to the complainant;
- (iii) Payment shall be made within six months of this order. In case of default, the compensation shall be payable with a penal interest of 15% for the period of delay. ■

HOTELS AND RESTAURANTS SHOULD NOT LEVY SERVICE CHARGES, RULES CCPA

Hotels and restaurants cannot levy service charge automatically or by default on food bills, ruled the Central Consumer Protection Authority (CCPA) on Monday. The CCPA added that consumers can lodge complaints on National Consumer Helpline number 1915 against hotels/restaurants charging service charges.

Amid rising complaints, the CCPA has issued guidelines for preventing unfair trade practices and violations of consumer rights with regard to levying of service charge.

As per the guidelines, "No hotels or restaurants shall add service charge automatically or by default in the bill."

There should not be any collection of service charge by any other name, it added.

No hotel or restaurant can force a consumer to pay a service charge. They have to clearly inform the consumer that the service charge is voluntary, optional and at the consumer's discretion.

"No restriction on entry or provision of services based on a collection of service charge shall be imposed on consumers," the guideline said.

Further, service charge cannot be collected by adding it along with the food bill and levying GST on the total amount.

If any consumer finds that a hotel or restaurant is levying a service charge in violation of the guidelines, s/he can request the concerned establishment to remove it from the bill amount.

Consumers can also lodge a complaint on the National Consumer Helpline (NCH), which works as an alternate dispute redressal mechanism at the pre-litigation level, by calling 1915 or through the NCH mobile app.

They can also file complaints with the Consumer Commission.

Courtesy: India TV

Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of " **Consumer Protection Council, Rourkela**".

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