

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

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ADVANTAGE - IX

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.)

When possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to refund of the amount paid, with reasonable Interest thereon from the date of payment till the date of refund.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 245 OF 2019

PAZHAYANNUR K SUBRAMANIAN & ANR.

R/o C-407, Nana Nani Phase-4, 618/1A, Sabari Avenue,
Kasturi Naickepalayam, Coimbatore

Tamilnadu - 641041

.....Complainant(s)

Versus

M/S. PATEL ENGINEERING LTD. & 2 ORS.

(Through its Managing Director) Patel Estate Road,
Jogeshwari-West,

Mumbai - 400102

.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER

Dated : 08 Dec 2021

ORDER

1. Heard Ms. Priya Balakrishnan, Advocate, for the complainants and Mr. Kunal Cheema, Advocate, opposite party-1.
2. The complainants are husband and wife. The opposite parties are Builders and Promoters of the Residential Project “Townsville” at Neo town, Bangalore South. Opposite Party-2 was a subsidiary of Opposite Party-1 and was later on merged with Opposite Party-1. Opposite Party-3 entered into Joint Development agreement with Opposite Party-1 for completion of the aforesaid project.

3. The complainants booked a residential unit in the “Townsville” project, Neotown, Bangalore South by depositing Rs.5,00,000/- on 18.10.2011. The complainants were allotted unit No.32-a, 3.5 BHK-Garden, admeasuring 3477 sq. ft., which was inclusive of proportionate share in common area in the project with 2 closed car parking space and sale consideration was Rs.15227395/- vide allotment letter dated 20.10.2011. The project was to be constructed on the land in Hulimangala Village, Jigani Hobli. Opposite Party-2 issued demand letter dated 20.10.2011 for Rs.1681609/- towards payment of instalment. On 20.10.2011, a sale agreement was executed between the complainants and Opposite Party-2. According to the agreement, the payment schedule was a “construction linked payment plan” and defaulted instalment would attract interest of 2% per month. Payment schedule is as follows: -

Due on or before	Amount
Booking and Sale Agreement	2181609.00
On Completion of Foundation Work	1725287.00
On Completion of Podium Slab	2156609.00
On Completion of Slab 1 Work	862644.00
On Completion of Slab 2 Work	862644.00
On Completion of Slab 3 Work	862644.00
On Completion of Slab 4 Work	862644.00
Commencement of External Block Work	862644.00
Commencement of Internal Plastering	862644.00
Commencement of External Finishes/ Plastering	862644.00
Commencement of Flooring	862644.00
On Possession 1	575094.00
On Possession 2	825000.00
Total	15227395.00

4. The demands raised by Opposite Party-2 were fulfilled by the complainants promptly by paying up to 9th instalment. The details of payment made by the Complainants are given below: -

Schedule Item	Mode of payment	Date	Bank	Amount (Rs.)
Advance	Cheque	18/10/11	City Bank	500000
Sale agreement	Bank Transfer	23/11/11	BFSFCU	1679992
E-stamp & Exch. Diff.	Bank Transfer	16/01/12	ICICI	16918
Service tax/VAT	Bank Transfer	09/05/12	ICICI	166274
Foundation work	Bank Transfer	31/12/14	BFSFCU	1941730
Podium slab	Bank Transfer	19/09/16	ICICI	1000000
Podium slab	Bank Transfer	20/09/16	ICICI	1000000
Podium slab	Bank Transfer	21/09/16	ICICI	272390
Slab 1 & 2	Bank Transfer	01/12/16	BFSFCU	1927854
Slab 3 & 4	Bank Transfer	25/01/17	ICICI	630000
Slab 3 & 4	Bank Transfer	27/01/17	ICICI	1200000
External & Internal works	Bank Transfer	16/03/17	ICICI	300000
External & Internal works	Bank Transfer	21/03/17	ICICI	580000
Total				12215158

5. The possession of the unit was to be handed over by December, 2013 with grace period of six months. Opposite Party-2 never informed the complainants about the construction status. The Complainants were denied access to the construction site. Opposite Party-2 always gave the assurance that the construction was in full swing and would be completed in time. Since the construction stage was not known to the Complainants, they stopped making further payments to the Opposite Party. In 2017, M/s. Patel Realty (India) Ltd. (opposite party-2) was amalgamated with M/s. Patel Engineering Ltd. (opposite party-1). Amalgamation was approved by National Company Law Tribunal on 06.07.2017. On 21.11.2017, Opposite Party-1 entered into a Joint Development Agreement with Opposite Party No.3 M/s. GM Infinite Dwelling Private Limited, who is a builder with low market brand value, without intimation to the complainants and other buyers. As per Joint Development Agreement, the project has to be completed within 18 months with grace period of six months.

6. To find out a solution, a joint meeting was arranged on 04.12.2017. The meeting was attended by the parties and their lawyers/representative. In this meeting for the first time, the buyers were informed about Joint Development Agreement with opposite party-3. The buyers took time for reading the Joint Development Agreement and next meeting was request in January, 2018. However, opposite party-1 has not given any date for next meeting. Some of the buyers gave a legal notice to opposite party-1, in April, 2018. Then, a meeting with few buyers was held on 18.05.2018. Thereafter, opposite party-1, vide email dated 30.05.2018, in callous and fraudulent manner offered minuscule compensation for delay in completing construction. The builder sent a tripartite agreement in August, 2018 to be executed between M/s. Patel Engineering Limited and GM Infinite Dwelling (India) Pvt. Ltd. and the buyers. A perusal of this agreement shows that the builder has completely absolved from his liability to complete the project. Area of integrated development project was also reduced to 103 acres from 120 acres. The complainants received an email dated 06.11.2018, giving progress updates of the project "Townsville". The complainants received an email dated 06.12.2018, from the opposite parties, re-launching the Townsville project under the brand name of "GM Townsville Premium Limited Edition Townhomes". Fed up with the fraudulent action of the builder, the complainants sent a notice dated 10.01.2019 to Opposite Party-1. As per this agreement, Opposite Party-3 was to complete the construction of the Project within 18 months with an extension of 6 months from the effective date of the Joint Development Agreement. Alleging deficiency in service and unfair trade practice on the part of the opposite parties, the complainants filed the instant Consumer Complaint with the following prayer: -

"a. Grant refund of the entire amount along with compounded penal interest @ 24% annually, from their respective dates of deposit till the date of refund amounting to Rs.28295577/- assuming the date of this complaint as the date of refund for the purpose of calculation.

b. Grant compensation of Rs.2000000/ for mental agony, inconvenience, mental harassment and damages suffered by the complainants due to deficiency of services on the part of the opposite parties and the consequential delivery.

c. Grant compensation of Rs.5,00,000/- toward the costs of litigation lawyer's fee, documentation charges, representation(s) and numerous visits.

d. Grant compensation of Rs.15513251/- towards real estate price inflation from June 2014 till March, 2018 as per RBI's Housing Price Index.

e. Grant any other relief to which the complaints may be entitled to under the facts and circumstances of the case and pass such further order and orders as this Hon'ble commission may deem fit proper in the facts in facts and circumstances of the present case."

7. The complaint was contested by Opposite Party-1 by filing written reply. Opposite Party-3 failed to file the written reply, despite service of notice. Opposite Party-1 stated that Opposite Party-2 was not a legal entity having merged with Opposite Party-1 and the complaint against Opposite Party-2 was not maintainable. The complaint was filed with ulterior motive as the demand of the complainants to swap the unit with a larger unit was not accepted by the opposite parties. The complaint was nothing but an attempt to avoid payment of balance instalments. The delay was due to reasons beyond control of the opposite parties such as heavy rains, strike of labour, disruption of supply of cement, transporters strike, Bangalore and/or Karnataka Bundh etc. According to clause 6 of the Agreement, the opposite parties are entitled to sell/transfer the development rights to any other person without the consent of the purchaser. The Joint Development Agreement entered with opposite party-3 had only been executed for balance land available in Neotown. The Tripartite Agreement entered with Opposite Party-3 was an honest endeavour in the interest of the Project and the purchasers, including the complainants.

8. The counsel for the complainant submitted that payment plan was a “Construction Linked Payment Plan”. The complainants made payments sincerely as and when demand letters were served upon them and a total amount of Rs.12215158/- has been paid by them. Possession of the unit had to be handed over by June, 2014 but the opposite parties did not adhere to the agreement and failed to give possession to the complainants. The opposite parties charged 24% interest from the buyers for delay in making the payment. He relied upon the judgment of Supreme Court in **Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711, Fortune Infrastructure vs. Trevor D’lima&Ors., (2018) 5 SCC 442 and Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, 2019 SCC OnLine SC 438** and submitted that the complainants cannot be made to wait indefinitely for possession of the unit. He also relied on the judgment of Supreme Court in **Pioneer Urban Land & Infrastructure Ltd. vs. Govindan Raghavan, (2019) 5 SCC 725** and submitted that the terms of the contract being one sided are not binding on the complainants. It was further submitted that the opposite parties have not filed any evidence to establish that the possession could not be delivered in time due to force majeure conditions.

9. The counsel for Opposite Party-1 submitted that the complaint is not maintainable in view of clause 2 of the agreement and has been filed with ulterior motive to gain undue advantage. The complainants stopped payment after March, 2017 and the instant complaint is nothing but an attempt to avoid the balance payment of instalments to Opposite Party-1. The time for completion of project as per the Tripartite Agreement dated 21.11.2017 had to expire on 21.11.2019 and the complaint was filed on 01.11.2018. The complaint qua Opposite Party-3 is pre mature and not maintainable. The project could not be completed in time due to force majeure conditions, which were beyond the control of the opposite parties. They have completed construction of approximately 560 apartments and handed over possession to the buyers.

10. Brief facts of the case are that the complainants were allotted a residential unit with 2 closed car parks in the Project “Townsville” by Opposite Party No.2, for a consideration of Rs.16082737/-. Possession of the unit was to be handed over on or before June, 2014. Construction of the project was not according to the agreement. The constructions were stopped after March, 2017. In July 2017, Opposite Party-2 was amalgamated with Opposite Party-1. Thereafter, Opposite Party-1 entered into a Joint Development Agreement with Opposite Party-3 on 21.11.2017, for construction of the project, according to which the construction was to be completed up to 21.11.2019. Thus, inordinate delay in completion of the construction has been proved. Clause 18 of the Agreement deals with the construction and possession of the unit, which reads as follows: -

“...subject to non-existence of any force majeure conditions and as more particularly described in Schedule 'G' hereto, and subject to fulfilment of all objections by the Purchaser as also by all the Unit owner, the Vendor shall call upon the Purchaser to take possession of the Unit on or before December 2013 with a further grace period of 6 months i.e. on or before June 2014. In the event the Vendor is not able to handover the possession of the unit by such later date, the Vendor shall pay interest at the rate of 10% (ten per cent) per annum on the amounts paid by the Purchaser till that date to the Vendor towards penalty to the Purchaser which shall be inclusive of any/all damages, claims and compensation and the same shall be paid at the time of handing over of possession of the Unit.....”

11. From the above, it is clear that the possession was to be delivered on or before June, 2014 but the builder was not able to complete the building till filing of the complaint on 08.02.2019. In Bangalore Development Authority Vs. Syndicate Bank (2007) 6 SCC 711, Supreme Court held that when possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to refund of the amount paid, with reasonable Interest thereon from the date of payment till the date of refund. The complainants are entitled for refund of all the payments with interest if the Builder is not able to give possession of the building within the stipulated time. Opposite Party-1 has not provided any evidence to substantiate the plea that the delay was caused due to unforeseen and unexpected events. Opposite Party-1 cannot take shelter of the “Force Majeure” Clause. The reasons cited by the Opposite Parties for the delay of the project, appear to be delaying tactics veiled as “Force Majeure” conditions and seem to be an attempt to wriggle out of its contractual obligations. In Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711, Fortune Infrastructure vs. Trevor D’lima&Ors., (2018) 5 SCC 442 and Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, 2019 SCC OnLine SC 438, Supreme Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him/her, and is entitled to seek refund of the amount paid by him, along with compensation. The reasons stated for force majeure conditions are only delay tactics to handover possession of the Apartment. The complainants are, therefore, entitled for refund of the amount paid by them. According to Clause 18 of the agreement, Opposite Party-1 has agreed to pay compensation for delay in handing over possession i.e. interest @ 10% p.a. on the deposit made by the buyer.

ORDER

The complaint is partly allowed and Opposite Party No.1 is directed to refund the entire amount deposited by the complainants along with simple interest @ 10% per annum with effect from the respective date of each payment till the date of refund. Payments in terms of this order shall be made within two months from today, failing which Opposite Party No.1 shall be liable to pay interest @ 12% per annum after expiry of two months.

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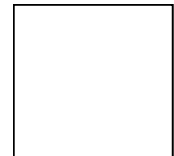
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