

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1467 OF 2015

1. ANSAL API MEGAPOLIS BUYER'S
ASSOCIATION (REGD.) & 16 ORS.

Through Its President Mr. Pawan Verma Registered
Address: 261, Katra Gul Khan Subzi Mandi,

Delhi - 110 017.....Complainant(s)

Versus

1. ANSAL HI-TECH TOWNSHIPS LTD.

(Through Its Managing Director), Regd. Office: 115
Ansal Bhawan, 16, Kasturba Gandhi Marg,

New Delhi - 110 001.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT
HON'BLE DR. S.M. KANTIKAR, MEMBER**

For the Complainant : For the Complainants : Mr. Saurabh Jain, Advocate

For the Opp.Party : For the Opposite Party : Mr. Rakesh Kumar, Advocate
Mr. Rupesh Kumar Sinha, Advocate

Dated : 08 Nov 2021

ORDER

R.K. AGRAWAL, J., PRESIDENT

1. This Complaint, under Section 21 read with Section 2(b)(ii) and Section 12(1)(b) of the Consumer Protection Act, 1986 (for short "the Act"), has been filed by Ansal API Megapol Buyer's Association: a voluntary Consumer Association registered under The Societies Registration Act, 1860, having Registration No. S/1350/2015 along with 16 individual Complainants being Allottees/flat buyers in the project "Megapolis Green Hi-Tec Township" (for short "the Project"), launched by the sole Opposite Party, namely, Ansal Hi-Tech Townships Ltd. (for short, "the Developer") in Bulandshahar, adjoining Greater Noida, UP.
2. According to the Complainants, since all the Complainants have booked their respective flats in the same Project of the Opposite Party; entered into identical Agreements to Sell with the Developer and the issues regarding their allotment such as delay in handing over possession, deficiency in construction, illegal demands by the Developer and huge gap in super area and carpet area, are identical and resultantly almost same reliefs have been prayed for by all the Complainants; the Complaint is proposed to have been filed in a representative capacity under the aforesaid provision.

3. The Complainants have sought to place reliance on Order dated 28.08.2015 passed by the Commission in CC No. 120 of 2015, wherein it has been held that the Complainant, being Society registered under the Societies Registration Act, 1860, consists of apartment buyers, therefore a recognized Consumer Association and since the Reliefs claimed are of the same nature and against the same Person, such an Association is competent to file a Complaint Against the said order dated 28.08.2015, the Builder had approached the Hon'ble Supreme Court by way of Civil Appeal No.8423 of 2015 and the Hon'ble Supreme Court vide its Order dated 16.10.2015 was pleased to dismiss the said Appeal thereby upholding the order of the Commission.
4. Factually, the Opposite Party Developer is engaged in the business of construction and real estate. Allured by the representations and assurances given by the Developer that they have the international repute of developing and selling residential and commercial complexes; they have successfully launched several residential and commercial complexes in different parts of the country; they deliver high quality structures with superior functionality within the agreed time frame; necessary approvals for the Project have been arranged and the Project will be developed with assistance of internationally renowned Architects, thus the Complainant booked their respective flats. At the time of booking of the flats, the Complainants were informed about the different sizes of the flats which were offered by the Opposite Party, with number of world class facilities in the said Hi-Tech township. The said Project was supposed to be spread over an area of 2504 acres. Thus the Complainants chose the flat size as per the budget and made the booking accordingly. Builder-Buyer's Agreement/Apartment Allottee's Arrangements (for short, "Agreement") were executed from the year 2009 onwards.
5. As per clause 4.1 of the Agreement, the possession of flats was supposed to be handed over within 42 months from the date of signing of the Agreement. As stated by Complainant requisites with respect to property details along with area of the flat, date of booking, date of execution of agreement, proposed date of possession, total sale consideration and total monies paid towards sale consideration is as follows:

Sr. no.	Allottee's name	Flat Number	Date of Booking	Date of Execution of Agreement	Date of Possession	Total Sale Consideration (Rs.)	Amount Paid (Rs.)
1	Prashant Kumar Singh & Anr.	H-0552	23.02.2009	23.02.2009	23.09.2012	27,53,159/-	12,97,122/-
2	S R Unithan	G-0147	04.02.2009	04.02.2009	03.08.2012	31,83,875/-	6,21,537/-
3	Pawan Verma	H-0850	28.04.2009		28.10.2012	25,97,240/-	7,82,404/-

4	Jasbir Singh &Anr.	F1-379	06.11.2009	06.09.2009	2012	16,32,674/-	15,25,000/-
5.	Atul Aggarwal &Anr.	F-0841	09.02.2009	09.02.2009	08.07.2012	18,18,356/-	15,40,273/-
6	Syed Fazal Hayat &Anr.	I-0856	04.04.2009	04.04.2009	04.10.2012	25,55,402/-	19,70,216/-
7.	TarakNathHaldar&Anr	F2-987	03.11.2009		03.02.2013	13,40,575/-	9,42,187/-
8	Pramoda Kumar T &Anr.	K-665	20.08.2009	31.08.22009	20.02.2013	21,82,980/-	18,36,641/-
9	Satwant Kaur &Jasbir Singh	A-202	16.04.2009	N/A	2012	9,00,718/-	4,89,478/-
10	Syed Qais Hayat &Anr.	I-0855	20.02.2009	20.02.2009	20.08.2012	25,55,402/-	19,78,399/-
11	Rohit Kumar Sharma	H-0752	26.11.2009	01.12.2009	26.05.2013	27,04,736/-	12,77,562/-
12	VN Narayanan &Anr	C-722	12.05.2009	13.05.2009	13.11.2012	18,61,487/-	18,77,022/-
13	Avsiek Rishi &Anr.	H-551	17.03.2009	17.03.2009	17.09.2012	26,72,127/-	13,99,057/-
14	Shahid Akhtar &Anr.	G-747	16.10.2009	22.10.2009	22.04.2013	31,78,125/-	9,54,735/-
15	Hareesh A &Anr.	F2-890	26.10.2009	26.10.2009	26.04.2013	13,58,400/-	9,04,117/-
16	Amit Chaudhery	F2-1193	09.03.2010	09.03.2010	09.11.2013	15,46,216/-	8,34,160/-
						3,48,41,452/-	2,02,29,910

1. The Complainants allege that the Project has not been completed till date even after about years from the date of the booking. The Opposite Party Developer has indulged in unfair trade practices by utilizing the money collected from the Complainants, for its personal gains and benefits and has further diverted the funds collected from the Complainants to its other projects. The Project has not even reached 50% completion stage, which clearly shows that the Opposite Party has no intention in developing/completing the Project.
2. It is further averred that most of the clauses of the Buyer's Agreement prepared by the Opposite Party were one-sided and the Complainants were compelled to sign the agreement along with its unfair and unreasonable clauses; and in the event if any Complainant raises objection to any such unfair clause, then they were threatened with cancellation of the allotment and the earnest money paid by that person being forfeited, therefore, the buyers were forced to sign the agreement under compulsion.
3. The Complainants allege to have repeatedly, both orally as well as in writing enquired about the status of construction of the project and their unit from the Opposite Party. The Complainants wrote emails/letters to the Opposite Party expressing their concerns over the extent of enormous delay in completing the construction of the project and the delay in handing over the possession of their unit, however, their queries and efforts have gone unaddressed.
4. It was further averred that the Complainants have invested their lifetime savings on the basis of tall claims and promises made by Opposite Party and now the Complainants are left in miserable financial loss since many of the Complainants took huge loans for payment towards the flat and are paying EMIs with heavy interest to the banks and despite having made the payments to the Opposite Party towards the sale consideration, they are further forced to bear and pay heavy monthly rent for alternate accommodation.
5. Moreover, the Opposite Party vide its letter dated 22.07.2011, had informed the Complainant that the title of the Project is clear and free from litigation and furthermore that the project has not been affected in any manner by the farmer's agitation. The same was also advertised by the opposite party in leading newspapers at the time of launch of project.
6. It was also stated that as per clause 1.12 of the Buyer's Agreement, an interest @ 18% p.a. was charged by the Opposite Party in case of any delay in payment of any installment by the Complainants. The Opposite Party has even charged interest @ 18% p.a. towards delayed payments by few of the Complainants. Whereas, the Opposite Party has been indulged in unfair/restrictive trade practices by mentioning a compensation clause 4.5 according to which the Opposite Party has offered compensation @10% p.a. for delay in handing over possession to the Complainants and that too is subjected to certain conditions, which is unjust and the Opposite Party has exploited the Complainants by firstly taking their money and not completing the construction of the project within time. Therefore, the Opposite Party should also be held liable to pay *pendente lite* and future interest @ 18% p.a. to each of the Complainants, till the date of its realization, or such higher interest.
7. Complainants have further submitted that they suffered loss of opportunity as the prices of the residential units have increased to more than 100 percent since the year 2007-2008 and today

the Complainants wish to purchase any other property of a similar size/specification, they would never be able to purchase the same at the prices which were prevailing at the time of booking the property in question.

8. It was also alleged that even after 8 years, the construction of the Project is not even close to completion, there are no laying of roads, utility supplies, access/service roads, facilities, club no sign of rail over bridge etc. It was further alleged that the unexpected, unreasonable and inordinate delay in developing and constructing the project, and facilities and also the delay in handing over possession of the flat, clearly amounts to deficiency in services.
9. Thus the Complainants are left with no other recourse but to file the present Consumer Complaint before this Commission with the following relief:-

“(a) Grant refund of a sum of Rs. 2,02,29,910/- to the Complainants toward principal amount, together with compensation in the form of interest at the rate of 18% per annum along with pendent lite and future interest at the same rate or such higher rate of interest which this Hon'ble Commission may deem fit in the interest of justice, from the date of making payments till the date of actual realization of the payment ;

(b) Grant a sum of Rs.5 lakhs to each of the Complainants towards mental agony and damages, due to the arbitrary acts of the opposite party as detailed above in the complaint ;

(c) Grant cost of Litigation to each of the Complainants; and

(d) Any other order, relief or direction which this Hon'ble Commission may deem fit and proper under the circumstances of the case may kindly be passed in favour of the Complainants and against the Opposite Party.”

1. Upon notice, the Opposite Party has filed its reply to the Complaint. It is, *inter-alia*, contended that the present Complaint is not maintainable in light of Clause 33 of the Agreement executed between the Parties, according to which, all or any disputes arising out of or touching upon or in relation to the terms of the Agreement including its interpretation and validity and the respective rights and obligations of the parties have to be settled amicably by mutual discussion failing which the disputes have to be settled through arbitration. The Opposite Party has further submitted that the Complainant No. 1 has no privity of contract with the Opposite Party and no relief can be granted to the said Buyer's Association. Since the Association was only registered on 12.10.2015, no cause of action has arisen in its favour and therefore, the Complaint qua the Complainant No. 1 must be dismissed. It was also contended that the same Association has been claiming different reliefs from the Opposite Party in different cases with

respect to the same Project. In addition to the instant Consumer Complaint, the Association also a Complainant in CC No.57 of 2016 and CC No.1538 of 2015 seeking distinct and, to a extent, contradictory reliefs. The Complainant No. 1 does not have the 'same interest' a Complainants No. 2 to 17 and have been roped in as a party in these proceedings merely t frustrate the arbitration clause, to overcome the hurdle of limitation, of pecuniary jurisdic and of misjoinder of causes of action. The Opposite Party has also refuted the reliance place on the Order dated 28.08.2015 passed by this Commission in CC No. 120 of 2015. It i submitted that in the said case, only the consumer association was a party and the same ha been formed with the common objective of the welfare of its allottees as opposed to the presen Complainant Association that is formed with the ulterior objective of filing different Consume Complaints claiming different reliefs for different members. Further, the allottees were n parties in their individual capacities in the said complaint and the nature of reliefs sought b the Complainant Association was generic in nature and common to all its members, which not the case here.

2. It is further stated that the Complaint qua Complainant Nos. 2 to 17 is not maintainable as the have failed to establish that they are Consumers within the meaning of Section 2(1)(d) of th Consumer Protection Act, 1986 and that certain Complainants herein are not consumers, viz the Complainant Nos. 5 and 10 have purchased two flats in the Project with the intention o investment/commercial purpose; Complainant No. 6 is a regular investor because when th Project was in its initial phases of development, on 24.07.2010, he had emailed the Opposit Party to transfer funds from Megapolis to another Project of the property in Gurgaon Complainant No. 8 has no locus standi to file the present complaint as the allotment of the sai Complainant already stands cancelled on 11.02.2015 due to default in making timely payme despite several show cause notices were issued to him from time to time; Complainants No. by letter dated 09.09.2011 had requested that all funds paid by him for Flat No. C-422 initiall allotted to him, should be transferred to Flat No. K--665 which the he presently owns, whic proves that the said Complainant regularly purchases apartment for investment purposes unles proved to the contrary; Complainant No. 12 defaulted in making payment despite Show Caus Notices dated 11.07.2014 and 14.01.2015 and the Complainant No. 14 as per the informatio available with the Opposite Party, appears to own least three other properties, in their name viz., (i) A-II, 102, Eldeco Golf View Apartments, Omega - 1, Greater Noida, U.P.; (ii) Flat N S-901, Amrapali Zodiac, Sector 120, Noida, U.P. and (iii) Flat No. 201, Sanyal Enclav Buddh Marg, Patna. Since the Complainants have not established their locus to file the subje complaint evidencing that the apartments purchased by the said parties were for their own us and not for commercial purposes, therefore, the said complaint is not maintainable.
3. It was also stated that the Complainants have filed the instant Complaint by combining sever distinct and independent causes of action which cannot be done. In order to establish the cause of action, each of the Complainants will have to prove the facts that have given the cause to approach this Commission. The rights of each of the Complainants are distinct an fact specific. The relief, if any, which would be granted to the Complainants, woul necessarily involves an independent and distinct investigation into the facts relating to each o the Complainants. Pertinently, a few Complainants had admitted that a force majeure doe exists on account of the farmer agitation, some have defaulted in making payments time an again and some have also had their allotment cancelled. Since each Complainant's case i

peculiar and fact specific, if the Complaint, as filed, is entertained any further, the Opposit Party will have to prove all the facts in its defence in one consolidated and chaotic tri resulting in immense burden and inconvenience to this Commission as well as the Opposit Party. The proposed joinder of causes of action in one Complaint will embarrass and delay th trial and is otherwise extremely inconvenient. The Complainants are abusing the process o law by filing the present Complaint jointly in order to confer jurisdiction on this Hon'bl Commission. Section 21(a)(i) of the Act confers jurisdiction on this Hon'ble Commission onl for Complaints where the value of the goods or services "exceeds rupees one crore". The valu of the services provided to each of the Complainants does not exceed Rupees One Crore. I fact, in some cases the relief does not even amount to 20 lakhs. Therefore, the Opposite Part has contended that the Complaints be returned to each of the Complainants, in order to b presented before the appropriate District or State Commissions, as the case may be.

4. The Opposite Party has further stated that the Complaint is premature and contrary to the term of the Agreement, since as per clause 4.1.a, possession of the units was supposed to be hande over to Complainants No. 2 to 13 within a period of 42 months from the date of signing of th Agreement, however the said clause is subject to clause 4.1.b which states that in the event of force majeure event, the date of possession shall get extended accordingly. Further claus 4.1.b.i also authorizes the Opposite Party to suspend the construction of the apartment for suc period as it may consider expedient during the pendency of a force majeure event and th Complainants voluntarily agreed to not claim compensation for the period of suspensio operation of the force majeure event. Opposite Party has submitted that force majeure conditions continue to exist. That the construction has been delayed on account of event which are beyond the control of the Opposite Party, such as agitation by farmers wherein a efforts were made by the Opposite Party to resolve issue by seeking help from the High Cou of Judicature of Allahabad and District Administration, further time was consumed in takin assistance from the government authorities in order to complete legal obligations and therefor in view of the prevailing force majeure circumstances, the Opposite Party is not liable t refund or pay compensation to the Complainants.
5. The Opposite Party Developer stated to have made all efforts to complete the construction the towers that are the subject matter of the present dispute, however, the agitation an disturbances at the Project Site have critically hampered the construction work of the facilitie common to the entire Project. That since the Complainants had opted for a "construction linke payment plan", no prejudice would be caused to them for the delay being caused i constructing the project.
6. Further, in view of Clause 4.4, the Complainants had to serve a notice upon the Opposite Part within 90 days from the expiry of the period of 42 months, however, no such notice has bee served upon the Opposite Party. That the complainants are bound by the terms of the Contrac thus cannot override the conditions as stipulated in the Agreement and approach thi Commission. Moreover, the Complainants also failed to make timely payments, which wa quintessential for the Opposite Party to continue construction in a timely fashioned manner.

7. < >, Opposite Party has denied the contentions as raised in the Complaint in *toto*. The Opposite Party has thus prayed that the consumer complaint be dismissed.

The Complainants filed Rejoinder to the Reply filed by the Opposite Party Developer in which they denied the contentions of the Opposite Party Developer and stated that the Complainant No.1 is the Registered Association of the Complainants, who has filed the present Complaint seeking similar reliefs as they are identically placed and thus have same cause of action and thus falls within the ambit of Section 21 r/w Section 12(1)(b) of the Act. It was further stated that by Consumer Protection Act, provides additional remedy to the Consumers in addition to the provisions of any other law for the time being in force, therefore, despite having an Arbitration clause in the Agreement they are provided with additional remedy to file complaint under the Consumer Protection Act. In support of their contentions, they relied upon judgment dated 02.05.2016 passed by this Commission in CC No. 346 / 2013 'Lt. Col. Anil Raj & Anr. Vs. Unitech Ltd.' It was also stated that the Project consists of residential flats, plots, floors etc. therefore, the Association has filed different cases for each unit, i.e. separate case for flat, separate case for plot and separate case for flat for members having common grievance and are claiming similar reliefs. They relied upon Order dated 07.10.2011 passed by a larger Bench of this Commission in "Ambrish Kumar Shukla & Ors. Vs. Ferro Infrastructure Pvt. Ltd." (CC No. 97 / 2016) and stated that their booking on different dates, different towers, different rates etc. would not bar them from filing a common case. It was also stated that through various newspapers the Developer advertised that the land is free from all sorts of litigation and vide letter dated 20.07.2011 the Opposite Party Developer also re-assured and re-affirmed that they have purchased the lands on market rates with the consent of the land owners and farmers and there is no dispute on the lands in Project. The Developer collected huge money from the Complainants and utilised the money and now at the time of giving possession, taking excuse of farmers' litigation for delay in possession. The Developer has referred a writ petition for showing the dispute between the Developer and the farmers, in response to this it was stated that the dispute related to only some piece of land which was to be developed as a part of Phase III of the Project, whereas the units allotted to the Complainants fall under Phase I of the Project. It was also stated that the Developer entered into MoU with Bulandshahr Development Authority (hereinafter referred to as BDA) and was decided that Project will be completed in phased manner and the units allotted to the Complainants fall under Phase I of the Project, the possession of which was to be delivered by 06.07.2013 yet till date, the Developer has failed to complete the Project. This is a clear case of unfair trade practice on the part of the Opposite Party Developer. This was also submitted that as per clause 20 of the Development Agreement signed by the Developer with BDA it was agreed that 'if any time during the continuance of this agreement, the performance in whole or part by either party of any obligation under this Agreement shall be prevented or delayed by reasons of any war or riot or natural calamities, the Second Party within 7 days of occurrence and cessation of each Force Majeure conditions shall intimate the First Party by a registered letter, the beginning and end of the above causes of delay. But as per information received under RTI Act, BDA has categorically denied of having such document in their possession that were received from the Opposite Party Developer intimating any force majeure incident. Thus it is clear that the Opposite Party Developer is indulged in Unfair Trade Practice in not completing the Project on time and taking lame excuse of farmer's litigation. It was further stated that as the construction of the flats was at a standstill, the Complainant No. 3 due to fear of blocking further amounts, did not pay until they were threatened for cancellation and forfeiture of amounts already paid by him. The Complainant No. 5 and 10 had purchased

flats – one for his self-residence and other for his children as they wanted to live close to the son in their old age but at the same time give privacy to their children. This does not make them an investor. As far as Complainant No. 6 is concerned, he asked the Developer to transfer his flat to another project as he had changed his plan and wanted to shift to Gurgaon. This switching does not make him an investor. As there was no construction/development at the Project, Complainant No. 8 had withheld the payment, this does not bar him from becoming a consumer. The Complainant No. 9 had initially purchased 2 flats but later on got the payment made towards the other flat merged into the flat which they had purchased earlier, it does not make him an investor as per assumptions made by the Opposite Party.

8. We have heard Mr. Saurabh Jain, learned Counsel appearing on behalf of the Complainant Mr. Rakesh Kumar, learned Counsel appearing on behalf of the Opposite Party perused the material available on record and have given our thoughtful consideration to the argument advanced before us.
9. As far as the contention of the learned Counsel for the Opposite Party Developer regarding Arbitration Clause is concerned, we find it a fit case to place reliance on the Judgment passed by the Hon'ble Supreme Court in *M/S Emaar MGF Land Limited vs. Aftab Singh – I (2019 CPJ 5 (SC))*, in which the Hon'ble Supreme Court has laid down the law that an Arbitration clause in the Agreement does not bar the jurisdiction of the Consumer Fora to entertain the Complaint. Hence, the objection raised by the Learned Counsel for the Opposite Party that the clause of Arbitration bars this Commission from entertaining the Complaint is unsustainable.
10. The contention of the learned Counsel for the Opposite Party Developer that the Complainants are not 'Consumers' and that the subject Flats were booked for investment purpose is completely unsustainable in the light of the judgement of this Commission in *Kavita Ahuja v Shipra Estates I (2016) CPJ 31*, in which the principle laid down is that the onus of establishing that the Complainants were dealing in real estate i.e. in the purchase and sale of plots/ flats in his normal course of business to earn profits, shifts to the Opposite Party Developer, which in the instant case the Opposite Party Developer had failed to discharge by filing any documentary evidence to establish their case. The allegation of the Opposite Party based on its assumptions. Therefore, we are of the considered view that the Complainants are 'Consumers' as defined under Section 2 (1)(d) of the Act.
11. The Opposite Party Developer contended that due to farmers' agitation delay occurred in completing the Project. It is not disputed that at the time of booking of the Flats in the Project through various newspapers, the Developer advertised that the land is free from all sorts of litigation and vide letter dated 20.07.2011 the Opposite Party Developer also re-assured and re-affirmed that they have purchased the lands on market rates with the consent of the land owners and farmers and there is no dispute on the lands in Project and the Project is not affected by the recent rulings given by the Hon'ble Allahabad High Court as well as by

Hon'ble Supreme Court of India. Now at this stage, the Opposite Party Developer cannot take advantage of lame excuse that the delay is due to farmer's agitation the Project could not be developed within stipulated period. Secondly, the land dispute is regarding the piece of land which belongs to Phase III of the Project, whereas in the present case, the allotted flats belong to Phase I and II of the Project. Thirdly, as per clause 20 of the Development Agreement signed between the Developer with BDA it was agreed that 'if any time during the continuance of the agreement, the performance in whole or part by either party of any obligation under the Agreement shall be prevented or delayed by reasons of any war or riot or natural calamity the Second Party within 7 days of occurrence and cessation of each Force Majeure condition shall intimate the First Party by a registered letter, the beginning and end of the above cause of delay. But as per information received under RTI Act, BDA has categorically denied having such document in their possession that were received from the Opposite Party Developer intimating any force majeure incident. The delay in development of the Project by the Developer cannot be justified on such bald allegation without substantiating the same by hard evidence. We do not find any force in the defence taken by the Developer.

12. The learned Counsel for the Opposite Party Developer contended that some of the Complainants are not consumers as they failed to make payment, after due show-cause notice and their allotments were cancelled as per terms of the Agreement and they are bound by the terms of the Agreement. We have gone through the Clauses of the Agreement. Clause 1.1 and Clause 4.5 of the Agreement read as under:

"1.19 TIME IS ESSENCE

That the timely payment of instalments as stated in Annexure-1 of the Arrangement an applicable stamp duty, registration fee and other charges payable under this Arrangement the essence of this Arrangement. In the absence of any notice of demand issued by the Developer/SPV, it shall be incumbent on the Allottee(s) to strictly comply with the terms of timely payment and the other terms and conditions of this Arrangement, failing which allotment shall stand cancelled and the entire amount of Earnest Money deposited by him shall be forfeited. In exceptional circumstances, the Developer/SPV may at its sole absolute discretion condone the delay in payment by charging an interest @ 18% p.a on the amount outstanding. In the event of the Developer/SPV waiving the right of forfeiture and accepting payment of that account, no right, whatsoever, would accrue to any other defaulting allottee(s) (The Allottee(s)/Purchaser). The Allottee(s) agrees and accept that in case of any default /delay in payment as per the schedule of payment as provided in Annexure - the date of handing over of possession shall be extended accordingly solely at the Developer/SPV's discretion till the payment of all outstanding amounts to the satisfaction of the Developer/SPV .

4.5 FAILURE TO DELIVER POSSESSION REMEDY TO THE DEVELOPER/SPV

The ALLOTTEE(s) agrees that in consequence of the Developer/SPY abandoning the Scheme or becoming unable to give possession within 42 months from the date of sanction of the lay out plan or such extended periods as permitted under this Arrangement, the Developer/SPV shall be entitled to terminate this Arrangement whereupon the Developer/SPV's liability shall be limited to the refund of the amounts paid by the Allottee(with simple interest 10% per annum for the period such amounts were lying with the Developer/SPV and to pay not other compensation whatsoever."

13. A bare perusal of above Clauses makes it clear that as per Clause 4.5 of the Flat Buy Agreement, in case of failure to deliver possession, the Opposite Party Developer is liable to refund of the amounts paid by the Allottee(s) with simple interest 10% per annum for the period such amounts were lying with the Developer/SPV and to pay not other compensation whatsoever, whereas in terms of Clause 1.19 in case of late payment, the Complainant/Buyer liable to pay interest @18% p.a. This shows that the terms of the Agreement are wholly one-sided and unfair. Therefore, the Complainant cannot be made bound to the terms of the Agreement, which is one-sided and unfair in the light of the recent Judgment of the Hon'ble Apex Court in ***Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, II (2019 CPJ 34 (SC)***, wherein the Apex Court has observed as follows:

"6.7. A terms of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.

7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent-Flat Purchaser. The Appellant-Builder cannot seek to bind the Respondent with such one-sided contractual terms. "

14. It is not in dispute that the Complainants were allotted the Flats in the year 2009 and till date the construction of the flat is not completed. Keeping in view the Judgment passed by the Commission in ***Emmar MGF Land Ltd. & Ors. vs. Amit Puri [II (2015) CPJ 568 NC]*** wherein it was laid down that after the promised date of delivery, it is the discretion of the Complainant whether he wants to accept the offer of possession, if any, or seek refund of the amounts paid with reasonable interest, it is held that it is well within the Complainant's right to seek for refund of the principal amount with interest and compensation as construction is still not complete. We are of the view that the Complainant cannot be made to wait indefinitely for the delivery of possession and the act of the Opposite Party in relying on Farmers' agitation

while retaining the amounts deposited by the Complainants, is not only an act of Deficiency of Service but also amounts to Unfair Trade Practice.

15. We find it a fit case to place reliance on the Judgment of the Hon'ble Supreme Court in *Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 SC*, in which the Hon'ble Apex Court has observed as hereunder:

“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 circumstances, we are of the view that the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified ”

16. In the instant case also the Complainants cannot be made to wait indefinitely for possession of the Flats, as the construction is not completed. Therefore, we are of the considered view that the Complainants are entitled for refund of the principal amount with reasonable interest which we quantify @9% p.a. from the date of respective date of deposit till the date of actual refund. Consequently, the Opposite Party Developer is directed to refund the amount deposited by each of the Complainants alongwith interest @9% p.a. from the date of respective date of deposit till the date of actual refund within 6 weeks from the date of passing of this Order failing which the rate of interest will increase from 9% to 12% p.a.
17. With the aforesaid directions, the Consumer Complaint stands disposed off. However, there shall be no Order as to costs. The pending application, if any, also stands disposed off.

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**R.K. AGRAWAL
PRESIDENT**

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**DR. S.M. KANTIKAR
MEMBER**