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NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 854 OF 2016

1. DR. SATPAL KAUR NALWA & ANR.
HOUSE NO. 841, 1ST FLOOR, PHASE 3B1, SECTOR 60,
MOHALI-160059,PUNJAB ....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LIMITED & ANR.
ECE HOUSE, 28, KASTURBA GANDHI MARG,
NEW DELHI-110001

2. M/S. EMAAR MGF LAND LIMITED
SCO NO. 120-122, 1ST FLOOR, SECTOR-17C,
CHANDIGARH-110017 ....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT

For the Complainant : Ms.RarannumCheema, Advocate
Mr. Akash Singh, Advocates

For the Opp.Party : Mr. Aditya Narain, Advocate
Mr. Mishra Raj Shekhar, Advocate

Dated : 01 May 2023

ORDER

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1. The present Consumer Complaint has been filed under Section 21of the Consumer Protection Act, 1986 (for short "the Act") by Dr. Satpal Kaur Nalwa and Karambir Singh Nalwa (hereinafter referred to as the Complainants) against Opposite Party, M/s. Emaar MGF Land Limited (hereinafter referred to as the Developer), seeking refund of the amount paid towards purchase of Villa alongwith interest, compensation and costs as the Opposite Party Developer failed to hand-over the possession of the Villa booked by them in the Project launched by the Developer in the name and style of "The Villa" located at Mohali Hills in Augusta Greens, Sector 109, SAS Nagar, Mohali (Punjab).

2. Brief facts of the case are that the Opposite Party Developer issued advertisements about a residential colony namely 'The Villas' situated at Mohali Hills in Augusta Greens, Sector 109, SAS Nagar, Mohali (Punjab) (hereinafter referred to as the Project) consisting of high-end Villas around Golf Course with car parking spaces, recreational facilities and landscaped gardens. Allured by the representations made by the Opposite Party Developer, the Complainants booked a Villa in the said Project by depositing the booking amount of ₹11,00,000/- on 29.10.2007 with the Opposite Party Developer on the basis of which a provisional allotment letter dated 24.12.2007 was issued and Villa No. VLM/AV/109/AG/283 in Sector 109, SAS Nagar, Mohali to be built up on a plot area of 300 square yards was allotted to the Complainant for a total consideration of ₹1,26,01,104/-. The Buyer's Agreement was executed between the Parties on 06.02.2008. As per clause 8 of the said Agreement, the possession of the Villa was to be delivered within 24 months from the date of execution of the Agreement but not later than 30 months, meaning thereby the Possession was to be delivered by 06.08.2010. The Complainants were to pay the instalments within 30 days of the demand letter and all the instalments were being paid on time. As the Complainants were paying all the instalments on time, the Opposite Party Developer vide their letter dated 02.02.2009 congratulated the complainants on qualifying for 'Paying on Time' reward whereby the last instalment i.e. 10th instalment of

5% basic price shall be waived off. So as to ensure timely instalments, the Complainants took a home loan of ₹20,00,000/- on 24.03.2009 from Punjab and Sind Bank, Sector 17, Chandigarh to ensure that they pay the remaining instalments on time. Accordingly, a tripartite agreement dated 25.03.2009 was signed between the Complainants, Opposite Party Developer and Punjab and Sind Bank. The Complainants cleared the bank loan within three years and the same was duly intimated to the Opposite Party Developer. The Complainants till 07.09.2010 had made a payment of ₹1,07,90,736/- to the Opposite Party Developer. That the Opposite Party Developer vide letter dated 23.09.2010 requested for payment of an instalment (last instalment to be paid by complainants) of ₹11,80,910/- on alleged start of flooring work. A number of emails were exchanged between the Opposite Party Developer and the Complainants wherein, the former kept giving reasons for the delay in giving possession on some pretext or the other. The Complainant vide email dated 10.03.2014 categorically pointed out the delay of more than four years in handing over possession of the villa but were reassured that the same shall be completed soon. On 23.07.2015, the Complainants again visited the site to check the status of the construction and were shocked to know that no construction work has progressed on the site for the last about three years with wild grass grown on the entry of the villa which only showed that no work was going on the site and it was in a dilapidated condition, much worse than 2011. It is the case of the Complainants that due to the delayed completion of work by the Opposite Party Developer, the complainants were constrained to shift into a rented accommodation in September 2010 and were staying in rented accommodation till September 2017. Despite having received the substantial sale consideration, the Opposite Party Developer miserably failed to deliver the possession of the Apartment within stipulated period. It is averred by the Complainants that they continued to follow up with the Opposite Party Developer through various correspondence, meeting and telephonic conversation with their representative but whenever the Complainant raised query for actual date of possession, the Opposite Party Developer without assigning any reason for the delay, kept postponing the delivery date of the said Project on one pretext or the other. Seeing the conduct of the OP Developer, they have no trust on the Opposite Party Developer and are no longer interested in having possession of the Villa. The Complainants served a detailed notice on 16.09.2015 seeking refund of amount paid along with interest and compensation due to delay of more than 5 years and 6 months in handing over possession of built-up villa till date of notice, but to no avail.

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3. Alleging deficiency in service and unfair trade practice on the part of the Opposite Party Developer, the Complainant has filed the presentComplaint with following prayer:-

“a) Allow the present complaint and declare the conduct of the Opposite Parties to be unfair trade practices and that they have rendered deficient services

b) Direct the Opposite Parties to refund the principal amount of ₹1,07,90,736/- (Rupees One Crore Seven lacs Ninety thousand seven hundred thirty six only) paid by the complainants along with interest @ the rate as being demanded by the opposite parties in clause 26 of the agreement i.e 18% per annum with effect from the respective dates of deposits till realization/refund.

c) Award compensation of ₹10,00,000/- (Ten Lacs Only) for harassment and mental agony”

d) Award litigation expenses of ₹1,00,000/- (One Lac Only)

e) Pass any other order or direction as this Hon'ble Commission may deem fit in the interest of justice.

4. The Opposite Party Developer contested the Complaint by filing its Written Statement in which it raised inter alia, preliminary objections that clause 43 in the Buyer's Agreement provided for the settlement of disputes relating to the agreement amicably and on failure of which the dispute shall be referred for arbitration. Therefore, by virtue of Section 8 of the newly amended Arbitration and Conciliation Act, it was mandatory for this Commission to refer the matter to arbitration. It was submitted that the Arbitration and Conciliation Act, 1996 being a special Act and having been passed after the Consumer Protection Act, 1986 would have overriding effect over Section 3 of the Consumer Protection Act.

5. It was contended that Complainants could not be regarded as 'consumers' in terms of Section 2(1)(d)(ii) of the Act as their Prayer established that the Villa was booked for investment purpose only and that the Complainants were never interested in seeking possession of the Villa. Therefore, the Complaint ought to be dismissed on this ground alone. It was submitted that the Buyer's Agreement provided that in case of any delay in delivery, the Opposite Party Developer shall be liable to pay a delay compensation at the rate of Rs.50/- per sq yd. per month, provided the Complainants themselves have not made any breach of the terms of the Agreement. It was submitted that since the Complainants were bound by the terms of the Buyer's Agreement, which they have voluntarily entered into, it was not now open to them to seek absurd and exaggerated reliefs beyond the scope of the Buyers Agreement dated 06.02.2008. It was brought to light that the Complainants' defaulted in making payment of instalments due under the Construction linked payment plan opted by them. It was submitted that the Complaint could not be entertained for non-joinder of necessary party i.e. Punjab & Sind Bank, Chandigarh. It was further submitted that the Complaint was based on the alleged non-fulfilment of contractual obligation by the Opposite Party Developer under the Agreement. If the Opposite Party Developer were at fault, the present dispute would only be a breach of contract and the proper remedy, if at all, was to file an appropriate Civil Suit before a Civil Court. It was contended that Complainants herein were themselves habitual defaulters in making timely payment of instalments, thus, they could not insist upon the delivery of possession within the tentative period stipulated in terms of the Buyers Agreement which was contingent upon them making timely payment.

6. Ms. Tarannum Cheema, learned Counsel appearing on behalf of the Complainants submitted that the Opposite Party Developer made many false promises and vide their letters dated 25.9.2012, 6.3.2014 and 13.3.2014 showed repeated misrepresentations made by the company with regard to handling over of possession of the built-up villa. They submitted that the Opposite Party Developer was sending monthly emails to all customers for updating on the latest developments of their Project. Complainants too received one such e-mail dated 17.08.2015 which had a web link, upon clicking which the status of 12 villas in Sector 109 Mohali showed that the plaster work, flooring work and finishing work was in progress. The complainants were shocked as the request for instalment of ₹13,62,410/- on 'start of plastering work' was made on 16.08.2010 and the same was paid on 06.09.2010 within stipulated time period. However, the Opposite Party Developer's website itself revealed that the plaster work was still in progress in July 2015 for which instalment was collected in September 2010. Further even the instalment for 'starting of flooring work' asked in September 2010, was also continuing for last 5 years. Therefore, due to non-completion and inordinate delay by the opposite parties, the complainants were constrained to shift into a rented accommodation in 2010 and were staying in rented accommodation till September 2017 and spent more than ₹20,00,000/- on the same, which were also reflected in the Income Tax Returns of Complainant No. 2. Furthermore, it was urged with respect to the quantum of compensation claimed that the Hon'ble Supreme Court in Ghaziabad Development Authority v. Balbir Singh (2004 (5) SCC 65) while dealing with the question of whether grant of interest at 18% was justifiable, noted that an award of exemplary damages, could serve a useful purpose in indicating the strength of law.

7. Per contra, Mr. Aditya Narain, learned Counsel appearing on behalf of the Opposite Party Developer reiterating the contentions raised in the Written Statement submitted that the possession of the said Villa had been offered to the Complainants vide letter of offer of possession dated 15.03.2018 after completion of all the amenities as mentioned in the Buyers Agreement dated 6.2.2008 asking them to come forward and take possession of the said unit after clearing the outstanding dues and it was the Complainants

who chose not to come forward to take possession of the said Villa. It was submitted that Complainants were not covered by the definition of "consumer" under S.2(1)(d) (ii) as they admittedly own another residential house namely 142/2, Sector 45A, Chandigarh. Furthermore, Complainant No. 1 also jointly owns house H.No.328, Sector 11, Panchkula which was mortgaged for the loan. It was argued that was no averment much less any evidence that Complainants did not own any other property. It was urged that there was no explanation as to why the Complainants were insisting on refund of amount deposited with interest and compensation and not taking possession of the Villa which had been offered on 15.3.2018 particularly when the delayed compensation had been adjusted in favour of the Complainants. It was submitted that Opposite Party Developer had filed an application bearing I.A. No. 6757 of 2016 for referring the present matter to the Arbitration as per clause 43 of the Buyers Agreement.

8. It was further urged that the Covid 19 pandemic and the ensuing lockdowns, the prevailing market conditions must be considered in order to determine the compensation to be awarded, for the same reference was made to DLF Home Developers Ltd. &Anr. V Capital Greens Flat Buyers Association (C.A. No. 3864-3889 of 2020) whereby the Hon'ble Supreme Court recently granted compensation at the rate of 6% per annum. It was submitted that the Opposite Party Developer had made efforts to settle the matter with an offer to refund of the amount deposited with a reasonable compensation which was not accepted by the Complainants who pressed for the prayer made in the Complaint. It was further submitted that there was no deficiency in service on their part and it was prayed that the Consumer Complaint be dismissed.

9. I have heardMs. Tarannum Cheema, learned Counsel for the Complainant Company; Mr. Aditya Narain, learned Counsels for the Opposite Party Developer, perused the material available on record and have given thoughtful consideration to the various pleas raised by them.

10. In view of the Judgment passed by the Hon’ble Supreme Court in “M/s Emaar MGF Land Limited vs. Aftab Singh – I (2019) CPJ 5 (SC)’ wherein it has been laid down that an Arbitration clause in the Agreement does not bar the jurisdiction of the Consumer Fora to entertain the Complaint, the objection raised by the learned Counsel for the Opposite Party Developer that the clause of Arbitration bars this Commission from entertaining the Complaint is unsustainable. Accordingly, IA No. 6757 / 2016 filed by the Opposite Party Developer seeking permission to refer the present case to Arbitrator, is dismissed.

11. So far as the next objection raised by the Opposite Party Developer that the Complainants are not ‘Consumers’ and that the subject Villa was booked for investment purpose is completely unsustainable in the light of the judgement of this Commission in Kavita Ahuja vs. Shipra Estates I (2016) CPJ 31, in which the principle laid down is that the onus of establishing that the Complainant No.1 was 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, which in the instant case the Opposite Party Developer had failed to discharge by filing any documentary evidence to establish their case. Therefore I am of the considered view that the Complainants do fall within the definition of ‘Consumer’ as defined under Section 2 (1)(d) of the Act and the Complaint does fall under the jurisdiction of this Commission.

12. With regard to the submission made by the learned Counsel for the Opposite Party Developer that the Complainants has defaulted in timely making payment of the instalments, I am of the considered view that if there was default in making the timely payments by the Complainant, the Opposite Party Developer was empowered in terms of Agreement either to charge interest on the delayed payment to or cancel the allotment and refund the deposited amount, however, the Opposite Party Developer has neither cancelled the allotment nor refunded the amount. Therefore, I see no force in on the said submission and it is rejected.

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13. The contention of the learned Counsel for the Opposite Party Developer that the Complainants are bound by the terms of the Agreement and it did not give any rise to any cause of action to Complainant to file the present Complaint and the Complainants are entitled for compensation as per terms of the Agreement, I have gone through the various clauses of the Agreement. Clause 8 and 26 of the Agreement read as under:-

"8. ....In the event that the Company fails to deliver possession of the Built up villa without existence of any force majeure event or reason beyond the control of the Company within a maximum period of 3 years from the date of execution of this Agreement, the Company shall be liable to pay the Allottee, a penalty of sum of Rs.50/- per sq. yds. per months for such period of delay beyond 3 years from the date of execution of this Agreement......

26. …….However, the Company may, in its sole discretion, waive its right to terminate the allotment/agreement and enforce all the payments and seeks specific performance of the Buyers' Agreement. In such a case, the possession of the Unit will be handed over to the Allottee only upon the payment, by the Allottee(s), of all outstanding dues, penalties etc., along with interest at the rate of 15% p.a. for the first 90 days from the date of instalment as per the Payment Plan, and for the period exceeding first 90 days after the due date at the rate of 18% p.a. till the date of payment to the full satisfaction of the Company.."

14. A bare perusal of above Clauses makes it clear that as per Clause 26 in case of delay, the Allottees/Complainants are liable to pay interest @18%, whereas as per Clause 8, in case of delay in possession, the Opposite Party Developer is liable to pay meager compensation in the form of ₹50/- per sq. yd. This shows that the terms of the Agreement are wholly one-sided and unfair. Therefore, the Complainants cannot be made bound to the terms of the Agreement, which are 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:

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"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."

15. The learned Counsel for the Opposite Party Developer submitted that the possession of the said Villa had been offered to the Complainants vide letter of offer of possession dated 15.03.2018, but it is the Complainants who did not come-forward to take the possession. Undisputedly, as per terms of the Agreement, the Opposite Party Developer was obliged to give possession by 06.08.2010 but the possession was offered only on 15.03.2018, i.e., after a delay of more than 7½ years from the expected date of delivery. A reference can be made to the decision of the Hon'ble Supreme Court in Civil Appeal No. 12238 of 2018 Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan & Connected Matter decided on 02.04.2019 and the decision of the Hon'ble Supreme Court in Civil Appeal No. 3182 of 2019 Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra decided on 25.03.2019, wherein it has been held that in a case of an unreasonable delay in offering possession of the allotted flat, the consumer cannot be compelled to accept possession at a belated stage and is entitled to seek refund of the amount paid by him to the builder with compensation.

16. 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."

17. 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, 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., 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.

6.3. The National Commission in the Impugned Order dated 23.10.2018 held that the Clauses relied upon by the Builder were wholly one-sided, unfair and unreasonable, and could not be relied upon.

The Law Commission of India in its 199th Report, addressed the issue of 'Unfair (Procedural & Substantive) Terms in Contract'. The Law Commission inter-alia recommended that a legislation be enacted to counter such unfair terms in contracts. In the draft legislation provided in the Report, it was stated that :

"A contract or a term thereof is substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties."

6.6. Section 2 (r) of the Consumer Protection Act, 1986 defines 'unfair trade practices' in the following words :

"'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice …", and includes any of the practices enumerated therein. The provision is illustrative, and not exhaustive.

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6.7. A term 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 could not seek to bind the Respondent with such one-sided contractual terms.

8. We also reject the submission made by the Appellant – Builder that the National Commission was not justified in awarding Interest @10.7% S.I. p.a. for the period commencing from the date of payment of each instalment, till the date on which the amount was paid, excluding only the period during which the stay of cancellation of the allotment was in operation.

18. In the instant case, it is not in dispute that the Complainants were allotted the Villa on 24.12.2007. As per terms of the Agreement executed between the Parties, the proposed date for delivery of the possession of the Villa was 06.08.2010. Despite having received a huge sum of ₹1,07,90,736/- (Rupees One CroreSevenLacs Ninety Thousand Seven Hundred Thirty Six only) on different dates upto07.09.2010, the Opposite Party Developer had failed to deliver the possession of the Villa even after more than 11 years of the booking of the Villa. Admittedly, the possession of the Villa was offered only on 15.03.2018, i.e., after more than 11 years from the date of booking of the Villa. The Complainants cannot be made to wait indefinitely. The Complainantshad not made a prayer for delivery of possession in the Consumer Complaint but sought refund of the amount paid by them to the Opposite Party Developer on account of the delay in offering possession of the allotted Villa to them.

19. Respectfully following the principles laid down by the Hon'ble Supreme Court in Devasis Rudra (supra) and Pioneer Urban Land & Infrastructure Ltd. (supra), I am of the considered view that the Complainantsare entitled for refund of the entire deposited amount along with damages/compensation.

20. It is the case of the Complainants that in view of the principle laid down by the Hon'ble Supreme Court in Ghaziabad Development Authority v. Balbir Singh (2004 (5) SCC 65), they are entitled for delay compensation in the form of simple interest @18% p.a. Per contra, relying upon the Judgment passed by the Hon'ble Supreme Court in DLF Home Developers Ltd. &Anr. V Capital Greens Flat Buyers Association (C.A. No. 3864-3889 of 2020), it was prayed on behalf of the Opposite Party Developer that if any delay compensation is awarded it should not be more than 6% p.a.

21. Having considered the rival contentions of both the Parties, it is observed that the Hon'ble Supreme Court vide Order dated 05.06.2020 passed in Civil Appeal No. 2504/2020 entitled "Prateek Infra Projects India Pvt. Ltd. vs. Nidhi Mittal and Anr.", has scaled down the rate of interest awarded towards damages by this Commission to 9% per annum. Similar view was also taken in Civil Appeal No. 62/2021 entitled "M/s. NexgenInfracon Pvt. Ltd. vs. Manish Kumar Sinha & Anr." and in Civil Appeal No. 5109/2021 entitled "M/s. NexgenInfracon Pvt. Ltd. vs. Sanjay Dhall". In "Ireo Grace Realtech Pvt. Ltd. vs. Abhishek Khanna & Ors." (2021) 3 SCC 241", the Hon'ble Supreme Court has also awarded compensation in the shape of simple interest @9% p.a. on the deposited amount, by observing as under:-

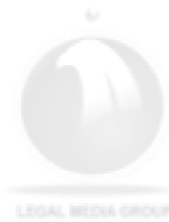
…….We have considered the rival submissions made by both the parties. The Delay Compensation specified in the Apartment Buyer's Agreement of 7.5 per sq. ft. which translates to 0.9% to 1% p.a. on the amount deposited by the Apartment Buyer cannot be accepted as being adequate compensation for the delay in the construction of the project. At the same time, we cannot accept the claim of the Apartment Buyers for payment of compound interest @ 20% p.a., which has no nexus with the commercial realities of the prevailing market. We have also taken into consideration that in Subodh Pawar v. IREO Grace, this Court recorded the statement of the Counsel for the Developer that the amount would be refunded with Interest @ 10% p.a. A similar order was passed in the case of IREO v. Surendra Arora. However, the Order in these cases were passed prior to the out-break of the pandemic.

We are cognizant of the prevailing market conditions as a result of Covid-19 Pandemic, which have greatly impacted the construction industry.

22. Keeping in view the peculiar facts and circumstances of the case as also the principles laid down by the Hon'ble Supreme Court in afore-noted Judgments, I am of the considered view the Complainants are entitled for refund of the entire deposited amount along with damages and compensation in the form of simple interest@9% p.a. from the respective date of deposit till the date of actual refund. Since the damages in the form of interest @9% p.a. on the deposited amount has been awarded, the Complainants shall not be entitled for any other compensation in view of the Judgment passed by the Hon'ble Supreme Court in "DLF Homes Panchkula Pvt. Ltd Vs. D.S. Dhanda, II (2019) CPJ 117 (SC)", wherein it has been held that when interest is awarded by way of damages awarding additional compensation is unjustified.

23. Consequently, the Opposite Party Developer is directed to refund to the Complainants a sum of ₹1,07,90,736/- (Rupees One Crore Seven Lacs Ninety Thousand Seven Hundred Thirty Six only) alongwith interest @9% p.a. from the respective dates 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 to 12% p.a. The Opposite Party Developer is also directed to pay a sum of ₹50,000/- towards cost to the Complainants within six weeks from today.

24. The Consumer Complaint is partly allowed in above terms. The pending applications, if any, also stand disposed off.



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R.K. AGRAWAL
PRESIDENT