

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

CONSUMER COMPLAINT NO. NC/CC/884/2020

SRI RADHA SKYGARDEN HOMEBUYERS ASSOCIATION

PRESENT ADDRESS - H.NO. 2-0-47, F/P T/F. P LAJPAT NAGAR, NEW DELHI , South East ,
DELHI ,

MR. SANJAY KUMAR DUBEY

PRESENT ADDRESS - .

MR. DHARMENDRA MOHAN

PRESENT ADDRESS - .

.....Complainant(s)

Versus

M/S SJP INFRACON LTD.

PRESENT ADDRESS - 1ST FLOOR, SHRI RADHA AQUA GARDENS, PLOT NO. GH-05,
SECTOR 16B, GREATER NOIDA, WEST G.B. NAGAR - 201008 GH- 05, SECTOR 16B
GREATER NOIDA, GAUTAM BUDDHA NAGAR, GREATER NOIDA 201301. , GAUTAM
BUDDHA NAGAR , UTTAR PRADESH ,

.....Opposite Party(s)

BEFORE:

HON'BLE MR. BINOY KUMAR , PRESIDING MEMBER

HON'BLE MRS. JUSTICE SAROJ YADAV , MEMBER

FOR THE COMPLAINANT:

MR. SAHIL SETHI, ADVOCATE MS. ARUSHI MANN, ADVOCATE MR. VIKASH
KUMAR, ADVOCATE

FOR THE OPPOSITE PARTY:

MS. ANAM SAHAR, ADVOCATE

DATED: 17/03/2025

ORDER

PER MRS. JUSTICE SAROJ YADAV, MEMBER

The present Consumer Complaint has been filed under Section 58(1)(a)(i) of the Consumer Protection Act, 2019 (for short the Act) by Sri Radha Skygarden Homebuyers Association (hereinafter referred to as Complainant) against M/s SJP Infracon Ltd. (hereinafter referred to as Opposite party, in short OP).

1. The brief facts of the case are that M/s SJP Infracon Ltd., OP had announced a group housing project named Shri Radha Sky Gardens in the year 2010. But the said project did not commence as the land allotted was under dispute. The complainant in the present complaint is Sri Radha Skygarden Homebuyers Association, a voluntary consumer association with the objective of protecting the collective interest of buyers of Group Housing Project Shri Radha Sky Gardens. Initially the complaint was filed on behalf of 34 homebuyers/ allottees but now at present there remain 21 homebuyers/allottees.

2. The home-buyers have raised the concern that they have booked apartments in the project being impressed by the highly alluring and attractive promises made by the OP. After booking the apartment and making payment, the OP gave them standard form allotment letters which contain various one-sided and arbitrary conditions. Even after about 95% of consideration being paid, the OP had failed to deliver possession of apartment. As per clause 22 of the Allotment Letter the OP was obliged to give possession of the apartments within the stipulated timeline. However, the OP failed to deliver possession. As per Clause 22 of the said Allotment Letter if there is delay in delivery of possession the OP shall entail only token compensation of Rs.5 per sq. ft. for each month of delay. The OP had stalled the construction after receiving nearly 95% of the consideration and due to this fall out the consumers has to bear huge financial losses, as while on one hand, their hard earned money is blocked and on the other hand, they had to wait indefinitely for the occupancy of their respective apartments. In the month of March 2019, the OP has issued the 'Offer of Possession' letter to the consumers. The OP has charged interest for the delayed payment, whilst there has been no delay in making payment by the concerned consumers. The OP along with this has also charged Farmers Compensation @ Rs.75/- per sq. ft. on sale area from consumers for booking made before 25th June, 2013. The OP has shifted the financial burden of paying the farmers to the consumers. The offer of

possession issued by the OP was done on the basis of a Temporary Occupancy Certificate (hereinafter referred as "TOC") dated 18th March, 2019 issued by the Greater Noida Industrial Development Authority (hereinafter referred to as the 'Authority'). The TOC dated 18th March, 2019 mentions that the building does not conform to the requirements of the Authority's regulations/directions and hence only TOC was granted with the condition to remove the defects/ discrepancies. The Authority has previously issued a similar letter dated 1st September, 2017 to the OP granting a TOC and pointing out deficiencies, however, the same continued to be reflected in the letter dated 18th March, 2019.

3. Though in the original complaint multiple prayers were made, now through IA no. 16311/2024 dated 07.11.2024, the Complainant has prayed as under:

"..... Complainant Association respectfully prays this Hon'ble Commission be pleased to direct the Respondent to procure the Occupancy Certificate/Completion Certificate within a period of 2 (two) months. The Hon'ble Commission to direct the Respondent to handover possession of apartments to respective concerned consumers, complete in all respects and in conformity with the Allotment Letter and for the consideration mentioned therein (without any excess demand on account of farmer's compensation), with all additional facilities and as per quality standards promised, and execute all the necessary and required documents in respect of the apartments in favour of the respective concerned consumers, within a period of 2 (Two) months. Further, the Respondent be directed to pay compensation to the concerned consumers on account of delay in handing over the possession of the apartments from the date of promised date of delivery till the actual date of possession."

4. The notice was served on OP. The OP appeared and filed its written statement stating that –

5. The present complaint is false, frivolous and barred by law of limitation. They have stated that they have launched total 19 Towers in the entire project and out of 19 Towers; total 16 Towers have been completed and delivered successfully. As on date total 965 allottees have executed their sub-lease deeds and total 535 allottees are residing in their flats/apartments. The project is left with 3 Towers for which the Occupancy Certificates have already been applied with the Authority. The letter for offer of possession has been issued to the allottees of Tower, including these allottees herein. Therefore, the present complaint has concealment of facts filed with ulterior motives and same is *contra legem* and liable to be dismissed. Action of the complainant is not bonafide as the *modus operandi* is to extort money and gain undue advantage. The complaint has been filed with malafide intention or ulterior motives of some of the residents who have failed to fulfill their part to pay their balance amount.

6. In the year 2010, the OP was allotted the land by the Greater Noida and then the OP announced a Group Housing Complex under the name Shri Radha Sky Garden at GH-05, Sector 16B. The Authority allotted an issue less land admeasuring 1,98,135.62 Sq. meters by way of public announcement and procedures of the Authority. It is denied that the project could not commence for reasons that the land was under dispute. In pursuance of the order/directions of the Authority, they had to return the land total admeasuring 71,833.62 Sq. meters to the Authority as per land acquisition proceedings and they were left with 1,26,302 sq. meters. Now the area available with them was 1,26,302 sq. meters. The Allotment Letters have been entered into by the consumers only after reading and understanding the terms.

7. The project is nearby 100% complete with all basic amenities and the Occupancy Certificate for all 19 Towers have been applied and obtained. However, the Occupancy Certificate for 3 Towers is under the process by the Authority and the letter has been

issued to the allottees, including the allottees herein in the complaint. Further due to various reasons beyond the control and adverse circumstances, the pace of work was halted from time to time and for this reason they moved an application dated 19.08.2016 to the Authority for extension of period to complete the project in question. The Authority by letter dated 02.09.2016 had allowed the extension. The allottees herein in the complaint are in breach of the allotment letter's terms as they were supposed to pay their balance 10% amount at the time of offer of possession.

8. The contention raised by the concerned Allottees/home-buyers that allotment letters have one sided and arbitrary terms imposed on them, is vehemently denied. The allottees prior to entering into agreement/allotment letters had visited the site as well as inquired every aspect of the project. Only after being convinced had entered into and signed the agreement. No allottee herein has made 95% payment. Only 90% payment has been received but despite of this, the pace of work was never halted.

9. The pace of work was affected due to adverse/unforeseen circumstances but despite this they have almost completed the project in question. Owing to demonetization in the year 2016 and because of GST implications the Real Estate and construction industry had to bear huge financial losses as well as in 2020, the COVID-19 had halted the pace of the work. The letter/direction dated 08.06.2012 was issued by the Authority for not to carry on with the construction. The Clause no.42 of the allotment letter protects the rights and obligations of the OP, arising out of the delay of the project caused due to unforeseen circumstances. It is submitted that the complainant has interpreted only half terms of the allotment letter. The copy of intimation for completion of Group Housing Project Shri Radha Sky Gardens dated 25.06.2019 issued by the Authority has been attached. The allottees got executed their sub-lease deed on 30.06.2021. It is denied that the offer of possession issued by the OP has been made on the basis of a TOC dated

18.03.2019. All the points raised by the Authority in its TOC have already been completed and then on being satisfied, the Authority issued the Occupancy Certificate.

10. The OP had sent reminder email/letters to the concerned allottees/home-buyers to pay the amount and get apartment registered. The fact that they were being harassed is denied. The allottees are well aware that only after execution of the sub-lease deed/registration of the flat, the OP shall complete the finishing of the flat within next 45 days from the date of sub-lease deed as per terms of the allotment letter. It is vehemently denied that allottees were lured to book the apartments. Further the fact that the Club Membership fee was collected in advance even before the club was constructed is denied and true situation is that the Club House has been completed and hence arises no question of refund. The OP has not charged allottees/home-buyers with Preferential Location Charges (PLC) for park facing apartments.

11. The complainant has filed its rejoinder. The complainant, in its rejoinder, denied the averments made by the Opposite party and reiterated the contentions made in the Complaint. It has also been stated in the rejoinder that OP has taken defense of various legal impediments affecting the construction work, but the same was concealed from the allottees and no documents were given substantiating the same. It is submitted that Temporary Occupancy Certificate has also expired on 17.09.2020 and hence the possession offered is illegal and cannot be accepted. To substantiate the same reliance is placed on judgment passed by Hon'ble the Apex court in ***Samruddhi Cooperative Housing Society Ltd. v. Mumbai Mahalaxmi Construction Pvt. Ltd. (Civil Appeal no. 4000 of 2019)***, wherein it has been held that the failure to obtain an Occupancy Certificate or abide by contractual obligations amounts to a deficiency in service. Moreover, the OP has failed to complete the project and handover the possession of the apartments to the concerned allottees/home-buyers. There is a continuing cause of action in favor of

concerned home-buyers. To substantiate the reliance has been placed on the judgment passed by this Commission in ***Mehnga Singh Khera & Anr v. M/S Unitech Ltd. I (2020) CPJ 93 (NC)***.

12. The Evidence by way of affidavit has been filed by the complainant on 06.04.2022. The OP has also filed evidence by way of affidavit on 05.09.2022. The complainant filed written arguments / submissions on 21.06.2023. The OP was also granted an opportunity to file the written arguments / submissions but no written arguments / submissions have been filed by the opposite party.

13. The complainant has stated in its written submissions that the complainant is a bona fide consumer association which has been working for the benefit of the consumers who have booked apartments in the project. The OP has failed to deliver the possession of the apartments within the promised timeline, as mentioned in the Allotment Letter, despite receiving nearly 95% of the total consideration of the apartment. The OP has been luring the home-buyers with false promises of completing the construction soon and even in their reply to the complaint before this Commission they have claimed that the project is almost 100% complete with basic facilities. The OP has justified the delay caused due to unforeseen circumstances like demonetization, GST implications and the COVID-19 pandemic. Furthermore, they have stated that the Authority extended its time to deliver the project by 2020 and hence the question of delay in handing over the possession of apartments does not arise. The OP cannot take the defense of COVID, demonetization or GST implications as the construction was supposed to be completed by August 2016. Moreover, none of the factors stated would have affected the construction of the project. The delay has been caused by deliberate action of the OP divesting these funds to other projects/ventures. The OP has offered the possession to some of the concerned allottees/home-buyers and had issued "offer of possession" on the basis of a TOC dated

18.03.2019, issued by the Authority. It can be seen in the letter issued that the building does not conform to the requirement of the The Authority's regulations/directions. Similar letter dated 01.09.2017 was issued by the Authority granting a TOC and pointing out deficiencies, however none of it has been removed by the OP.

14. The Complainant further submits that the OP has devised a standard form of printed Allotment Letter, the contents of which were not shared with the buyers at the time of booking. Pursuant to receiving the booking amount, the buyers were called upon to accept the Allotment Letter in totality, even when the clauses were onerous and one-sided. It is submitted that the Allotment Letter did not have the proportionality clause to fasten commensurate penalty on the OP for breach in fulfilling their promise. The timely payment by the allottees is made an essential pre-requisite condition in the allotment letter, but the timely delivery of possession has not been given similar significance. As per Clause 22 of the Allotment Letter, the OP was obliged to deliver the possession within the stipulated time and in case of delay the OP shall entail only token compensation of Rs.5/- per sq. ft. for each month of delay. It is admitted that the parties are bound by contract however, this principle may not apply where the contracting parties have unequal bargaining power. To support the contention reliance has been placed on ***LIC of India & Anr. v. Consumer Education & Research Centre & Ors. (1995 SCC (5)482)***; ***Pioneer Urban Land and Infrastructure Limited v. Govindam Raghavan (2019) 5 SCC 725.***

15. It has further been submitted that the OP has promised its buyers with additional facilities which have not been completed yet. The OP collected a Club Membership fee and the same should be refunded. Some of the buyers have been charged with Preferential Location Charges (PLC) for park facing apartments; however no park has been constructed till date. Reliance has been placed on ***RV Prasannakumaar & 47 Ors. v. Mantri Castles Pvt. Ltd. (Consumer Case 913 of 2016, decided on 08.06.2018)***

wherein it was held that even if no specific date of completion of common facilities and amenities is given, it should be understood that they will also be completed within the time frame given for handing over of the apartment or at least by the date of registration of the Conveyance Deed.

16. Further it is submitted that the OP is liable to pay compensation on account of delay in handing over the possession from the date of promised date of delivery till the date of actual possession. To substantiate the claim reliance is placed on ***Satish Kumar Pandey & Anr. v. Unitech Ltd. Consumer (Consumer Case No. 427 of 2014); Wg. Cdr. Arifur Rahman Khan & Aleya Sulatana & Ors. v. DLF Southern Houses Pvt. Ltd. (CA no. 6239 of 2019, decided on 24.08.2020 (AIRONLINE 2020 SC 693).***

17. It has further been submitted that, if the OP fails to procure the Certificate/Completion Certificate and handover the possession of the apartments complete in all respects within a period of two months, the concerned allottees must be refunded the entire amount paid along with compensation in the form of interest at a reasonable rate. To substantiate the reliance was placed on ***Fortune Infrastructure & Anr. v. Trevor D'Lima & Ors. (2018 5 SCC 442); M/S Mantri Developers Private Limited & 2 Ors. v. Nupur Anchlia & Anr. (FA no. 1567 of 2019 decided on 06.01.2020).*** The Commission in similar cases has granted interest @ 9% p.a. to the consumer seeking refund from date of deposit till the date of refund wherein the OP has failed to complete the construction and offer possession of the apartment. To substantiate the reliance was placed on ***Yogesh Kumar & Anr. v. M/S Ramprastha Promoters & Developers Pvt. Ltd. (CC/602/2018).*** It is submitted that the National Commission has repeatedly opined that the buyers seeking refund of their money should be compensated not only on account of loss of income by way of interest but also on account of loss of opportunity. To substantiate the reliance was placed on ***Puneet Malhotra v. M/s Parsvnath Developers Ltd (Consumer case no. 232 of 2014 decided on 29.01.2015);***

Swaran Talwar & Ors. v. Unitech Ltd. (Consumer Case No. 347 of 2014, decided on 14.08.2015).

18. Heard oral arguments of both the parties.

19. Learned counsel for the complainant submitted that originally the complaint was filed on behalf of 34 home-buyers but now only 21 are left as 13 home-buyers have withdrawn their names from the array of the consumer complaint. The OP has not completed and delivered the possession of the apartments as promised. The alleged offer of possession made by the OP cannot be considered a valid offer of possession because that was made on the basis of the TOC which was issued by the Authority to cure the defects / remove deficiencies in the building but, till date all those defects / deficiencies have not been removed. The learned counsel further argued that though the OP has alleged that the OP obtained the Occupancy Certificate, yet the same has not been filed on record despite of the Commission's Order. The complainant has further submitted that most of the home-buyers have paid 95% of the amount of the total consideration agreed upon, hence the complaint be allowed and relief prayed for be granted.

20. Contrary to it, the learned counsel for the OP Ms. Anam Sahar appearing on behalf of the OP submitted that the OP has almost completed the project in question and offered the possession therefore, the OP is not liable to pay any delayed compensation. Whatever delay caused, was caused due to the reasons beyond the control of the OP i.e. demonetization, levy of GST and outbreak of Covid Pandemic. She further argued that the allottees have not paid the money as per terms of the agreement; therefore they are liable to pay penalty / penal interest on the balance amount before getting possession. She further argued that the complaint deserves to be dismissed as it has been filed without any proper basis and is time barred also.

21. We have considered the arguments made by both the learned counsel for the parties and perused the material available on record.

22. The key information / dates relating to 21 home-buyers left in this complaint is put in the Tabular form as below as furnished by the complainant:-

S No	Name of Applicants	Apartment and tower	Allotment date	Delay in handing over the possession till November 2024	Total Consideration of the apartment (Rs.)	Paid consideration (Rs.)	Date of Booking
1	Abung Wairokpam	T11/12A02	13.07.2015	92 Months	41,52,518	41,52,518	11 July 2015
2	Arundhati Seigell and Anil Seigell	T11/1206	04.04.2013	99 months	41,43,989	40,00,065	08 February 2013
3	Asha Bajaj and Manmohan Kumar bajaj	T6/0301	06.03.2013	101 Months	38,50,917	38,80,895	NA
4	Ashish Kumar Sen and Shilpi Sen	T7/1502	18.02.2013	101 Months	39,12,242	37,13,092	01 January 2011
5	Gaurav Kumar	T11/0306	14.02.2014	99 Months	42,00,647	40,59,300	07 November 2012
6	Jiwanjot Singh, kehar Singh and Anupama	T7/1202	31.12.2012	101 months	37,06,313	35,11,690	22 January 2011
7	Kamal Bhargava and Bharat Bhushan Bhargava	T17/1604	20.03.2015	103 months	51,76,990	49,83,413	19 June 2013
8	Manish Dhar	T15/0703	22.03.2013	99 months	41,92,158	40,37,993	28 January 2013

9	Manish Kumar and Vijay Kumar	T15/0706	12.02.2013	99 months	40,76,261	39,40,701	08 December 2012
10	Nishant Kumar	T15/1006	17.11.2015	89 months	44,41,060	31,42,576	04 October 2013
11	Praveen Sharma and Mamta Sharma	T11/0901	21.03.2013	91 months	40,16,053	39,09,519	21 November 2012
12	Radha Rao and Arundhati Seigell	T15/1503	16.04.2013	99 months	41,42,989	39,99,405	27 February 2013
13	Rahul Shrivastava	T14/0403	30.03.2103	99 months	49,78,392	47,43,508	14 January 2013
14	Rajeshwar Khurana	T15/0903	22.03.2013	99 months	41,92,798	39,40,736	01 February 2013
15	Ravindra Arun Bisht and Ganeshwari Bisht	T11/1406	01.04.2013	99months	40,91,597	39,50,015	09 November 2012
16	Rommel Saini	T11/1401	02.04.2013	99 months	40,91,597	38,45,336	22 November 2012
17	Sanjay Singh Negi and Hemlata Negi	T11/0906	07.08.2013	99 months	41,42,167	34,90,614	06 November 2012
18	Shobhit Jain	T5/1902	16.02.2013	101 months	28,46,850	27,75,623	12 May 2011
19	Sonu Goel	T11/0903	10.04.2013	99 months	41,07,439	39,66,705	07 November 2012
20	Sushma Jain	T5/1906	13.03.2013	101 Months	29,01,910	26,70,571	19 January

							2011
21	Vineet Kumar and Poonam Sharma	T15/1604	21.03.2013	99 months	40,81,174	39,32,301	15 February 2013

23. The particulars of booking and paid amount have not been disputed by the OP. No evidence / affidavit has been filed to controvert this information provided by the complainant. This Commission directed the OP to produce the Occupancy Certificate obtained as the OP claimed that it has obtained the Occupancy Certificate. But the OP has not filed the Occupancy Certificate. Therefore, the Commission is constrained to construe that Occupancy Certificate has not been obtained by the OP. The TOC cannot be considered as OC as it is very clear from the language and particulars of TOC that, that was issued to remove the defects / deficiencies in the project in question. The particulars given above also reveals that almost all the allottees have paid 95% of amount of the total consideration for the apartments. The allottees described at serial no.1 has paid the total consideration. The possession offered on the basis of TOC cannot be considered as a valid offer of possession. Admittedly, no possession has been delivered to the allottees herein till date. As per the settled Law, the possession should be delivered within the stipulated period with a grace period of six months or the grace period agreed upon. If there is nothing in the terms and conditions of the agreement then the period will be three years. If possession is not delivered within such period then it will amount to deficiency in service and an allottee would be entitled to get the delayed compensation. Here, we rely upon case law **Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. Vs. Trevor D'Lima & Ors. (2018) 5 SCC 442**, wherein the Hon'ble Apex Court has held as under:

"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund

of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e. the possession as required to be given by last quarter of 2014.....”

This principle of law has been reiterated in the case of **Pioneer Urban Land and Infrastructure Ltd. Vs. Govindan Raghavan (2019) 5 SCC 725**, where Hon’ble the Apex Court has observed as under:

“6.1 In LDA 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(1)(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 V. Trevor D’Lima, 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.”

24. Here in the matter in hand, as per terms of agreement, the OP has to hand over the possession to the home-buyers by the date described herein below:

Sl. No.	Name of Applicants	Promised date of possession
1	Abung Wairokpam	Mar-17
2	Arundhati Seigell and Anil Seigell	Aug-16
3	Asha Bajaj and Manmohan Kumar bajaj	Jun-16
4	Ashish Kumar Sen and Shilpi Sen	Jun-16

5	Gaurav Kumar	Aug-16
6	Jiwanjot Singh, kehar Singh and Anupama	Jun-16
7	Kamal Bhargava and Bharat Bhushan Bhargava	Mar-17
8	Manish Dhar	Aug-16
9	Manish Kumar and Vijay Kumar	Aug-16
10	Nishant Kumar	Jun-17
11	Praveen Sharma and Mamta Sharma	Aug-16
12	Radha Rao and Arundhati Seigell	Aug-16
13	Rahul Shrivastava	Aug-16
14	Rajeshwar Khurana	Aug-16
15	Ravindra Arun Bisht and Ganeshwari Bisht	Aug-16
16	Rommel Saini	Aug-16
17	Sanjay Singh Negi and Hemlata Negi	Aug-16
18	Shobhit Jain	Jun-16
19	Sonu Goel	Aug-16
20	Sushma Jain	Jun-16
21	Vineet Kumar and Poonam Sharma	Aug-16

25. Admittedly, possession has not been handed over to any of the home-buyers herein. The argument advanced by the learned counsel for the OP that the OP had offered the possession is not tenable because that was without obtaining the OC. The TOC cannot be deemed OC as discussed above. As the offer of possession made was not a valid offer of possession, the OP cannot say that the allottees have delayed payment to be made at the time of offer of possession. Therefore, the OP cannot charge any delayed penalty on that account.

26. Though the opposite party has taken the plea in Written Statement that the complaint is time barred, yet this plea is not tenable for the reason that the allottees are agitating and waiting for possession of their respective apartments after paying a considerable amount as most of the allottees have paid 95% of the total consideration. Hence there is a continuing cause of action.

27. The learned counsel for the OP submitted that the possession was delayed for the reasons beyond the control of the OP such as demonetization, levy of GST and outbreak of Covid pandemic. This contention has vehemently been opposed by the learned counsel for the complainant, submitting that the defenses put forth by the OP occurred after the stipulated date of promised possession. Hence the OP cannot take these occurrences as defense because construction was supposed to be completed by August, 2016. The levy of GST has nothing to do with the delay in construction. Hence, none of the factors stated above would have affected the construction of the project in question.

28. Considering the facts and circumstances of the matter, there the project was supposed to be completed by August, 2016. The effect of demonetization, levy of GST and outbreak of Covid pandemic cannot be supposed to effect the completion of the projection at all.

29. The learned counsel for the complainant has submitted that the OP has wrongly charging the amount in the name of farmers' compensation to be paid. In fact, that is not the liability of the home-buyers and that is the liability of the OP. Therefore, the OP cannot charge any amount in the garb of farmers' compensation. The contention of the complainant's counsel is acceptable as the home-buyers are liable to pay only that amount which has been agreed to be paid and not otherwise.

30. From the above discussion, it is clear that the OP did not hand over the possession to the home-buyers of their respective apartments till date, that is much beyond the period stipulated for handing over the possession. The home-buyers have paid a considerable amount to the OP and most of them has paid 95% of the total consideration and are still waiting for the possession of their respective apartments. Hence, there is deficiency in service on the part of the OP.

31. In the light of above discussion the complaint deserves to be allowed and is allowed giving following reliefs:-

- (i) The OP shall hand over the peaceful and vacant possession, after procuring the Occupancy Certificate, to allottees of their respective apartments, complete in all respects and in conformity with the terms and conditions of the Allotment Letter for the consideration mentioned therein (without any excess demand on account of farmers' compensation or otherwise) with all additional facilities and as per quality standards promised in the agreement, within a period not later than six months;
- (ii) The OP shall also execute Conveyance Deed in favour of the allottees of their respect apartment within the aforesaid period;
- (iii) The OP is further directed to pay compensation on account of delay in

handing over the possession of the apartments to the respective allottees from the promised date of delivery till the actual date of possession @ 8% per annum on the amount deposited from the date of the deposit.

- (iv) The amount of delayed compensation payable to the allottees first will be adjusted towards the balance amount payable to the OP. No penalty or penal interest shall be charged on the balance payment to be made to the OP;
- (v) In case the OP fails to hand over the possession as mentioned above, then the allottees have option either to wait for OC to take the possession or to seek refund of their money paid to the OP, along with interest @ 9% per annum from the date of deposit till the actual payment. If the refund is sought by the allottee then the OP has to refund the entire amount, along with interest @ 9% per annum within two months from the date of application so moved by the allottee. If the OP fails to refund the amount within two months then the rate of interest payable will be @ 12% per annum.
- (vi) The OP shall also pay Rs.1,00,000/- (Rupees one lakh) as litigation costs to the complainant.

The present consumer complaint is decided accordingly.

All the IAs pending in this consumer complaint shall stand disposed of.

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BINOY KUMAR
PRESIDING MEMBER

.....J
SAROJ YADAV
MEMBER