

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**NEW DELHI**

**CONSUMER COMPLAINT NO. NC/CC/496/2019**

VAIBHAV GARG & ANR.

.....Complainant(s)

Versus

HAMILTON HEIGHTS PVT. LTD. & ANR.

PRESENT ADDRESS - B-II/100, Mohan Co-operative Industrial Estate, Mathura Road, , New Delhi-110044

ESPIRE INFRASTRUCTURE CORPORATION LTD.

PRESENT ADDRESS - 12/1 Delhi Mathura Road, Faridabad, , Haryana-122003

.....Opposite Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE SUDIP AHLUWALIA , PRESIDING MEMBER**

**HON'BLE MRS. JUSTICE SAROJ YADAV , MEMBER**

**FOR THE COMPLAINANT:**

MR. PRANJAL MISHRA, ADVOCATE.

**FOR THE OPPOSITE PARTY:**

MR. BRIJESH CHAUDARY, ADVOCATE MR. PRINS KUMAR, ADVOCATE

**DATED: 08/04/2025**

**ORDER**

JUSTICE SUDIP AHLUWALIA, MEMBER

This Consumer Complaint has been filed under Section 21 r/w Section 12(a) of the Consumer Protection Act, 1986 alleging deficiency in service and unfair trade practice on the part of the Opposite Parties and, seeking refund of the deposited amount along with ancillary reliefs.

2. The factual background, in brief, is that the Complainants booked an apartment in a residential project called "Hamilton Heights" located at Sector-37, Faridabad, Haryana, developed by the Opposite Parties solely for residential purposes. The total cost of the apartment was Rs. 66,24,000/- inclusive of all taxes. Initially, the apartment booked was of 1758 sq. ft. (3 BHK with servant room), which was later revised by Opposite Parties to 1800 sq. ft. and subsequently further revised to 1890 sq. ft. due to alleged governmental directions. The Complainants booked the unit on 14.10.2007, paying an initial amount of Rs. 5,00,000/-. Despite collecting substantial amounts totalling Rs. 10,71,350/- before signing the formal Buyer's Agreement, the Opposite Parties executed this Agreement only on 22.12.2008 after a delay of around 13 months. The Buyer's Agreement specified that possession would be given within 36 months from its execution, i.e., by December 2011. It also contained several arbitrary, unfair, and one-sided Clauses that the Complainants were forced to accept as the Opposite Parties threatened forfeiture of the amounts already paid. By the scheduled date (December 2011), the Complainants had paid Rs. 46,70,000/- . However, the Opposite Parties failed to deliver possession on time. Eventually, the Opposite Parties offered possession on 01.02.2013, after considerable delay, by which time the

Complainants had paid a total of Rs. 69,94,488/-. Upon inspection on 03.04.2013, the Complainants noticed several defects and deficiencies, and communicated those to the Opposite Parties, requesting rectifications. Instead of making necessary repairs, the Opposite Parties continued raising demands for payment, even though they had not obtained the mandatory Occupation Certificate at that time.

3. The Complainants later discovered that the possession offered was illegal, as the mandatory Occupation Certificate and other statutory permissions were not obtained by the Opposite Parties at the time of delivery. This fact was concealed from the Complainants. Due to the acts of deceit and illegalities, the Complainants lodged FIR No.206 against the Opposite Parties on 24.05.2014, and separately filed a case before the Punjab & Haryana High Court on 28.08.2013, which is pending adjudication. The Complainants claim that the Opposite Parties maliciously delayed the construction, misused their dominant position, imposed unfair and arbitrary terms, diverted collected funds to other projects, and fraudulently provided illegal and incomplete possession. They also highlighted that the Opposite Parties repeatedly revised the area of the apartment arbitrarily without proper justification, thus increasing costs. It was further stated that such unfair trade practices, deficiency in service, and fraudulent conduct caused significant mental agony, financial hardship, and personal loss to the Complainants. That the Opposite Parties were duty-bound to deliver proper and legal possession only after obtaining all statutory permissions, including the Occupation Certificate, as required under the approval of Building Plans issued by Town & Country Planning Department, Haryana, Chandigarh (Memo No.11051 dated 21.11.2008). Aggrieved with deficiency of service and unfair trade practice on the part of the Opposite Parties, the Complainants filed the present Complaint praying as follows -

“1. Direct the Opposite Party(s), jointly and severally, for an immediate refund of INR. 69,94,488/- (Rupees Sixty Nine Lakh Ninety Four Thousand Four Hundred and Eighty Eight only) paid by the Complainants along with a penal interest of 18% per annum from the date of receipt of each payment made to the Opposite Party(s).

2. Direct the Opposite Party(s), jointly and severally, to pay compensation of INR. 10,00,000/- (Rupees Ten Lakh only) to the Complainants for mental agony, harassment, discomfort and undue hardships caused to the Complainants as a result of the above acts and omissions on the part of the Opposite Party(s);

3. Direct the Opposite Party(s), jointly and severally, to pay a sum of INR. 1,50,000/- (Rupees One Lakh and Fifty Thousand only) to the Complainants as a whole, towards litigation costs;”

4. The Opposite Parties filed their Written Statement and resisted the Complaint. They have denied all the material averments made by the Complainant. The Opposite Parties have averred that the primary issue raised by the Complainants regarding the alleged illegality of the possession due to lack of Occupation Certificate (OC) is completely baseless, as the OC has already been granted by the Authorities in 2015. The Complainants were offered possession in February 2013, and despite repeated reminders and the availability of a valid OC since 2015, the Complainants deliberately refused to take possession. The Opposite Parties state that the Complainants have no genuine cause of action because they delayed filing the Complaint by approximately four years without any reasonable explanation. Further, the Complainants had previously filed a frivolous Criminal Complaint (FIR No.206 dated 24.05.2014) against the Opposite Parties, which was dismissed uncontested on 08.12.2015. Additionally, the Opposite Parties approached the Punjab & Haryana High Court seeking quashing of the FIR, as the matter was purely civil. Regarding the increase in the area of the apartment from 1758 sq.ft to 1800 sq.ft, and subsequently to 1890 sq.ft,

the Opposite Parties submit that such revisions were made strictly as per directions from competent Authorities, and this fact was timely communicated to the Complainants through Allotment Letters dated 20.09.2008 and 12.08.2013. Thus, there was no concealment or unfair practice.

5. The Opposite Parties further averred in the Written Statement that the Buyers' Agreement was not arbitrary or one-sided, as the Agreement was signed willingly by the Complainants, who had full opportunity to review and object to any term before signing. The Opposite Parties deny allegations of inducement, allurement, or unfair trade practice, asserting that the Complainants booked the apartment voluntarily. Regarding the alleged construction defects, the Opposite Parties contend that the so-called defects were minor in nature, commonly encountered prior to taking possession, and would have been addressed promptly. They further averred that the delay in completing the project was beyond their control and due to delayed payments by multiple Flat buyers under a Construction-linked Payment Plan. Thus, no deliberate delay or negligence can be attributed to the Opposite Parties. The Opposite Parties also assert that the judgments cited by the Complainants in their Complaint are not relevant or applicable to the facts of this case.

Additionally, they clarify that the allegations of diversion of funds are false, unsubstantiated, and defamatory. They submit that the Complaint lacks genuine cause of action, is barred by delay, and that the Complainants are not bona fide Consumers as defined under the Consumer Protection Act, 1986.

6. Rejoinder on behalf of the Complainants to the Written Statement by the Opposite Party has been filed; It has been averred in the Rejoinder that according to Clause 4.1 of the Agreement, the Opposite Parties were obligated to deliver possession within 36 months (i.e., by December 2011). Despite having received a substantial amount of Rs. 46,70,000/- by 22.12.2011, the Opposite Parties failed to deliver possession within the agreed timeline. Subsequently, on 01.02.2013, after an inordinate delay, the Opposite Parties issued a letter offering possession, and by this date, the Complainants had paid a total of Rs. 69,94,488/-; That upon inspecting the Unit on 03.04.2013, the Complainants discovered significant structural defects, which were immediately communicated to the Opposite Parties, clearly stating the rectifications required. However, instead of addressing these issues, the Opposite Parties arbitrarily sent another revised Allotment Letter on 12.08.2013, unilaterally increasing the area of the Flat from 1800 sq. ft. to 1890 sq. ft., raising unwarranted and unjustified demands for additional payments. Upon further enquiry with government Authorities, the Complainants discovered that no such official directive was given to enhance the area of the Flat, and upon independent measurement through a private Architect, the actual carpet area was found to be only 1319 sq. ft., or at most 1776.320 sq. ft. including balconies and circulation areas, much less than what the Opposite Parties claimed.

7. The Complainants further averred in the Rejoinder that they strongly contest the Opposite Parties' claim of having provided valid possession, as the Opposite Parties illegally offered possession in 2013 without obtaining the mandatory Occupation Certificate (OC). The OC was received only later in 2015, thereby making the 2013 offer invalid and illegal. To substantiate this illegality, the Complainants refer to the directive issued by the Director, Town and Country Planning, Haryana (Memo No. 11051 dated 21.11.2008), which specifically forbids occupation without a valid OC. The Complainants have placed reliance upon the judgment of the Hon'ble Supreme Court in "Debashis Sinha & Ors. vs. M/s R.N.R. Enterprise, 2023 LiveLaw (SC) 92" and "Samruddhi Co-operative Housing Society Ltd. vs. Mumbai Mahalaxmi Construction Pvt. Ltd., Civil Appeal No 4000 of 2019", wherein it was established that failure to fulfil promised facilities or to provide the OC constitutes continuous wrong and amounts to unfair trade practice and deficiency of service.

8. Evidence by way of Affidavit has been filed by Complainant No. 1 Mr. Vaibhav Garg and

Complainant No. 2 Mr. Gaurav Garg; Evidence by way of Affidavit has been filed on behalf of Opposite Party by Mr. Abhishek Singh, Authorized Representative of Hamilton Heights Pvt. Ltd. 9. Ld. Counsel for Complainants has argued that during the pendency of the Complaint, the Complainant No. 1 passed away on 30.05.2021, and his Legal Heirs were subsequently brought on record by Order dated 24.11.2022. As per Clause 4.1 of the Builder Buyer Agreement, the Opposite Party No. 1 was obligated to deliver possession by 22.11.2011, but they miserably failed to adhere to the committed timeline and did not provide the promised amenities. On 01.02.2013, the Opposite Party No. 1 arbitrarily issued an Offer of Possession and Final Demand Notice without obtaining the mandatory Occupation Certificate (OC) or requisite permissions, blatantly violating the specific directive outlined in Memo No. 11051 dated 21.11.2008. Subsequently, on inspection, the Complainants found significant defects in the Unit, which they communicated to the Opposite Party No. 1 through a Possession Certificate dated 03.04.2013. However, the Opposite Party No. 1 failed to rectify these defects and continued raising demands. Relying upon assurances from the Opposite Parties, the Complainants diligently complied with all payment obligations and paid a total amount of Rs. 69,94,488/- by 01.03.2013, exceeding the total agreed consideration.

10. Ld. Counsel for Complainants has further argued that in a unilateral and arbitrary act, Opposite Party No. 1 issued a revised Allotment Letter dated 12.08.2013, increasing the area of the Unit from 1800 sq.ft. to 1890 sq.ft., purportedly based on directions from Government Authorities, without obtaining consent from the Complainants and long after the originally promised possession date. The Complainants were coerced into signing a highly one-sided and unfair Builder Buyer Agreement, which included discriminatory Clauses favouring the Opposite Party No. 1. Specifically, Clause 2.6 imposed an exorbitant interest rate of 18% per annum (compounded quarterly) on any payment delay by the Complainants, whereas Clause 4.3 provided only a minimal penalty of Rs. 5 per sq.ft. per month payable by the Opposite Party No.1 for delayed possession. The Complainants were forced to accept these terms without negotiation, under threat of forfeiture of Earnest money. The Opposite Party No.1 has deliberately delayed possession to unjustly enrich itself at the expense of the Complainants. Due to the Opposite Parties' complete failure to obtain the requisite approvals and OC within the promised period, the very purpose of the Complainants' purchase stands frustrated. It is also settled law that Consumers cannot be expected to wait indefinitely for possession of booked residential units.

11. Ld. Counsel for Opposite Parties has argued that the Complaint filed by the Complainant in 2019 is clearly an afterthought, initiated with the sole motive to unfairly coerce the Opposite Parties into refunding the money, despite having received a valid offer of possession along with a duly issued Occupation Certificate (OC). Reliance is placed upon the judgments of the Hon'ble Supreme Court in "Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna & Ors., SCC OnLine SC 14", wherein it was categorically held that once an offer of possession is made along with an OC, the Allottee is not entitled to seek refund of amounts deposited and is obligated to accept the possession. This has been followed by this Commission in the matter of "Deepak Chaudhary v. DLF New Gurgaon Developers Pvt. Ltd., CC No. 335 of 2018", where it was specifically held that Allottees cannot terminate agreements and demand refunds after issuance of the OC and offer of possession. In the instant matter, the OC was duly issued on 28.10.2015, and the offer of possession was provided to the Complainants on 18.11.2015. The Complainants have, however, unjustifiably refused to take possession without demonstrating any cogent or justifiable reason for their refusal. Therefore, in view of the settled law and precedents, the present complaint lacks merit and deserves outright dismissal.

12. We have heard both the Ld. Counsel for Complainants and the Opposite Parties, and perused the material available on record.

13. Upon careful consideration of the facts, evidence, and submissions on record, we find substantial merit in the Complainants' allegations against the Opposite Parties regarding deficiency in service. Primarily, the critical issue revolves around the illegality and invalidity of the alleged "Offer of Possession" extended by the Opposite Parties to the Complainants. The Opposite Parties initially issued an Offer of Possession letter dated 01.02.2013; However, it stands uncontested and well-established on record that this offer was made without obtaining the mandatory Occupation Certificate (OC). It is a settled legal principle, reiterated by the Hon'ble Supreme Court in multiple judgments, including *Debashis Sinha & Ors. vs. M/s R.N.R. Enterprise (supra)* and *Samruddhi Co-operative Housing Society Ltd. vs. Mumbai Mahalaxmi Construction Pvt. Ltd. (supra)*, that any offer of possession without a valid OC is inherently illegal and constitutes a significant deficiency of service and unfair trade practice.

14. Furthermore, upon scrutiny of the entire record, including the Written Statement and Evidence by way of Affidavit submitted by the Opposite Parties, it emerges that no revised or proper Offer of Possession letter (accompanied by an OC) was placed on record by the Opposite Parties either at the stage of pleadings or during evidence. The Opposite Parties' claim regarding a valid subsequent Offer of Possession allegedly dated 18.11.2015 surfaced belatedly, after the matter had already been reserved for Final Orders on 19.3.2025. Despite being granted liberty only to file any written submissions or additional arguments on the said date, the Opposite Parties on 25.3.2025 attempted to introduce this alleged subsequent Offer of Possession as part of their submissions filed on 25.3.2025 without any supporting evidence or documentation to establish its authenticity or prior communication to the Complainants. Crucially, no postal receipt or acknowledgment was filed to substantiate that such an offer was indeed dispatched or communicated to the Complainants at the relevant time. This significantly undermines the credibility of the Opposite Parties' claims, strongly suggesting that the purported offer of 18.11.2015 is merely an afterthought devised as a vague defence tactic.

15. It may be observed that for an Offer of Possession to be valid, it must be unambiguously documented, accompanied by all statutory clearances, notably the Occupation Certificate, and reliably communicated to the Allottee. The Opposite Parties have clearly failed to meet this fundamental obligation. Their attempt to introduce a purported subsequent offer without adequate supporting documentation and at an unjustifiably belated stage is not only procedurally unacceptable but also substantively deficient. This conduct further demonstrates a persistent pattern of unfair trade practice and deficiency of service on the part of the Opposite Parties.

16. The Hon'ble Supreme Court in "*Experion Developers (P) Ltd. v. Sushma Ashok Shiroor, (2022) 15 SCC 286*" has also opined as under-

"32. We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in *DLF Homes Panchkula (P) Ltd. v. D.S. Dhanda [DLF Homes Panchkula (P) Ltd. v. D.S. Dhanda, (2020) 16 SCC 318]* and in modification of the direction issued by the Commission, we direct that the interest on the refund shall be payable from the dates of deposit. Therefore, the appeal filed by purchaser deserves to be partly allowed. The interests shall be payable from the dates of such deposits.

33. At the same time, we are of the opinion that the interest of 9% granted by the Commission is fair and just and we find no reason to interfere in the appeal filed by the consumer for enhancement of interest."

17. Given these considerations, this Commission is of the view that the Complainants were not provided a legally valid and proper Offer of Possession within the stipulated timeline or thereafter. The initial offer dated 01.02.2013, made without obtaining the mandatory OC, was patently illegal, invalid, and unacceptable. The Opposite Parties have failed to provide any credible or legally sustainable alternative offer on record. Consequently, the Complainants are fully justified in refusing such illegal possession and are, therefore, entitled to a refund of the entire amount paid, amounting to Rs. 69,94,488/-, along with interest.

18. In line with established precedents and considering the inconvenience and financial hardship caused to the Complainants, we deem it just and equitable to award interest at 9% per annum from the respective dates of deposit till the date of actual realization. This adequately addresses the Opposite Parties' clear deficiency in service, providing just restitution to the Complainants for the prolonged deprivation of their money and undue hardships endured.

19. In view of the aforesaid discussion, the Opposite Parties are therefore directed to -

a) Refund to the Complainants the entire deposited sum of Rs. 69,94,488/- along with interest @ 9% p.a. from the date of each deposit till the date of realization, within 06 weeks from the date of this Order. In case of non-compliance of the Order within the directed time, the interest rate shall be enhanced to 12% p.a. for any outstanding amount(s).

b) Pay to the Complainants an amount of Rs. 40,000/- towards litigation costs.

20. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

.....J  
**SUDIP AHLUWALIA**  
**PRESIDING MEMBER**

.....J  
**SAROJ YADAV**  
**MEMBER**