

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AT NEW DELHI
(Through Hybrid Hearing)**

RESERVED ON : 27.02.2025

PRONOUNCED ON : 23/04/25

CONSUMER COMPLAINT NO.450 OF 2019

With – IA/4676/2019, IA/923, 1311-1313, 3575/2020, IA/2373,
2435/2021, IA/10315/2022, IA/10470/2024 (Applications for
exemption from dim documents, impleadment of parties,
Directions, Publication, Condonation of delay in filing reply,
Condonation of delay in filing the rejoinder, Publication)

Commander's Gateway Homebuyers Welfare
Association

A-103, Prem Dreams CHS Ltd.,
Tanaji Nagar, Road No.1, Bandongri,
Kurar Village, Malad (East)
Mumbai – 400097

.....Complainant

Versus

1. M/s Jupiter Infrastructure (Bangalore) Pvt. Ltd.
Flat No.003, Ground Floor,
Plot No.29, Neel Agan Building,
Sector – 19, near HDFC Chowk, Opp. Axis Bank,
New Panvel – Matheran Road - 410206
2. M/s Valji Gokuldas & Sons
Shop No.-13, Plot No.67, Hermes Centre,
Sector – 17, Vashi,
Navi Mumbai – 400705



3. M/s Laxmi Enterprises

67/13, Hermes Centre,

Sector – 17, Vashi,

Navi Mumbai - 400705

4. M/s Thakkar Realities Pvt. Ltd.

67/ 13, Hermes Centre,

Sector – 17, Vashi,

Navi Mumbai – 400705

.....Opposite Party

BEFORE:

HON'BLE MR. BINOY KUMAR, PRESIDING MEMBER

HON'BLE MRS. JUSTICE SAROJ YADAV, MEMBER

For Complainant : Mr.Sahil Sethi, Advocate

Ms.Arushi Mann, Advocate

Mr.Vikash Kumar, Advocate

For Opposite Parties : Mr.Satal Singhai, Proxy Counsel for

Mr.Vikramaditya Singh, Advocate

ORDER

Binoy Kumar, Presiding Member

1. The present Consumer Complaint i.e. CC/450/2019 has been filed under Section 21(a)(i) of the Consumer Protection Act, 1986 (for short "the Act") by Commander's Gateway Homebuyers Welfare Association (hereinafter referred to as the "Complainant") against M/s Jupiter Infrastructure Pvt. Ltd. & Ors. (hereinafter referred to as the "Opposite Parties") seeking refund of the respective amount paid by the members of the Complainant Association with interest at the rate of 18% per



annum from the date of the payment till its realization and other ancillary reliefs.

2. The Complainant is a voluntary consumer association registered under the Societies Registration Act, 1860. The Opposite Party No. 1, M/s Jupiter Infrastructure (Bangalore) Pvt. Ltd., along with its associated entities, launched a real estate project named "*Commanders' Gateway*" (hereinafter referred to as Project). The development was undertaken in collaboration with Opposite Party No.2, M/s Valji Gokuldas & Sons, and Opposite Party No.3, M/s Laxmi Enterprises, both of which are sister concern of a real estate firm, M/s Thakkar Realities Pvt. Ltd. (Opposite Party No.4). The Project was promoted and marketed by Opposite Party No.1.

3. The brief facts leading up to the present Complaint are that the Complainant members herein are individuals who had booked apartments, row houses, and plots in the project initiated by Opposite Party No.1 through a booking form available on its website. The Complainant members made advance payments amounting to 20% of the total consideration towards the said bookings. The Opposite Party No. 2 and 3 handed over a standard form "*Allotment Letter*" to the members of the Complainant Association. However, no formal "*Agreement for Sale*" was executed in favour of the members of the Complainant Association. As per the Allotment Letter, possession of the Units was to be handed over by March 2015. However, after nearly two years of issuing allotment letters, in March 2015, the Opposite Party No. 2 and 3 communicated that the project was awaiting necessary approvals as it fell within the zonal regulations of residential development and they are awaiting for approval.



4. The Complainant further stated that the Opposite Parties misrepresented the status of approvals at the time of booking, despite being aware of the Government of Maharashtra's notification dated 10.01.2013, wherein CIDCO (NAINA) was appointed to approve projects around Navi Mumbai Airport within a 25 km radius. Despite collecting up to 20% of the total consideration from each of the Complainant members, the Opposite Parties failed to commence construction within the stipulated time and continued to provide false assurances regarding approvals from CIDCO until December 2015.

5. The Opposite Party No.1, through various email correspondences dated 24.03.2014, 27.05.2014, 06.07.2014, 16.01.2015, 18.07.2015, and 27.12.2015, assured one of the member of the Complainant Association that approvals would be obtained soon. The Opposite Parties asserted that the delay in commencing construction was due to force majeure conditions related to obtaining government approvals, leading to repeated extensions of the project's start date. They assured the affected Complainant members for two years that the necessary approvals would be secured. However, on 06.11.2015, Opposite Party No.1 sent an email to the project buyers/ Complainant members, offering them alternative options in their other projects located in Pune, Goa, Bangalore, and Mumbai, should they wish to transfer their allotment. Subsequently, on 04.08.2016, Opposite Party No.1 informed the concerned Complainant members via email that it had been unable to obtain approvals from NAINA/CIDCO and, as a result, proposed an alternative to the Commanders Gateway project.



6. Due to delays in obtaining necessary approvals and starting construction at the project site, several Complainant members repeatedly approached Opposite Party No.2 and No.3, requesting refunds. The proprietor of Opposite Party No. 2, 3, and 4, Mr. Shailesh J. Dawda, in response, assured the Complainant members of refund and also to pacify them, he refunded partial amounts to some individuals. Additionally, a few Complainant members submitted written requests to cancel their allotments and sought refunds. Acknowledging these requests, Opposite Party No.2 and No.3 asked the members to provide a Declaration of Cancellation on an affidavit, detailing their allotted apartment, the amount paid, the reason for cancellation, and confirmation of returning original documents. Some members complied, after which Opposite Party No.2 and No.3 issued post-dated cheques, including interest, as refunds.

7. However, upon deposit, these cheques were dishonoured due to "Account Blocked" and "Insufficient Balance," causing further financial distress to the members. Several Complainant members initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881, due to the dishonouring of these cheques.

8. The Complainant further stated that his members have also approached the Economic Offenses Wing, Navi Mumbai, against the Directors of the Opposite Parties. An FIR bearing Crime No. 258/2017 was lodged in the Magistrate Court, Panvel, District Raigad, Maharashtra, under Sections 420, 406 read with 34 of the Indian Penal Code, 1860. Subsequently, the Directors of the Opposite Parties were arrested. The Hon'ble High Court of Bombay, vide its order dated 12.02.2019, denied the anticipatory



bail applications of Mr. Deepak Bhikanrao More (Director) and Mr. Tarachand Prasad (Managing Director, M/s Jupiter Infrastructure (Bangalore) Pvt. Ltd.). Mr. Shailesh Jamnadas Dawda, sole proprietor of Opposite Party No. 2, 3, and 4, was granted regular bail on medical grounds after being in police custody for three months. Similarly, Mr. A.K. Sharma, a director of M/s. Jupiter Infrastructure Bangalore Pvt. Ltd., was also held in police custody for two months before being released on regular bail.

9. Thus, aggrieved by the above acts of the Opposite Parties, the Complainants filed this Complaint with the following prayer:

i) Direct the Respondents, severally and or jointly, to refund the amount paid by the concerned consumers, along with compensation in the form of simple interest on that amount @ 18% per annum from the date of deposit till the date the said amount is refunded to each of the concerned consumers;

ii) Direct the Respondents, severally and jointly, to pay Rs. 5,00,000/- (Rupees Five Lakh only) to each of the concerned consumer for the mental agony and harassment caused;

iii) Direct the Respondents severally and jointly, to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) to each of the concerned consumer, towards costs.

iv) Pass any other and further relief which the Hon'ble Commission thinks fit and proper in the facts and circumstances of the case in favour of the Complainant and against the Respondent.

10. Notice to Opposite Party No.1 was served by way of substituted service through paper publication. Despite being duly served, Opposite Party No. 1 failed to appear and did not submit a written version before this Commission. Consequently, by an order dated 19.07.2021, this Commission proceeded ex parte against Opposite Party No. 1.



11. The Opposite Party No. 2, 3 and 4 resisted the Complaint by taking the main objections as under:

- (i) The answering Opposite Parties could only commence work at the site after 18.10.2019, a fact known to the Complainant but deliberately concealed from this Commission, thereby engaging in *suppressio veri* (concealment of truth) and *suggestio falsi* (misrepresentation).
- (ii) The members of the Complainant association have already lodged an FIR against Mr. Shailesh J. Dawda and are now approaching the Hon'ble Forum, indicating an attempt at forum shopping.
- (iii) Several members of the Complainant association have received refunds, making their claims dubious. The following members have already been refunded amounts, some even in excess of what they originally paid:

| Name of the Allottee | Unit No. | Amount Paid | Amount Refunded |
|-------------------------------|------------|---------------|-----------------------------------|
| Deen Mohammed | (J-22/103) | Rs.5,71,000/- | Rs.3,00,000/- |
| Mahendra Singh | (J-25/303) | Rs.5,71,000/- | Rs.8,28,800 + Rs.5,000 in cash |
| Rakesh Kumar Singh Chauhan | (J-23/104) | Rs.3,91,000/- | Rs.1,90,000/- |
| Arvind Kumar Singh | (J-18/204) | Rs.3,91,000/- | Rs.2,75,000/- |
| Mohd Dastagir Alam | (J-23/304) | Rs.3,91,000/- | Rs.6,01,830/- |

- (iv) Many Complainant members are investors who have purchased multiple flats for rental purposes rather than genuine homebuyers. Therefore, they are not consumers.



- (v) Several members of the Complainant Association only paid the booking amount and failed to make further payments as per their contractual obligations.
- (vi) There is a discrepancy in the number of buyers/allotees/members of the Complainant association. The complaint states that it represents 119 buyers/allotees, while Annexure-A of the Complaint lists 121 members.

12. During the pendency of the present complaint, following the demise of Mr. Shailesh Jamnadas Dawda, who represented Opposite Party Nos. 2 and 3 as their proprietor and Opposite Party No. 4 as its Director, the Complainant filed an amended memo of parties to bring his legal heirs (wife and daughters) on record. The legal heirs have also filed their reply, wherein they have reiterated the contentions previously made by Mr. Shailesh Jamnadas Dawda, who had earlier filed a reply on behalf of Opposite Party Nos. 2, 3, and 4. The legal heirs further stated that they were not concerned with the functioning of Opposite Party No. 2, 3 and 4 entities.

13. The Complainant, in his rejoinder, denied the averments made by the Opposite Party No.2 to 4 and reiterated the contentions made in the Complaint. The Complainant stated that the present complaint pertains to a total of 119 apartments. However, the Complainant Association comprises 121 members, all of whom have booked the said apartments. The Complainant further stated that two of these apartments, specifically those listed as Serial No. 52 and 102 in Annexure A of the complaint, have co-allotees, while the remaining apartments are allotted to



single allottees. Consequently, the total number of members of the Complainant Association stands at 121.

14. We have heard learned Counsel for both parties and have gone through the material available on record.

15. Learned Counsel for the Complainant argued that the present complaint has been filed by the Complainant on behalf of 119 buyers under Section 12 (1) (b) of the Act. The Opposite Party No. 1 has been proceeded *ex parte* as per the Commission's order dated 19.07.2021. The Complainant seeks full refund of the amounts paid by each complainant members for the booking of their respective apartments. The booking for the project began in May 2013, and the Opposite Parties were fully aware of the Government of Maharashtra's notification dated 10.01.2013, which designated NAINA (CIDCO) as the authority for approving projects within a 25 km radius of Navi Mumbai Airport. At the time of booking, 20% of the total consideration amount was paid as the booking amount to Opposite Party Nos.2 to 4. The balance sale consideration was to be paid according to the Construction linked payment plan outlined in the allotment letters. The Opposite Party No.1 never commenced construction, as it failed to obtain the necessary approvals. Liberty was given to the homebuyers/Complainant members to cancel their allotments in case of delay on the part of the Opposite Parties. In March 2015, when possession was due, Opposite Party No.2 and No. 3 informed the Buyers that construction was delayed due to regulatory changes and NAINA's implementation by CIDCO. As a result, some Complainants requested cancellation of their allotments. Learned Counsel further argued that some members of the Complainant association received full/ partial payments



from the developer/ Opposite Parties while the majority did not. The money received by Opposite Party Nos.2 to 4, as evidenced in the reply filed on their behalf, clearly establishes their acknowledgment of having collected a total part sale consideration of Rs.6,45,82,028/- (Rupees Six Crores Forty-Five Lakh Eighty-Two Thousand and Twenty-Eight) from the Buyers.

16. Learned Counsel for the Opposite Party Nos.2 to 4 argued that the sole proprietor, Late Mr. Shailesh Jamnadas Dawda, of Opposite Party No.2 and 3, passed away on 18.10.2022. Consequently, upon the demise of the sole proprietor, the sole proprietorship, namely Opposite Party Nos.2 and 3, ceased to exist in law. Ld. Counsel further argued that the legal representatives of Late Mr. Shailesh Jamnadas Dawda cannot be held liable for his personal obligations, and the claims against them should be dismissed as per the principles laid down by the Hon'ble Supreme Court in *Vinayak Purshottam Dube (Deceased) Through LRs. vs. Jayashree Padmakar Bhat and Others, (2024) 9 SCC 398*.

17. The first objection raised by the Opposite Party is that the Complainant members are not a consumer. The onus to prove that the Complainant members are not a consumer lies with the Opposite Party, who must provide evidence that the purchase was made solely for commercial purpose. In this regard, it would be proper to draw attention to this Commission's Order in the case of *Kavita Ahuja vs. 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 shifts to the Opposite Party. In the instant case the Opposite Party had failed



to discharge by filing any documentary evidence to establish his case.

18. The objection of the Opposite Party that the members of the Complainant Association only paid the booking amount and failed to make further payments is rejected. The Complainant members having opted for construction linked payment plan, was to make payment of the balance amount as per schedule of the allotment letter. The Construction is not even as per the schedule. The Opposite Parties failed to obtain requisite approvals, and did not even commence construction despite collecting substantial amounts as advance payments.

19. The other issue for our consideration is whether the Opposite Parties have committed deficiency in service by failing to obtain requisite approvals, and failing to commence construction or refund the amounts paid by the Complainant members. It is evident from the records that all members of the Complainant Association, except one, booked their respective Units in the years 2013 and 2014, while one member booked his Unit in 2015. The booking dates vary, as do the delivery dates. However, the due date for the delivery of units to all allottees/members was in 2015. The allotment letter was issued either by Opposite Party No. 2 or Opposite Party No. 3 on the payment of the booking amount of the Unit i.e. 20% of the total sale consideration. Similarly, the booking amount was also collected by Opposite Party No. 2 and Opposite Party No. 3. The Opposite Parties failed to obtain the requisite approvals before launching the project "Commanders' Gateway" and misrepresented the status of regulatory clearances to the Complainant members at the time of booking. Even after



repeated representations, the Opposite Parties failed to obtain the necessary permissions from the concerned authorities, thereby violating legal and contractual obligations. Despite collecting significant amounts as advance payments, the Opposite Parties neither commenced construction nor refunded the amounts to all Complainants. The documentary evidence, including the email correspondences, establishes that the Opposite Parties were fully aware of the regulatory requirements imposed by CIDCO (NAINA) vide Notification dated 10.01.2013 but failed to act with due diligence. The prolonged inaction and misrepresentation regarding the approvals demonstrate a clear case of unfair trade practice and deficiency of service. Several Complainants requested refunds due to the undue delay in the commencement of construction. Although some partial refunds were issued, many members of the complainant association are yet to receive their refunds. This further substantiates the allegations of financial mismanagement and breach of contractual obligations. The Complainant members cannot be expected to wait indefinitely for the completion of the project, especially considering that nearly 10-12 years have elapsed since the date of booking and 8-9 years have passed since the due date of possession. The prolonged and unjustified delay on the part of the Opposite Parties in commencing and completing the construction demonstrates a clear deficiency in service, breach of contractual obligations, and an unfair trade practice. Given the significant delay, the continued inaction of the Opposite Parties, and their failure to refund the amounts paid, the Complainant Members are entitled to a full refund of their respective amounts deposited along with interest and appropriate compensation for



the financial loss, mental agony, and hardship suffered due to the Opposite Parties' wrongful conduct.

20. In this regard, we are relying on the judgment of Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghvan, II (2019) CPJ 34 (SC)*, decided on 02.04.2019, wherein it was held as under:

"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 installment, 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.

In Bangalore Development Authority v. Syndicate Bank, a Coordinate Bench of this Court held that when possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable Interest thereon from the date of payment till the date of refund.

21. The Hon'ble Supreme Court in *Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 SC*, decided on 25.03.2021 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 SCDRC and by the NCDRC for refund of moneys were justified.

...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. Having regard to all the facts and circumstances of the case, we modify the order of the NCDRC by directing that the appellant shall pay interest at the rate of 9% per annum to the respondent instead and in place of 12% as directed by the NCDRC. Save and except for the above modification, we affirm the directions of the NCDRC."

22. The Hon'ble Supreme Court in the case of *Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor*, in Civil Appeal No.6044 of 2019 decided on 7.4.2022, held as under:-

"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 Pvt. Ltd. Vs. DS Dhanda 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 interest shall be payable from the dates of such deposits.

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."

23. The issue for our consideration is whether the legal representatives of Late Mr. Shailesh Jamnadas Dawda are liable to refund the amounts paid by the Complainants, along with interest and compensation? The excerpt of one of the allotment letters issued by Opposite Party No.2 is reproduced herein;



“Dear Madam,

We, M/S VALJI GOKULDAS AND SONS through its Proprietor Shri S.J. Dawda, Aged Adult, occupation - Agriculturist and Business, having office at 67/13, Herrnes Centre, Sector-17, Vashi, Navi Mumbai-400705, hereinafter called and referred to as “THE BUILDERS /OWNERS /DEVELOPERS /VENDORS” (which expression shall unless it be repugnant to the context or contrary to meaning thereof mean and include his heirs, executors, administrators and assigns), are very much pleased to inform you about the confirm allotment of Two bed room/hall & Kitchen Flat no 102, First Floor, Parking No-367 in Building No J-9 (Layout attached), admeasuring 804 sq.ft.”

Also, Section 37 of the Indian Contract Act, 1872,

37. Obligation of parties to contracts.—The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law. Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

24. Therefore, the allotment letter issued to the allottees/members of the Complainant association explicitly binds the legal heirs of Late Mr. Shailesh Dawda, making them legally obligated to settle the debts of the sole proprietor. The Ld. Counsel for the Opposite Party cited the Hon’ble Supreme Court Judgment in *Vinayak Purshottam Dube (Deceased) Through LRs. vs. Jayashree Padmakar Bhat and Others, (2024) 9 SCC 398* to argue that the legal heirs should not be held liable for personal obligations of the deceased. However, the judgment explicitly held that legal representatives are liable for monetary obligations of the deceased to the extent of the estate inherited



and this can be construed from Para 24 of the Judgment, which are reproduced herein,

“24. But in the case of sole proprietorship, which is a common form of business in India, when a legal obligation arises under a contract which has to be discharged personally by the sole proprietor, who is since deceased, had entered into the agreement, such as, in the case of a Development Agreement in the instant case, can such obligations be imposed on his legal representatives or heirs who are not parties to the Development Agreement and where the obligations under such an agreement per se cannot be fulfilled inasmuch as they neither have the skills nor the expertise to do so and those obligations depend purely on the skills and expertise of the deceased sole proprietor? In other words, where the decree or order is not against the estate of a deceased sole proprietor but based on the skills and expertise of the sole proprietor, we are of the view that in the latter case, the obligations which had to be performed by the sole proprietor would come to an end on his demise and the same cannot be imposed on his legal heirs or representatives. We reiterate that such a position is distinguished from a position where the estate of the deceased sole proprietor would become liable to satisfy the decree in monetary terms. This is because a proprietorship firm is not a separate legal entity as compared to the proprietor and his estate would become liable only to satisfy a decree or an order in monetary terms on his demise.”

Since the present case involves a claim for refund of amounts paid, and not obligations requiring personal skill or expertise, the legal heirs of Late Mr. Shailesh Dawda are directly liable to refund the booking amounts from the inherited estate.

25. For the reasons stated above, the present complaint is disposed of with the following directions: -

- (i) The Opposite Parties shall refund the entire amount collected from each of the Complainant Association members to them along with interest @ 9% per



annum from the respective dates of deposit till the date of actual refund within six weeks from the date of this Order after deducting any payment (s) already made to a Buyer and calculating the 9% rate of interest for such amount already paid to the Buyer from respective deposits till such payment. For balance amount payable the rate of interest shall be 9% p.a. from respective dates of deposit till realization. Any delay beyond six weeks, will attract an interest rate of 12% per annum for the same period.

- (ii) The Opposite Parties are further directed to pay the litigation costs incurred by the Complainant Association, amounting to Rs.1,00,000/-.

26. Pending applications, if any, stand disposed of.



Sd/-

(BINOY KUMAR)
PRESIDING MEMBER

Sd/-

(SAROJ YADAV, J.)
MEMBER

Pankaj/Ar/B-5



1618 Pankaj
24/4/2025

