

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1976 OF 2019

1. ASHISH KAKKAR & ANR.Complainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 1977 OF 2019

1. VIJENDRA KUMAR AGRAWALComplainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 1978 OF 2019

1. RAJESH KUMAR RATHOREComplainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 1979 OF 2019

1. ANOOP KANT DIXIT & ANR.Complainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 1980 OF 2019

1. KAJAL KAPOOR & ANR.Complainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 2007 OF 2019

1. ALOK JAINComplainant(s)

Versus

1. PIYUSH IT SOLUTINS PVT. LTD.
THROUGH ITS MANAGING DIRECTORS HAVING
ITS REGD OFFICE AT FLAT NO.14,GROUND
FLOOR,PUL PEHALD PUR,DDA MIG SURAJ
APARTMENT NEW DELHI-110044Opp.Party(s)

CONSUMER CASE NO. 2031 OF 2019

1. SHILPA PURSWANI & ANR.Complainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.
THROUGH ITS MANAGING DIRECTOR HAVING
ITS REGD OFFICE AT FLAT NO.14, GROUND
FLOOR,PUL PRHALD PUR,DDA MIG SURAJ
APARTMENT NEW DELHI-110044Opp.Party(s)

CONSUMER CASE NO. 2032 OF 2019

1. ABHAY PRAKASH AGRAWALComplainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 2033 OF 2019

1. SRIRAM VARADARAJAN & ANR.Complainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 2034 OF 2019

1. NITIN SAXENA & ANR.Complainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 2132 OF 2019

1. GAURAV AGARWAL & ANR.Complainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.
THROUGH ITS MANAGING DIRECTOR HAVING
ITS REGD OFFICE AT FLAT NO.14, GROUND
FLOOR,PUL PEHALD PUR, DDA MIG SURAJ
APARTMENT NEW DELHI-110044Opp.Party(s)

CONSUMER CASE NO. 2133 OF 2019

1. SIDDHARTH JAINComplainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 2134 OF 2019

1. HARISH BANWARIComplainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 2135 OF 2019

1. DEEPAK SINGHComplainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 2136 OF 2019

1. RAM PRAKAT BARANWAL & ANR.Complainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

CONSUMER CASE NO. 2137 OF 2019

1. BELA SETHI & ANR.Complainant(s)

Versus

1. M/S. PIYUSH IT SOLUTIONS PVT. LTD.Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE V.K. JAIN,PRESIDING MEMBER

For the Complainant : Mr. Sushil Kaushik, Advocate with
Ms. Himanshi Singh, Advocate.

For the Opp.Party : Mr. C. George Thomas, Advocate.

Dated : 08 Sep 2020

ORDER

JUSTICE V.K.JAIN (ORAL)

The complainants booked residential apartments with the opposite party namely M/s Piyush IT Solutions Pvt. Ltd. in a project namely Lotus Arena-II, which the opposite party is developing on plot No. SC-01/A2, Sports City, Sector 78 and 79 of Noida. The complainants executed Apartment Buyer Agreement with the opposite party on different dates. Clauses 5.1 and 5.2 of the agreements pertain to the delivery of the possession and read as under:-

5.1 Subject to Clause 5.2 and subject to the Buyer making timely payments, the Company shall endeavor to complete the construction of the tower in which the apartment is situated within 42 months, with a grace period of 6 (six) months from the date of the execution of this Agreement provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Apartment in the event of any default or negligence attributable to the Buyer's fulfilment of terms & conditions of this Agreement.

5.2 The Buyer agrees and acknowledges that where the completion of construction of the Apartment and/or the handing over of the possession of the Apartment is delayed by any reasons beyond the control of the Company including (without limitation), Force Majeure and reasons such as delay on the part of the Government authorities in granting the necessary approvals for commencing and completing the development of the Project, including (without limitation), the grant of approval by the Ministry of Environment and Forest (MOEF) for construction, the grant of part/full occupation/completion certificate then no claim whatsoever by way of any damages/compensation shall lie against the Company and the Buyer do hereby waive all rights and claims in this regard. Further, where there occurs any delay in handing over possession of the Apartment to the Buyer on account of any of reasons specified under this Clause, the Company shall be entitled to a reasonable extension of time for handing over possession of the Apartment.

“Force Majeure” shall mean any event or circumstance or a combination of events and circumstances, whether occurred or likely to occur, which satisfied any of the following conditions:

1. Materially and adversely affects the Project and/or the performance of an obligation of the Company, and/or
2. Are beyond the control of the Company, and includes (without limitation), any one or more of the following events and/or circumstances:
3. War (whether declared or undeclared), invasion, armed conflict or act of foreign enemy; and/or
4. Revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage; and/or
5. Strikes, industrial disputes and/or lockouts and/or interrupting supplies and services to the Project including and not limited to raw material including Labour; and/or
6. Change in Government policy, laws (including any statute, ordinance, rule, regulation, judgment, notification, order, decree, permission, license or approval), including but not limited to expropriation or compulsory acquisition by any Government of any part of the Project or rights therein; and/or
7. Acts of God or events beyond the reasonable control of the affected party which could not reasonably have been expected, including any effect of the natural elements, including lightning, fire, earthquake, unprecedented rains, landslide, subsidence, flood, storm, cyclone, epidemics or plagues or any other similar effect; and/or

8. Any judgment or order of any Court of any jurisdiction, including any orders passed by any Tribunal, Quasi-Judicial Authority or Government in India made against the Company in any proceedings or in any other proceeding having effect on the project of the Company.

2. It would thus be seen that the possession was to be delivered within a period of 48 months from the date of agreement and this period included the grace period of six months. The case of the complainants is that the possession in terms of the agreement has not been offered to them and even the construction is not complete despite they having made substantial payment to the opposite party. The complainants are, therefore, before this Commission seeking refund of the amount which they paid to the opposite party along-with compensation etc.

3. The opposite party did not file its written version within the prescribed period. However, on 27.01.2020, the delay in filing the written version was condoned with the consent of the complainants subject to payment of Rs.20,000/- as costs in each complaint. The rejoinder and affidavit of admission/denial of documents was directed to be filed within four weeks from the said order dated 27.01.2020, meaning thereby that the cost in any case had to be paid before four weeks from the date of the said order. The opposite party failed to pay the costs in terms of the order dated 27.01.2020 though four weeks from the said order expired on 24.02.2020. IAs 4842 to 4849, 4850 to 4854 and 4864 to 4866 of 2020 were filed by the complainants seeking rejection of the written version which the opposite party had filed without paying the costs. This Commission vide order dated 10.08.2020 noted that the order passed on 27.01.2020 was a consent order and that the costs in terms of the said order had not been paid. One last and final opportunity was given to the opposite party to pay the costs within one week from that date failing which the written version was to stand rejected without any further orders and the matters were to be taken up for final hearing. In case the costs was paid within one week from 10.08.2020, the opposite party was permitted to file its affidavits by way of evidence as well as affidavits of admission/denial of documents. Despite the peremptory order passed by this Commission on 10.08.2020 the costs had not been paid and the Ld. counsel for the opposite party submits that being in financial crunch the opposite party has not been able to pay the costs. Therefore, the written version filed by the opposite party stands rejected, the costs having not been paid, even in more than seven months of the date on which the said costs were imposed. The matters have been, therefore, taken up for final hearing in terms of the order dated 10.08.2020.

4. The following are the particulars of the allotments made to the complainants by the opposite party:-

Sl. No.	Case No.	Name	Apartment Detail	DOA	B.B.A. Execution Date
1	CC/1976/2019	Ashish Kakkar	Unit no. 104 Floor 01 Tower 03	7-1-2015	3-7-2015
2	CC/1977/2019	Vijendra Kumar Agrawal	Unit no. 502 Floor 05 Tower 01	19-02-2015	7-10-2015

3	CC/1978/2019	Rajesh kr. Rathore	Unit no. 1802 Floor 18 Tower 03	23-12-2014	1-7-2015
4	CC/1979/2019	Anoop Kant Dixit	Unit no. 803 Floor 08 Tower 02	30-06-2015	13-08-2015
5	CC/1980/2019	Kajal Kapoor	Unit no. 1103 Floor 11 Tower 01	27-01-2015	23-07-2015
6	CC/2007/2019	Alok jain	Unit no. 503 Floor 05 Tower 04	16-12-2014	21-10-2015
7	CC/2031/2019	Shilpa purswani	Unit no. 702 Floor 07 Tower 01		5-8-2015
8	CC/2032/2019	Abhay Prakash Aggarwal	Unit no. 1702 Floor 16 Tower 01	2-3-2015	22-07-2015
9	CC/2033/2019	Sriram Varadarajan	Unit no. 403 Floor 4 Tower 06	Allotment - 2/3/2015	14-07-2015
10	CC/2034/2019	Nitin Saxena	Unit no. 803 Floor 08 Tower 01	3-3-2014	29-6-2015
11	CC/2132/2019	Gaurav Aggarwal	Unit no. 1101 Floor 02 Tower 05	11-3-2014	13-07-2015
12	CC/2133/2019	Siddharth Jain	Unit no. 1701 Floor 17 Tower 03	2-3-2015	28-7-2015
13	CC/2134/2019	Harish banwari	Unit no. 401 Floor 04 Tower 06	3-5-2014	25-12-2015
14	CC/2135/2019	Deepak singh	Unit no. 2402 Floor 23 Tower 02	6-1-2015	22-07-2015

15	CC/2136/2019	Ram Prakat Baranwal	Unit no. 804 Floor 08 Tower 03	30-Jun-2015	17-08-2015
16	CC/2137/2019	Bela Sethi	Unit no. 1803 Floor 17 Tower 01	17-12-2014	29-06-2015

Sl. No.	Case No.	Name	D.O.P (Without Grace Period)	Area (in Sq feet)	T.Consideration	Amount Paid
1	CC/1976/2019	Ashish Kakkar	3-1-2019	2045	RS 1,01,50,815	RS 77,14,775
2	CC/1977/2019	Vijendra Kumar Agrawal	7-4-2019	1870	Rs 89,35,427	RS 66,28,053
3	CC/1978/2019	Rajesh kr. Rathore	1-1-2019	2045	RS 96,39,565	RS 71,25,125
4	CC/1979/2019	Anoop Kant Dixit	13-02-2019	1870	RS 89,28,415	RS 58,66,512
5	CC/1980/2019	Kajal kapoor	23-01-2019	1870	RS 89,28,415	RS 58,60,190
6	CC/2007/2019	Alok jain	21-04-2019	1870	RS 92,13,510	RS 65,36,922
7	CC/2031/2019	Shilpa purswani	5-2-2019	1870	RS 92,13,590	RS 60,75,420

8	CC/2032/2019	Abhay Prakash Aggarwal	22-01-2019	1870	RS 90,26,590	Rs 58,65,977
9	CC/2033/2019	Sriram Varadarajan	14-01-2019	1870	RS 92,13,590	RS 52,67,651
10	CC/2034/2019	Nitin Saxena	29-12-2018	1870	RS 91,66,840	Rs 60,30,421
11	CC/2132/2019	Gaurav Aggarwal	13-01-2019	1562	Rs 73,84,829	RS 49,72,964
12	CC/2133/2019	Siddharth Jain	28-01-2019	2465	RS 1,15,48,480	RS 86,78,015
13	CC/2134/2019	Harish banwari	25-04-2019	1562	RS 74,90,264	RS 43,75,966
14	CC/2135/2019	Deepak singh	22-1-2019	1870	RS 90,26,590	RS 57,98,619
15	CC/2136/2019	Ram Prakat Baranwal	17-02-2019	2045	RS 97,36,702.50	RS 26,18,730
16	CC/2137/2019	Bela Sethi	29-12-2018	1870	RS 92,41,640	RS 60,12,890

5. It would thus be seen that in all these matters the agreements were executed between June, 2015 to December, 2015. The possession ought to have been delivered, between June, 2019 to December, 2019 when four years from the execution of the agreements expired. Admittedly, the possession has not been offered to the complainants till date and even the construction is not complete. The Ld. counsel for the opposite party states on instructions that the opposite party shall obtain the requisite occupancy certificate and then offer possession of the flats, complete in all respects, to the concerned allottees, within a period of 9 to 12 months from today and it shall refund the entire amount received by it from the concerned allottee along-with interest at the rate awarded by this Commission if the possession is not delivered within 12 months from today, after

obtaining the requisite occupancy certificate which the opposite party shall obtain at its own responsibility before offering possession to the concerned allottee.

6. Since the written version filed by the opposite party has already been rejected on account of non-payment of the costs, the case of the complainant remains practically unrebutted. Mr. Kaushik submits that the affidavits by way of evidence have already been filed by the complainants along-with applications which were disposed of on 10.08.2020. If 12 months from today are given to the opposite party for delivering possession of the flats, complete in all respects and after obtaining requisite occupancy certificate that would be more than reasonable extension for the purpose of delivery of possession.

7. In a recent decision of the Hon'ble Supreme Court **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. vs. DLF Southern Homes Pvt Ltd (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. in Civil Appeal No. 6239 of 2019 decided on 24.08.2020** there was a delay on the part of the developer in offering possession. Besides the delay in offering possession, it had also failed to provide several amenities which it had promised while selling the flats to the buyers. The Hon'ble Supreme Court held that not providing those amenities including a shopping center and health-care facilities constituted deficiency in service and the flat buyers were entitled to compensation on account of the failure of the developer to provide those amenities. It was noted that in such a situation it may be difficult for the court to quantify the exact nature of the compensation that should be provided to the flat buyer but generally appreciation in land value results in an increase in the value of the investment made by the buyers. It was further held that difficulties in determining the measure of compensation cannot dilute the liability to pay and a developer who has breached a clear representation made to the buyer should be held accountable to the process of law. The Hon'ble Supreme Court held that in factoring in the compensation which should be provided to the flat buyers, this has to be borne in mind. Thus, the Hon'ble Supreme Court granted compensation not only on account of the delay in offering possession of the flats but also on account of the failure of the developer to provide several amenities which it had promised to the flat buyers. The Hon'ble Supreme Court, awarded the compensation in the form of simple interest @ 6% p.a from the expiry of 36 months from the execution of the agreement until the date of offer of possession besides permitting the allottees to retain the compensation which had been paid or credited by the developer at the rate specified in the agreements between the parties. However, in the present case, the complainants shall be entitled to compensation only for the delay in offer of possession, in case the possession is not offered in terms of direction (i) above. Therefore, it would be fair and reasonable to award compensation in the form of simple interest @ 6% p.a. w.e.f. the committed date for delivery of possession till the date on which the possession actually offered in terms of this order.

8. The complaints are, therefore, disposed of with the following directions:-

(i) The opposite party shall complete the construction of the allotted flats in all respects, obtain the requisite occupancy certificate at its own cost and responsibility and then offer possession of the allotted flats to the concerned allottees within a maximum period of 12 months from today i.e. on or before 08.09.2021.

(ii) If the opposite party fails to complete the construction, obtain the requisite occupancy certificate and then offer the possession of the flat, complete in all respects, it shall refund the

entire amount received from the concerned allottee to him/them, within one month thereafter along-with compensation in the form of simple interest @ 9% p.a. from the date of each payment till the date of refund.

(iii) If the opposite party delivers possession to the complainants in terms of direction (i) above, it shall also pay to the concerned allottee compensation in the form of simple interest @ 6% p.a. from the committed date for delivery of possession till the date on which the possession in terms of direction (i) above is offered.

(iv) The balance amount, if any, payable by the concerned allottee to the opposite party shall be adjusted out the compensation payable in terms of this order and the balance amount, if any, shall be paid by the concerned allottee within four weeks of the offer of possession in terms of direction (i) above.

9. The opposite party shall also pay cost of litigation quantified at Rs.25,000/- in each case.

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V.K. JAIN
PRESIDING MEMBER