

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

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ADVANTAGE - VI

Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Sub: Problem with Flat Owners' Association.

- 1) I am a resident of a housing Complex in Kolkata. After possession, for one year the builder maintained our housing society, there was really no problem. But during May 2021 a “Flat Owners Association”-- an adhoc committee comprising some self-nominated owners was constituted and builder withdrew their support regarding maintenance and supervision. This committee is presently looking after the all house-keeping, lift maintenance, security works etc. Sir, the service under the “Flat Owners Association” is deteriorating day by day. I personally complained to the builder on this issue but they denied to hear and advised me to take the issue with the adhoc committee. But when any owner makes any complaint, the adhoc committee also expresses their helplessness on the ground of scarcity of money and limited power. There is no facility manager in the housing complex for the last one year and we the owners have no formal channel or designated person to lodge our grievances. Since the Adhoc welfare Association is not yet to be registered with the govt., we are totally helpless to find any legal remedy too. Owners are paying their maintenance charges regularly to the adhoc committee. A lawyer has been appointed for registration process, but till date it is not yet approved by the competent authority.

Query : Being a beneficiary of the Housing complex can I take any action against the builder or the adhoc welfare committee? Please guide.

- 2) **In my registration deed one point is mentioned in article 3.11:** “The Allottees/Purchasers shall observe all the terms and conditions of agreement for sale entered upon by and between the parties hereto and also all other covenants as be deemed reasonable from time to time by the owner/promoter/developer or the associations, upon its formation, for the common purposes.”

Query a: Is it apparent from the above that all owners including the resident welfare Association have to obey all the terms and condition mentioned in the sale agreement.

Query b: If is not obeyed by the RWA what type action can an owner initiate?

Goutam Ghosal
KOLKATA

Ans:

As a member of the “Flat Owners’ Association / Residents’ Welfare Association”, you could be aware of the following:

- 1) The Builder is responsible for the maintenance of the Flats, only for a limited time, say, for a year or so, till sizeable number of the flats are occupied, and the Flat Owners / Residents form their own Association. Even for that maintenance, for a year or so, the Builder must have collected some charges in advance, which could have been recorded in the Sale Agreement.
- 2) Since the maintenance of the Flats and other amenities of the Housing Complex are supposed to be maintained by the Residents themselves, the Builder could have facilitated formation of the Flat Owners Association. Such an Association elects its President, etc., in a democratic manner.
- 3) The said Association prepares the By-Laws and gets the Association Registered, so that it will enjoy all legal rights and responsibilities mandated under the relevant law of the State. Each state has its own Rules for the Registration of the Association /Societies. The Advocate engaged by your “Flat Owners Association”, is pursuing this Registration process.
- 4) It is to be noted that whether the Association is Registered or not, as long as it is designated to carry out the maintenance of the Housing Complex and the amenities therein, as per the By-Laws approved by the Residents, and collects the Maintenance charges, it is obliged to take care of the maintenance, etc.
- 5) In case of any shortcoming in the services which are supposed to be taken care of by the Managing Committee of the Association, the resident members can complain to the President of the Committee, as legally he is responsible.
 - Since the other residents also must be encountering similar shortcomings in the maintenance of the infrastructural amenities, it will be appropriate to approach the President of the Association, along with some more Flat Owners and try to resolve the issues, if any. It is not uncommon to find several teething troubles; especially when there is a change of guard (Builder to Volunteer based Association). It is through participation, discussion and sharing, the problems can be solved.
 - There are also occasions, when the elected people are found wanting. So, jointly the problems need to be faced and resolved. One should also remember that the Office-bearers of such Managing Committees perform their duties on voluntary basis and such offices are supposed to be not for profit.

I am sure that with the participation of the residents, you will be able to overcome the shortcomings in the maintenance. Unless there are serious issues of financial embezzlement, etc., it is not advisable to consider legal solution, in respect of voluntary service rendering co-residents.

Sub: Violation of Packaged Commodities Rules

Today in Reliance Jio retail shop of Sambalpur, I purchased two Thin Arrowroot Biscuit packets of 300gms. One is of Biskfarm and another one of Parle.

While Parle was just 300 gm, Biskfarm’s biscuit packet weighed only 278 gm. I tried three different machines and packets, but results were same.

Obviously, Biskfarm is cheating thousands of customers daily by adopting short weightment of particular biscuits (to the extent of 22gms – 7%)...may be with other products also.

I request you to make the consumers aware using your good offices of *Advantage Consumer* and other possible media.

Santosh Kumar Panda
SAMBALPUR, ODISHA

Ans:

As per Table-I of the First Schedule of The Legal Metrology (Packaged Commodities) Rules, 2011, the maximum permissible errors on net quantities declared by weight or volume, between 200 – 300 (say, 300 gm) is 9 gm only. So, weight below 291 gm, in a packet declared to contain 300 gm. is illegal and punishable, under The Legal Metrology Act, 2009. With proper evidence, the matter can be complained to the concerned official of Department of Legal Metrology, of the local area, for appropriate action.

Builder directed to compensate the complainant by refunding the amount deposited along with interest, as it could not hand over possession in time.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 2648 OF 2017

SUSHMA ASHOK SHIROOR

.....Complainant(s)

Versus

EXPERION DEVELOPERS PRIVATE LTD.

THROUGH ITS MD, F-9, FIST FLOOR, MANISH PLAZA-1,

PLOT NO. 7, MLU, SECTOR 10, DWARKA,

NEW DELHI-110075.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. PREM NARAIN,PRESIDING MEMBER

Dated : 19 Jun 2019

ORDER

This consumer complaint has been filed by the complainant Sushma Ashok Shirror against the opposite party Experion Developers Private Ltd. It is alleged in the complaint that the complainant had booked apartment in Windchants, Sector 112, Gurgaon, Haryana of the opposite party. The total consideration of the apartment was Rs.2,36,15,726/- and the builder –buyer’s agreement was signed on 26.12.2012. The complainant has paid total amount of Rs.2,06,41,379/-. As per the condition of the agreement, possession was to be given within 42 months from the approval of the plan. Thus, the possession was to be given latest by 26.6.2016. It has been alleged in the complaint that the possession has not yet been given. It has been prayed in the complaint that the opposite party may be directed to pay Rs.2,06,41,379/- along with 24% p.a. interest totalling to Rs.3,68,32,815/-. The complainant has prayed for Rs.5,00,000/- as cost of complaint. The complaint has been resisted by the opposite party by filing the written statement. Both the parties filed their evidence by way of affidavits.

2. Heard the Authorised Representative (AR) of the complainant and the learned counsel for the opposite party. The AR reiterated the facts given in the complaint and mentioned that the possession was due on 26.06.2016, however, no possession has been given to the complainant as yet. Hence refund has been sought because the complainant does not want to block her money with the opposite party without getting any benefit.

3. The Authorised Representative of the complainant stated that the said apartment was having a super area of 3,525 sq. ft. which was sold to the complainant @ Rs.5,750 per sq.ft. Therefore, the complainant purchased the said apartment at a total price of Rs.2,36,53,958/-. It was further stated that the opposite party in terms of clause 10(a) of the buyer's agreement had committed to the complainant that they would hand over the possession of the said apartment within a period of 42 months from the date of:

A. Date of approval of building plans; or

B. Date of receipt of the approval of the Ministry of Environment and Forest, Govt. of India for the project; or

C. Execution of this agreement dated 26.12.2012, whichever is later.

4. Authorised Representative further stated that till 08.06.2016 a sum of Rs.2,06,41,379/- out of total price of Rs.2,36,53,958/- has already been paid by the complainant. The opposite party in its reply dated 16.02.2018 and in para-wise reply of para-No.5 admits that "*The complainant has paid a sum of Rs.2,06,41,379/- out of total price of Rs.2,36,53,958/-.*"

5. It was argued by the AR of the complainant that as the construction of her apartment was not complete, she started asking for refund of her hard-earned money deposited with the opposite party. AR mentioned that the opposite party has filed its reply on 16.2.2018 and in its preliminary objections and submissions, the opposite party has admitted in para 2 that:

"The trigger date for clause 10.1 is 26.12.2012 which is the date of execution of the apartment buyer's agreement"

6. From the above one thing is clear that the period of 42 months is to be counted from 26.12.2012. Hence possession was due on 26.06.2016. By this reply it is also clear that from 26.12.2012 till filing of the reply on 16.2.2018, the occupation certificate was not there with the opposite party as the same had been applied for by them and it was only on 23.7.2018 that the opposite party got the occupation certificate which is after 67 months from the start of project and after a delay of more than 25 months from the due date of possession.

7. The AR further stated that the present case is squarely covered by the judgment dated April 02nd, 2019 passed by the Hon'ble Supreme Court in Civil Appeal No.12238 of 2018 titled as "**Pioneer Urban Land & Infrastructure Ltd. versus Govindan Raghavan**" wherein the Hon'ble Supreme Court has upheld the order of this Commission by observing the following:

"3.8. The National Commission vide Final Judgment and Order dated 23.10.2018 allowed the Consumer Complaint filed by the Respondent - Flat Purchaser, and held that since the last date stipulated for construction had expired about 3 years before the Occupancy Certificate was obtained, the Respondent - Flat Purchaser could not be compelled to take possession at such a belated stage. The grounds urged by the Appellant - Builder for delay in handing over possession were not justified, so as to deny awarding compensation to the Respondent - Flat Purchaser. The clauses in the Agreement were held to be wholly one - sided, unfair, and not binding on the Respondent - Flat Purchaser. 6 The Appellant - Builder was directed to refund Rs. 4,48,43,026/- i.e., the amount deposited by the Respondent - Flat Purchaser, along with Interest @10.7% S.I. p.a. towards compensation.

9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant - Builder failed to fulfil his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent - Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent - Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace Agreement expired. During this period, the Respondent - Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent - Flat Purchaser also located an alternate property in Gurugram.

In these circumstances, the Respondent - Flat Purchaser was entitled to be granted the relief prayed for i.e., refund of the entire amount deposited by him with Interest.

10. The Civil Appeals are accordingly dismissed, and the Final Judgment and Order dated 23.10.2018 passed by the National Consumer Disputes Redressal Commission is affirmed.”

8. Authorised Representative of the complainant further argued that the present case is covered by the judgment dated 19.09.2012 passed by the Hon'ble Supreme Court in **K.A. Nagamani Versus Housing Commissioner, Karnataka Housing Board, (2015) 16 SCC 587** wherein the Hon'ble Supreme Court relying on the judgment of the Supreme Court in **Ghaziabad Development Authority Vs. Balbir Singh (2004) 5 SCC 65** has allowed interest @18% p.a. on refund amount. The learned counsel emphasized that the complainant is also entitled to 18% p.a. interest on the amount of refund.

9. On the other hand, learned counsel for the opposite party stated that in the complaint itself the complainant has stated at many places that she has been requesting the opposite party that she be given earlier possession of her apartment as she is in a desperate need to shift to the said apartment. The complainant herein submitted that since October, 2015 she has been requesting the opposite party through phone communications and her personal visits that she and her family members require the apartment bonafidely and urgently. Now strangely the complainant is seeking refund. It was argued by the learned counsel for the opposite party that this is because of the fact that the complainant is an investor and as the prices of real estate are at low level, the complainant wants refund of the amount paid. The possession was due on 26.06.2016, but the opposite party offered the possession on 24.7.2018. The occupancy certificate was issued on 23.7.2018. There is already a provision in the agreement (clause 13.1) that if the company does not offer the possession by end of grace period, the company shall pay a compensation of Rs.7.50/- per sq.ft. per month. This is a huge project and some delay is likely to happen in big projects. Money paid by the complainant has already been spent in the building and the buildings are complete and the occupancy certificate has been obtained. As the possession was already offered on 24.07.2018, there should be no question of any refund of the amount as there is only a delay of 1 ½ years in giving the possession and for such delay the provision of compensation is already there. Many allottees have taken the possession and are residing there. The complainant seeks refund on the basis of some delay in handing over the possession. The delay is not deliberate and the delay has been due to certain force majeure conditions and on account of some delay in getting the occupancy certificate.

10. It was further asserted by learned counsel that it is wrong to say that the project is not complete on account of lack of water connection and due to non-completion of construction of road etc. as alleged by the complainant. No such pleadings have been made by the complainant and therefore, these allegations are without any basis. Moreover, the fact is that once the occupancy certificate has been issued, the project is considered to have been completed as per the plan of the project. The authority will not grant occupancy certificate, if the roads are not completed and water connection is not there.

11. I have given a thoughtful consideration to the arguments advanced by both the sides and have examined record. It is true that from the complaint, it seems that the complainant was in dire need of getting possession of the house. However, now she is requesting refund of the amount deposited by her, when the building is complete and offer of possession has been given to her on 24.07.2018 by the opposite party after receiving the occupancy certificate on 23.07.2018. The opposite party has not been able to complete the construction and get the occupancy certificate within the time stipulated and not even in reasonable time. In fact, the judgment of the Hon'ble Supreme Court in **Pioneer Urban Land & Infrastructure Ltd. versus Govindan Raghavan** (supra) is fully applicable in the present case as there has been delay of more than two years in obtaining occupancy certificate. The Complainant cannot be compelled to take the possession at this stage because the complainant has stated that she was not provided the flat when she actually needed it and now, she has made alternate arrangement and therefore, does not need this flat, though it is also a fact that if allottees opt out of the project and seek refund when the project is more or less complete, the sustainability of the project could be in danger, therefore, a balanced view is to be taken in such matters. The balance can be achieved to some extent mainly in the interest part. Hon'ble Supreme Court in **Kolkata West International**

Pvt. Ltd. Vs. Deva Asis Rudra, II (2019) CPJ 29 (SC) has reduced the interest of 12% p.a. granted by this Commission to 9% p.a. on the amount of refund.

12. Based on the above discussion, the complaint No.2648 of 2017 is allowed and the following order is passed: -

ORDER

The opposite party shall refund an amount of Rs.2,06,41,379/- paid by the complainant along with interest @9% p.a. from the date of last deposit before the due date of possession till actual payment on the amount paid before due date of possession and after this date if any amount is deposited, then from the date of deposit till actual payment. ■

Hon' Supreme Court has upheld the above Order, on 7th April 2022, in Civil Appeal no. 6044 of 2019.

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