

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 3814 OF 2017

1. SANJAY GUPTAComplainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.
THROUGH ITS DIRECTORS C-23, GREATER
KAILASH ENCLAVE 1
NEW DELHI-110048

2. ORRIS INFRASTRUCTURE PVT.LTD.
THROUGH ITS DIRECTORS RZ-D-5, MAHAVIR
ENCLAVE,
NEW DELHI-110045

.....Opp.Party(s)

CONSUMER CASE NO. 2011 OF 2017

1. PAWAN GUPTA
R/O C-66, Ground Floor South City-I
Gurgaon-122001

.....Complainant(s)

Versus

1. ORRIS INFRASTRUCTURE PVT. LTD. & ANR.
RZ-D-5,Mahavir Enclave
New Delhi-110045

2. Three C Universal Developers Pvt. Ltd.
C-23,Greater Kailash Enclave I
New Delhi-110048

.....Opp.Party(s)

CONSUMER CASE NO. 218 OF 2018

1. DESMOND NIKHIL D'SOUZA & ANR.Complainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.Opp.Party(s)

CONSUMER CASE NO. 2692 OF 2017

1. VINAY ARORA & ANR.Complainant(s)

Versus

1. ORRIS INFRASTRUCTURE PVT. LTD. & ANR.
RZ-D-5, MAHAVIR ENCLAVE,
NEW DELHI-110045.

2. THREE C SHELTERS PVT. LTD.

C-23, GREATER KAILASH ENCLAVE 1,
NEW DELHI-110048

.....Opp.Party(s)

CONSUMER CASE NO. 3563 OF 2017

1. ANJU NAGPAL

.....Complainant(s)

Versus

1. ORRIS INFRASTRUCTURE PVT. LTD. & 14 ORS.

2. THREE C SHELTERS PVT. LTD.

REGISTERED OFFICE: C-23, GREATER KAILASH
ENCLAVE I,

NEW DELHI-110048

.....Opp.Party(s)

CONSUMER CASE NO. 3811 OF 2017

1. BHITIKA GUPTA & ANR.

.....Complainant(s)

Versus

1. ORRIS INFRASTRUCTURE PVT. LTD. & ANR.

THROUGH ITS DIRECTORS, RZ-D-5 MAHAVIR
ENCLAVE,

NEW DELHI-110045

2. THREE C SHELTERS PVT. LTD.

THROUGH ITS DIRECTORS, C-23, GREATER
KAILASH ENCLAVE 1,

NEW DELHI-110048

.....Opp.Party(s)

CONSUMER CASE NO. 3812 OF 2017

1. GAUTAM ROY

.....Complainant(s)

Versus

1. ORRIS INFRASTRUCTURE PVT. LTD. & ANR.

RZ-D-5,MAHAVIR ENCLAVE,

NEW DELHI-110045

2. THREE C SHELTERS PVT. LTD

THROUGH ITS DIRECTOR C-23, GREATER
KAILASH ENCLAVE 1,

NEW DELHI-110048

.....Opp.Party(s)

CONSUMER CASE NO. 3817 OF 2017

1. PEEYUSH KAUSHIK

.....Complainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.

THROUGH ITS DIRECTORS, C-23, GREATER
KAILASH ENCLAVE 1,

NEW DELHI-110048

2. ORRIS INFRASTRUCTURE PVT.LTD.
THROUGH ITS DIRECTORS, RZ-D-5 MAHAVIR
ENCLAVE,

NEW DELHI-110045

.....Opp.Party(s)

CONSUMER CASE NO. 546 OF 2018

1. RAVI AGARWAL

.....Complainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.
C-23, Greater Kailash Enclave I, New Delhi-110048,
India

2. ORRIS INFRASTRUCTURE PVT. LTD.

RZ-D-5, Mahavir Enclave, New Delhi-110045, India

.....Opp.Party(s)

CONSUMER CASE NO. 562 OF 2018

1. MADHU TALWAR & ANR.

W/O VINOD TALWAR R/O FLAT NO. 46, RAMA
KRISHNA APARTMENT, SECTOR-9, ROHINI,
NEW DELHI-110085

2. RITESH TALWAR

S/O VINOD TALWAR R/O FLAT NO. 46, RAMA
KRISHNA APARTMENT, SECTOR-9, ROHINI,
NEW DELHI-110085

.....Complainant(s)

Versus

1. THREE C SHELTERS PVT. LTD. & ANR.
THROUGH ITS DIRECTORS REGD. OFFICE AT:
C-23, GREATER KAILASH ENCLAVE I,
NEW DELHI-110048

2. ORRIS INFRASTRUCTURE PVT. LTD.

THROUGH ITS DIRECTOR RZ-D-5, MAHAVIR
ENCLAVE,

NEW DELHI-110045

.....Opp.Party(s)

BEFORE:

HON'BLE MR. PREM NARAIN,PRESIDING MEMBER

For the Complainant : For the Complainant: Mr Aditya Parolia, Advocate with
Mr Zahid Hussain, Advocate
Ms Harshita Chauhan, Advocate
Mr. Nithin Chandran, Advocate
Ms. Aditi Sinha, Advocate

For the Opp.Party : For Orris Infrastructure Pvt. Ltd.: Ms Ruchika Jain, Advocate
For Three C. Shelters Pvt. Ltd.: Mr Anurag, Proxy Counsel for
Mr Pankaj Vivek, Advocate

Dated : 20 Jul 2020

ORDER

These consumer complaints have been filed by the complainants Sanjay Gupta & ors. as allottees of the project "Greenopolis" situated in Sector 89, Gurgaon alleging deficiency in service on the part of the opposite parties Three C Shelters Pvt. Ltd. & anr. As the complaints have been filed with more or less similar prayer against the same opposite parties, therefore, they are being considered together and are being decided together.

CC 3814/2017

2. The brief facts of the case are that the original allottee booked an Apartment in OP's project for total consideration of Rs.87,16,800/-. Through allotment letter dated 16.08.2012 Apartment no.1102 on 11th floor in Tower 11 was allotted and later on 24.08.2015, the same was endorsed in favour of complainant. The flat buyer's agreement was executed between the parties on 13.06.2013 issued to initial buyer was later on endorsed in favour of complainant on 24.08.2015. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 16.02.2016. Till date, complainant has paid Rs.75,96,776/- to opposite parties where last instalment was paid on 05.04.2016. The main prayers made in the complaint are as under:-

1. To direct OP to refund Rs.75,96,776 amount paid to OP with 18% p.a. penal interest.
2. To direct OP to pay compensation of Rs.5,00,000 & Rs.1,00,000 towards litigation costs.

CC 3817/2017

3. The brief facts of the case are that Complainant booked an Apartment in OP's project for total consideration of Rs.1,07,92,880/-. Through allotment letter dated 20.09.2012 Apartment no.701 on 7th floor in Tower 23 was allotted. The flat buyer's agreement was executed between the parties on 09.5.2013. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 20.03.2016. Till date, complainant has paid Rs.95,01,749/- to opposite parties where last instalment was paid on 05.04.2016. The main prayers made in the complaint are as under:-

1. To direct OP to refund Rs.95,01,749/- amount paid to OP with 18% p.a. penal interest.
2. To direct OP to pay compensation of Rs.5,00,000/- & Rs.1,00,000/- towards litigation costs.

CC 218/2018

4. The brief facts of the case are that the Complainants booked an Apartment in OP's project for total consideration of Rs.81,35,800/-. Through allotment letter dated 30.08.2012 Apartment no.12A03 on 13th floor in Tower 8 was allotted. The flat buyer's agreement was executed

between the parties on 22.05.2013. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 02.03.2016. Till date, complainants have paid Rs.73,55,651/- to opposite parties where last instalment was paid on 14.11.2015. The main prayers made in the complaint are as under:-

1. To direct OP to refund Rs.73,55,651 amount paid to OP with 18% p.a. penal interest.
2. To direct OP to pay compensation of Rs.5,00,000 & Rs.1,00,000 towards litigation costs.

CC 546/2018

5. The brief facts of the case are that the original allottee booked an Apartment in OP's project for total consideration of Rs.1,03,85,680/-. Through allotment letter dated 30.08.2012 Apartment no.103 on 1st floor in Tower 12A was allotted to initial buyer & later on 21.12.2012 the same was endorsed in favour of complainant. The flat buyer's agreement was executed between the parties on 22.05.2013. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 02.03.2016. Till date, complainant has paid Rs.85,72,435/- to opposite parties where last instalment was paid on 31.03.2016. The main prayers made in the complaint are as under:-

1. To direct OP to refund Rs.85,72,435 amount paid to OP with 18% p.a. penal interest.
2. To direct OP to pay compensation of Rs.5,00,000 & Rs.1,00,000 towards litigation costs.

CC 562/2018

6. The brief facts of the case are that the Complainants booked an Apartment in OP's project for total consideration of Rs.1,02,41,100/-. Through allotment letter dated 13.08.2012 Apartment no.1001 was allotted to the complainant. Due to financial condition of the complainants apartment no.1001 was cancelled and apartment no.1201 was allotted to the complainants on 04.07.2016 for total consideration of Rs.81,35,800/-. The flat buyer's agreement was executed between the parties on 07.07.2016. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 14.02.2016. The complainants have paid Rs.74,94,106/- to opposite parties by February, 2017. The main prayers made in the complaint are as under:-

1. To direct OP to refund Rs.74,94,106 amount paid to OP with 18% p.a. penal interest.
2. To direct OP to pay compensation of Rs.5,00,000 & Rs.1,00,000 towards litigation costs.

CC 2011/2017

7. The brief facts of the case are that Complainant booked an Apartment in OP's project for total consideration of Rs.97,06,610/- excluding taxes and overhead charges, when the total amount payable would be Rs.1,00,95,447/-. Apartment no.904 on 9th floor in Tower 21 was allotted on 13.08.2012. Agreement was executed on 8.5.2013. Complainant has taken a home loan of Rs.40,00,000/- by executing tripartite agreement for which he is paying an EMI of Rs.23,592/-. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months

grace period i.e. by 13.02.2016. Till date, complainant has paid Rs.88,93,512/- to opposite parties where last instalment was paid on 26.11.2015. The main prayers made in the complaint are as under:-

1. To direct OP to refund Rs.88,93,512 amount paid to OP with 18% p.a. penal interest.
2. To direct OP to pay compensation of Rs.5,00,000 & Rs.1,00,000 towards litigation costs.

CC 2692/2017

8. The brief facts of the case are that the Complainants booked an Apartment in OP's project for total consideration of Rs.87,16,800/-. Apartment no.12A on 13th floor of Tower 5 was allotted on 16.8.2012. The execution of agreement happened on 8.5.2013. Complainants have taken a loan of Rs.72,00,000/- for which they are paying an EMI of Rs.53,174/-. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 16.02.2016. Complainants have paid Rs.77,58,581/- to opposite party by April 2016. The main prayers made in the complaint are as under:-

1. To direct OP to handover the possession within 8 months with all additional facilities & execute all the necessary documents regarding the same.
2. To direct OP to refund Rs.77,58,581 amount paid to OP with 18% p.a. penal interest.
3. To direct OP to pay 6,000 per day in case of failure to provide possession as stipulated by this commission.
4. To direct OP to pay 12% interest on the amount deposited & wrongfully levied charges.
5. To direct OP to make arrangement & pay compensation of 20% total amount for loss of value due to sewage canal & to provide parking space.
6. To direct OP to pay compensation of Rs.5,00,000 & Rs.1,00,000 towards litigation costs.

CC 3811/2017

9. The brief facts of the case are that Complainants booked an Apartment in OP's project for total consideration of Rs.1,05,89,280/-. Through allotment letter dated 16.8.2012 apartment no.904 on 9th floor in Tower 23 was allotted. The flat buyer's agreement was executed between the parties on 29.05.2013. Complainants have taken a loan of Rs.52,00,000/- from Citi Bank at 10% p.a. interest. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 16.02.2016 till date complainants have paid Rs.92,82,430/- to opposite parties where last instalment was paid on 05.04.2016. The main prayers made in the complaint are as under:-

1. To direct OP to refund Rs.92,82,430 amount paid to OP with 18% p.a. penal interest.
2. To direct OP to pay compensation of Rs.5 lakh & Rs.1 lakh towards litigation costs.

CC 3812/2017

10. The brief facts of the case are that the original allottee booked an Apartment in OP's project for total consideration of Rs.97,06,610/-. Through allotment letter dated 13.8.2012 which was endorsed in favour of the complainant on 24.11.2012, apartment no.903 on 9th floor in tower 20 was allotted. The flat buyer's agreement was executed between the parties on 25.5.2013. Complainant has taken a loan of Rs.60,00,000/- from ICICI Bank at 8.5% p.a. interest. Opposite parties failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 13.02.2016. Till date the complainant has paid Rs.88,93,512/- to opposite parties where last instalment was paid on 30.10.2015. The main prayers made in the complaint are as under:-

(i) To direct OP to refund Rs.88,93,512/- amount paid to OP with 18% p.a. penal interest.

(ii) To direct OP to pay compensation of Rs.500,000 & Rs.1,00,000 towards litigation costs.

CC 3563/2017

11. The brief facts of the case are that the Complainant booked an Apartment in OP's project for total consideration of Rs.84,67,800/- . Through allotment letter dated 28.09.2012 Apartment no. 403 on 4th floor in Tower 10 was allotted. The Flat Buyer's Agreement was executed between the parties on 21.05.2013. Complainant entered into a tripartite loan agreement with the bank & builder, for Rs.30 lakhs on 10% p.a. interest, where he has paid the interest of Rs.2,55,163/-. OP failed to deliver the possession in 42 months inclusive of 6 months grace period i.e. by 28.03.2016. Till date, Complainant has paid Rs.78,73,124/- upto 05.04.2016 to OP. The main prayers made in the complaint are as under:-

(i) To direct OP to refund the amount paid with interest (18%) i.e. Rs.78,73,124/- + Rs.48,08,182/-, which totals to Rs.1,26,81,306/-.

(ii) To direct OP to handover the possession with all due facilities within 6 months from the date of filing of complaint (in alternative).

(iii) To direct OP to pay compensation of Rs.5,00,000/- & Rs.2,00,000/- towards litigation costs.

12. Consumer Complaint 2692/2017 has been filed for getting possession. However, remaining complaints CC 3814/2017, CC 3817/2017, CC 218/2018, CC 546/2018, CC 562/2018, CC 2011/2017, CC 3811/2017, CC 3812/2017 and CC 3563/2017 have been filed for refund of the deposited amount. These complaints have been resisted by the opposite parties by filing their written statement. All the parties filed their evidence by way of affidavits which have been taken on record.

13. Heard the learned counsel for the parties and perused the record. Learned counsel for the complainants stated that similar complaints have already been decided against the same opposite parties and therefore, these are covered cases under the judgments already passed by this Commission. Learned counsel referred to the judgment of this Commission in **consumer complaint No.2877 of 2017, VinamraShyamjiSharma Vs. Three C Shelters Pvt. Ltd. &anr. decided on 19.08.2019 (NC)** wherein the possession was sought and if the possession was not possible then refund was requested. This Commission vide order dated 19.08.2019 in this case,

allowed the complaint and ordered the possession to be handed over after obtaining the occupancy certificate by 30.11.2019 and an interest @6% p.a. was also awarded for delay in handing over the possession. It was also ordered in this case that if the possession is not delivered by 30.11.2019, the complainant would be entitled to get the refund along with 10% p.a. interest. Similarly in the case where the refund was sought, this Commission in **Atma Krishna Vs. Orris Infrastructure Pvt. Ltd. &anr. CC No.1590 of 2016 decided on 21.12.2018 (NC)** has allowed the refund of the deposited amount along with 10% p.a. interest from the date of respective deposits. Learned counsel for the complainants requested that these consumer complaints be also allowed on the same lines as of **Vinamra Shyamji Sharma Vs. Three C Shelters Pvt. Ltd. &anr.** (supra) and **Atma Krishna Vs. Orris Infrastructure Pvt. Ltd. &anr.** (supra).

14. Learned counsel for the complainants further stated that all the objections raised by the opposite parties have already been discussed in detail and have been decided in the aforesaid consumer complaints. Learned counsel for the complainants further stated that in the present consumer complaints, the payment has been made to the opposite party Oriss Infrastructure Pvt. Ltd. and therefore, if the refund is ordered, they should be responsible for refund of the amount. In these complaint cases, the possession was due in 2015-2016, however, even the construction is not complete and therefore, there is no question of giving any possession by the opposite parties. The learned counsel mentioned that in these consumer complaints, the possession has not been offered till date.

15. It was further argued by the learned counsel for the complainants that there is no force in the objection raised by the OPs with regard to payment of interest on the amount of refund, because the compensation for delayed possession as per the apartment buyer agreement is not sufficient to compensate the complainants for the loss suffered. In support of his contention, the learned counsel referred to the following judgments:

i) ***ThangavelPalanivel and another Vs. M/s. DLF Southern Homes Pvt. Ltd., Consumer Complaint No.304 of 2015 decided on 29.8.2016*** by this Commission (NC).

(ii) ***Jivitesh Nayal and another Vs. Emaar MGF Land Ltd. and another, CC No.34 of 215, decided on 2.11.2017, (NC)***.

16. In respect of the point raised by the opposite parties that the complainant has breached the provision of the Apartment Buyer Agreement as he stopped paying instalments and consequently as per Section 55 of the Indian Contract Act, 1872, the complainant is not entitled to any relief, the learned counsel for the complainant stated that this question has been considered by this Commission in ***Rakesh Mehta Vs. Emaar MGF Land Limited, CC No.653 of 2015, decided on 16.10.2017***, wherein the following has been observed:

“5. This complaint was instituted way back on 10.8.2015, about two years before the occupancy certificate was obtained by the opposite party. Therefore, the opposite party was not in a position to offer possession of the flat to the complainant even after the complaint was instituted or within a reasonable period thereafter. The first prayer made by the complainant being for delivery of immediate possession of the flat and the opposite party not being in a position to offer the said immediate possession, he became entitled to the alternative relief of refund of the amount paid by him. Even otherwise, Section 55 of the Indian Contract Act expressly provides that ‘when a party to a contract promises to do a

certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promise, if the intention of the parties was that time should be of the essence of the contract'. I therefore, find no merit in the submission that the complainant is not entitled to refund of the amount paid by him."

17. Learned counsel for the complainant further stated that the plea taken by the OPs in respect of the force majeure conditions is not valid. First of all, the order of the Hon'ble High Court referred to by the OPs was only in respect of not drawing the ground water. The High Court order does not put ban on the construction activity nor any ban on use of water. The OPs should have brought water from outside and should have used the same for construction activity. Thus, this order of the Hon'ble High Court cannot be treated as force majeure condition. Obviously, the OPs should have taken remedial measures. Once the apartment buyer agreement is signed between the parties, the OPs have to keep in mind the adverse situations that may arise and they should be ready to counter those conditions so that complainants need not suffer for the same. In support of his argument, the learned counsel referred to the judgment in *M/s. IREO FiveriverPvt. Ltd. vs. Surinder Kumar Singla and another, FA No.1358 of 2016, decided on 29.11.2016* by this Commission, wherein it has been observed:

"14. We have considered the rival contentions and perused the record. On careful consideration of record, we do not find merit in the contention of the appellant. In our considered view, the protection of Force Majeure clause in the agreement between the parties is not available to the appellant builder for the reason that it is the stand of the appellant that vide letter dated 16.03.2011, DTCP Haryana had directed the appellant not to carry out any earth work or construction work at the subject site without obtaining no objection certificate from the Irrigation Department Haryana. It is also admitted case of the appellant that ultimate clearance for undertaking construction work was received vide letter dated 24.04.2015 of National Board of Wild Life granting clearance for the development project. Despite of the aforesaid restraint on the appellant for carrying out development work, admittedly, the appellant executed Plot Buyer's agreement with the respective complainants during the period 23.06.2011 to 23.04.2012. It is not the case of the appellant that while entering into the agreement, the appellant disclosed about the restraint letter dated 16.03.2011 issued by DTCP Haryana. Thus, it is clear that appellant by concealment of material fact defrauded the respondents / complainants to execute the agreement contained Force Majeure clause, which in our considered opinion is unfair practice amounting to deficiency in service. As the agreement containing Force Majeure clause has been executed by concealment of material fact on the part of the opposite party, the aforesaid agreement is not binding on the complainants. Thus, appellant cannot take benefit of said clause. In view of the discussion above we do not find fault with finding of State Commission holding the appellant to be guilty of deficiency in service and directed the appellant to refund the money paid by the respective complainants with 12% interest besides payment of compensation and litigation expenses."

18. On the other hand, learned counsel for Orris Infrastructure Pvt. Ltd. stated that Orris Infrastructure Pvt. Ltd. is only the land owner and the Three C Shelters Pvt. Ltd. is the developer. There is a development agreement between these two parties and this was in the knowledge of complainants. As per this development agreement, 35% units are to be sold by Orris Infrastructure Pvt. Ltd. and 65% units are to be sold by Three C Shelters Pvt. Ltd. In this background, it is to be

considered that the project has been delayed by Three C Shelters Pvt. Ltd. and therefore, Orris Infrastructure Pvt. Ltd. is not responsible for paying any compensation for the delay in handing over the possession.

19 . The learned counsel for the opposite parties have argued the following points:-

(i) According to clause 4.3 of the apartment buyer agreement it has been clarified that time is of the essence under this agreement and allottee shall make the timely payment in respect of each instalment. Clearly, the complainants have agreed to this clause and therefore, they are clear defaulters and no relief can be granted to defaulters in the consumer complaint. If the allotment is cancelled, and refund is ordered, then Ops are entitled to forfeit 10% of the consideration amount as earnest money as per the agreed clause.

(ii) As per Section 55 of the Indian Contract Act, if a party to the contract does not perform its part/obligation, he is not entitled to ask for relief under the contract from other party. In this regard, learned counsel stated that the construction of the building depends upon the timely payment by the buyers and if a buyer does not pay instalment in time, the buyer becomes defaulter in the performance of his part/obligation. Therefore, under Section 55 of the Contract Act the complainant cannot demand relief as per the agreement from the OPs. To support his arguments, learned counsel referred to the following judgment:

DLF Southern Town Pvt. Ltd. vs. Dipu C. Seminlal, RP NO.1973 of 2014 decided on 7.1.2015 by this Commission, wherein it has been observed as under:

“9 . Complainant filled application form for provisional allotment on 30.9.2008 and rest of the amount was to be paid in instalments within 27 months of booking. Complainant did not pay any of the instalments and OP vide demand notice dated 31.10.2008, 4.12.2008, 17.12.2008, 31.12.2008, 2.2.2009, 2.3.2009 and 6.3.2009 asked complainant to remit payment, but complainant did not remit payment. OP also asked complainant from time to time to return duly signed Apartment Buyers Agreement, but that was not sent by complainant to OP. As per letter dated 28.1.2010, OP asked complainant to deposit Rs.10,60,326/- outstanding against him on or before 1.3.2010, failing which, allotment will be cancelled and earnest money will be forfeited. Later on, by notice dated 10.3.2010, issued by complainants Advocate it was expressed that complainant was ready to remit unpaid instalments or in the alternative demand of Rs.4,00,000/- deposited was made which was denied by OP vide reply dated 9.4.2010. It was specifically stated in this reply that OP was to complete construction within 36 months from date of execution of the agreement subject to allottee making timely payment of instalments and when payment was not made by the complainant, OP vide letter dated 28.7.2010 cancelled allotment and forfeited Rs.4,00,000/- earnest money and intimated to the complainant that no balance was refundable. After this letter, complainant filed complaint before District Forum with aforesaid prayer.

12. He has also placed reliance on judgment of this Commission in *R.P. No. 624 of 2007 – Sahara India Commercial Corpn. Ltd. &Anr. Vs. C. MadhuBabu* in which also similar order was passed as in *P. Gajendra Chary (Supra)*. He further placed reliance on judgment of Hon'ble Apex Court reported in (2000) 4 SCC 120 – *Prashant Kumar Shahi Vs. Ghaziabad Development Authority* in which it was observed as under:

“4....Having failed to perform his part of the contract, the appellant cannot be permitted to urge that he is not liable to pay the balance amount along with interest as according to him the respondent-authority had failed to deliver possession as per terms of the brochure. The authority was not expected to deliver possession in the absence of the payment of the agreed amount”.

13. *In the light of aforesaid judgments, it becomes clear that as complainant has not paid any subsequent instalments and committed default in making payments of instalments and also committed default in returning back duly signed agreement, OP had every right to forfeit amount of earnest money deposited by complainant and learned District forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal.”*

(iii) It has been contended that the interest on the refund amount can only be awarded under the provisions of the Interest Act, 1978 as held by the Hon'ble Supreme Court in ***HUDA Vs. Raj Singh Rana, Civil Appeal No.4436 of 2008, decided on 16.7.2008*** as under:

“10. The concept of levying or allowing interest is available in almost all statutes involving financial deals and commercial transactions, but the provision empowering Courts to allow interest is 13 contained in the [Interest Act, 1978](#), which succeeded and repealed the [Interest Act, 1839](#). [Section 3](#) of the said Act, inter alia, provides that in any proceeding for the recovery of any debt or damages or in any proceeding in which a claim for interest in respect of debt or damage already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the periods indicated in the said Section.”

(iv) It has been stated that as per the definition of the current rate of interest as given in the Interest Act, 1978, it is the highest rate of interest payable in FDs and highest FD rate is about 7-8% p.a. and therefore, more interest cannot be granted even if a decision is taken to refund the amount alongwith interest.

(v) It is accepted that there has been a delay in the project, however, the matter has now been taken cognizance of by the Real Estate Regulatory Authority, Haryana (RERA,Haryana). The RERA Haryana had convened a meeting on 7.9.2018 where MDs of Orris Infrastructure Pvt. Ltd. and Three C Shelters Pvt. Ltd. participated and it has been decided that the construction will be completed by 30.9.2020. The property in question is

likely to be ready by that time and opposite parties will be in a position by that time to give possession.

(vi) Coming to the force majeure conditions, it was stated that vide order dated 31.7.2012, Hon'ble High Court of Punjab and Haryana in "***Sunil Singh Vs. Ministry of Environment & Forests parayavaran***" which was numbered as CWP-20032-2008 imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of construction. In the light of force majeure conditions, no compensation is payable according to clause 5.2 of the apartment buyer agreement. The delay has occurred due to conditions prevailing which were beyond the control of the OPs.

(vii) A consumer forum is authorized to order compensation as per Section 14(i)(d) of the Consumer Protection Act, 1986 and the compensation has to be based on the loss or injury suffered by complainant due to negligence of the OPs. In the present case, no loss has been suffered by the complainants as no proof has been filed by the complainants whether they have suffered any loss due to payment of any rent or any such other thing. In support of his arguments, learned counsel referred to the judgement of the Hon'ble Supreme Court in ***M/s. Fortune Infrastructure (Now known as M/s. Hicon Infrastructure(and another Vs. Trevor D)Lima and others, Civil Appeal No. 3533-3534 of 2017, decided on 12.3.2018, wherein the Apex Court has held as under:-***

"11. It is now well established that the contractual damages are usually awarded to compensate an injured party to a breach of contract for the loss of his bargain. In the case of Johnson and Anr. V. Agnew, [1979] 1 All ER 883, the aforesaid case has clearly held as under-

The general principle for the assessment of damages is compensatory, i.e. that the innocent party is to be placed, so far as money can do so, in the same position as if the contract had been performed."

(viii) As per clause 5.5. of the Apartment Buyer Agreement, the OPs are liable to pay delay charges @ Rs.10/- per sq. ft. per month if the delay is more than 9 months and in these cases, this will be applicable. As the parties are bound by the agreement and the OPs are ready to pay the delay charges as per the agreement, there should be no question of seeking more compensation by the complainants and the Commission would not be justified in ordering further compensation beyond the one agreed in the agreement between the parties.

20 . I have carefully considered the arguments advanced by the learned counsel for the parties and have examined the material on record.

21 . So far as Sections 54 and 55 of The Indian Contract Act, 1872 are concerned, OPs have relied upon the judgment of this Commission in ***DLF Southern Town Pvt. Ltd. vs. Dipu C. Seminlal (supra)***, whereas the learned counsel for the complainants has relied upon the decision of this Commission in ***Rakesh Mehta Vs. Emaar MGF Land Limited (supra)***. In the case of ***DLF Southern Town Pvt. Ltd. vs. Dipu C. Seminlal (supra)*** the complainant has deposited only the booking amount and no instalments were paid whereas in the present cases instalments have been paid upto reasonable limit and the payment was stopped later on as there was no progress in

the construction. Thus, two cases cannot be compared and therefore, it cannot be said that the complainants breached the agreement first and they are not entitled to any relief in the light of Section 54 and 55 of The Indian Contract Act, 1872.

22 . Clearly the OPs have not been able to complete the project in time and to deliver the possession of properties in question to the respective complainants in time as per the allotment letter or the Apartment Buyer Agreement. It is now clearly established that the allottees have right to ask for refund if the possession is inordinately delayed and particularly beyond one year. In the present cases, the project is not yet complete though the possession was to be given in the year, 2016. The OPs have taken the defence of force majeure conditions for delay including the order of the Hon'ble High Court of Punjab and Haryana in "***Sunil Singh Vs. Ministry of Environment & Forests Parayavaran (supra)***" wherein the use of ground water was restricted and OPs had to bring water from outside. Clearly, there was no ban on construction and OPs should have put their resources and managerial skills to bring water from outside and to complete the construction in time. On the one hand, learned counsel for Three C Shelters Pvt. Ltd. has pleaded force majeure conditions for delay and on the other hand, Orris Infrastructure Pvt. Ltd. has pleaded that Three C Shelters Pvt. Ltd. is responsible for delay in construction. Clearly it was a joint project of Orris Infrastructure Pvt. Ltd. and Three C Shelters Pvt. Ltd. as both of them have signed the Apartment Buyer Agreement, therefore, both are responsible for delay. However, in cases where refund has been sought, the opposite party that has taken the money from the respective allottee, will be liable to refund if ordered.

23 . As Orris Infrastructure Pvt. Ltd. has received all the amount paid by the complainants, Orris Infrastructure Pvt. Ltd. would be liable to refund the same to the complainants. Recently, Hon'ble Supreme Court in Kolkata West International Pvt. Ltd. Vs. Deva Asis Rudra, II (2019) CPJ 29 (SC) has reduced the interest from 12% p.a. awarded by this Commission on the amount of refund to 9% p.a. Hence, it will be appropriate to order refund of amounts along with 9% p.a. interest from the date of respective deposits.

24. So far as the question of forfeiture of earnest money is concerned, it is seen that the complainants are seeking refund as the project has been inordinately delayed. Even though the RERA, Haryana has taken a meeting to expedite the project and Three C Shelters Pvt. Ltd. has agreed to complete the project in phases, it is seen in the same proceedings that the following has also been observed:

"7. The license holder and developer have entered into an agreement without permission of the government/DTCP Haryana which may attract action against the license holder as well as against the developer which finally in turn will affect the interest of the allottees. BIP permission is necessarily and legally required to regularize the already entered agreement by the developer and license holder. License holder shall apply for BIP in favour of 3C Shelters Pvt. Ltd. with DTCP Haryana, preferably within a month. The fee for BIP shall be paid to the government for which the drafts shall be made by the developer 3C Shelters Pvt. Ltd. preferably within a month and thereafter within three days of getting the draft the licensee shall apply for the BIP and pursue with the Government for issuance of the same well in time."

25. From the above, it is clear that Orris Infrastructure Pvt. Ltd. and Three C Shelters Pvt. Ltd. have not entered into the agreement as per provisions of law and accordingly, the Development Agreement itself becomes questionable and without any basis. Though this ground has not been

taken by the complainants for seeking refund, however this is also a valid ground for the complainants for seeking refund. If there is uncertainty in the development agreement itself, as entered between Orris Infrastructure Pvt. Ltd. and Three C Shelters Pvt. Ltd., the allottees would not like to block their money in such a project. Similarly in para -4 of the same proceedings it is mentioned that the OPs have not paid EDC and IDC to the Government and it seems that the OPs were not serious in timely completing the project. Thus, in these circumstances, there can be no question of forfeiture of earnest money.

26. In these complaints, there are certain cases where the subsequent buyers have filed the complaint. In such cases the Hon'ble Supreme Court in **Haryana Urban Development Authority Vs. Diwan Singh, (2010) 14 SCC 770** has, observed that such subsequent buyers are entitled to receive interest only after the date of endorsement in their favour.

27. Based on the above discussion the complaints are allowed as under:-

ORDER

CC 3817/2017, CC 218/2018, CC562/2018, CC 2011/2017, CC3811/2017 & CC 3563/2017

Opposite party Orris Infrastructure Pvt. Ltd. shall refund the amount of Rs.95,01,749/- in CC 3817/2017, Rs.73,55,651/- in CC 218/2018, Rs.74,94,106/- in CC 562/2018, Rs.88,93,512/- in CC 2011/2017, Rs.92,82,430/- in CC 3811/2017 and Rs.78,73.124/- in CC 3563/2017 along with interest @ 9% p.a. from the date of respective deposits till actual payment to the complainant(s). The order be complied with within a period of 45 days from the date of receipt of this order. The opposite party Orris Infrastructure Pvt. Ltd. shall also pay Rs.10,000/- in each complaint case to the complainant(s) as cost of litigation.

CC 3814/2017, CC 546/2018 & CC 3812/2017

The opposite party Orris Infrastructure Pvt. Ltd. shall refund the amount of Rs.75,96,776/- in CC 3814/2017, Rs.85,72,435/- in CC546/2018 and Rs.88,93,512/- in CC 3812/2017 along with interest @9% p.a. from the date of respective deposits till actual payment subject to the restriction that no interest shall be payable for the period before 24.08.2015 in CC 3814/2017 and before 21.12.2012 in CC 546/2018 as well as before 24.11.2012 in CC 3812/2017. The order be complied with within a period of 45 days from the date of receipt of this order. The opposite party Orris Infrastructure Pvt. Ltd. shall also pay Rs.10,000/- in each complaint case to the complainant(s) as cost of litigation.

CC2692/2017

The OP Orris Infrastructure Pvt.Ltd. is directed to:

- i) Complete the construction work and handover the physical possession of the flat complete in all respects as per agreement till 30th September 2020 after obtaining occupancy certificate.
- ii) The OP Orris Infrastructure Pvt. Ltd. shall pay interest @ 6% p.a. on the deposited amount by the complainant till the due date of possession from the due date of possession till the actual date of possession. For the amounts paid after the due date of possession, the interest shall be payable from the date of completion of one year from the date of deposit till the date of physical

possession. The receivables of compensation in the form of interest @6% p.a. shall be adjusted at the time of possession before any due amount is taken from the complainant by the Ops.

iii) If the possession is not delivered till 30.09.2020, the complainant shall be at liberty to take refund of the total deposited amount Rs.77,58,581/- alongwith interest @ 9% p.a. from the date of respective deposits till actual payment. OP Orris Infrastructure Pvt. Ltd. shall be liable to pay the same within a period of six weeks after receiving the request letter from the complainant. If the complainant does not ask for refund, he shall be entitled to get interest @ 6% p.a. as already ordered till possession is handed over.

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PREM NARAIN
PRESIDING MEMBER