

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB, CHANDIGARH**

Consumer Complaint No. 317 of 2017

Date of Institution : 04.05.2017

Date of Reserve : 10.10.2017

Date of Decision : 31.10.2017

Dilbag Singh Sidhu S/o Sh. Harcharan Singh, R/o House No. 745,
Sector 11-B, Chandigarh

....Complainant

Versus

BCL Homes Limited, Village Kishanpura, Adjoining Sector 20,
Panchkula, NAC Zirakpur, Distt. Mohali through its Authorized
Signatory Sh. Baldev Bansal & Gopal Bansal.

Correspondence Address:- House No. 253, Sector 7, Panchkula.

....Opposite party

**Consumer Complaint under Section 17 of
the Consumer Protection Act, 1986.**

Quorum:-

Shri Gurcharan Singh Saran, Presiding Judicial Member.

Shri Rajinder Kumar Goyal, Member

Present:-

For the complainant : Ms. Cherry Sofat, Advocate

For the opposite party : Ex.-parte.

GURCHARAN SINGH SARAN, PRESIDING JUDICIAL MEMBER

ORDER

Complainant has filed this complaint against the opposite party (hereinafter referred as Op) under Section 17 of the Consumer Protection Act, 1986 (for short the Act) on the averments that the complainant booked one plot measuring 200 sq. yards @ Rs. 15000/- per sq. yard in their project Chinar City on Zirakpur Patiala Highway. Initially booking amount to be paid and remaining amount was to be paid at the time of actual possession after 1 year. A sum of Rs. 3,00,000/- was paid by the complainant out of which Rs. 1,00,000/- was paid vide cheque/demand draft of Punjab and Sind Bank No. 440350 dated 15.12.2011 vide receipt No. 3405 dated 15.12.2011 and Rs. 2,00,000/- in cash vide receipt No. 3406 dated 15.12.2011. On 15.12.2011, letter was received from the Op regarding receipt of Rs. 3,00,000/- as expression of interest towards unit and that installments for the said plot will start after 1 year of the booking and in case possession is not given by the Op within one year and if the complainant does not like to retain the plot, OP will buyback the flat @ Rs. 15,500/-. Op neither handed over the possession of the plot within the stipulated period nor refunded the amount deposited with it. The complainant also came to know that Op did not have the requisite sanctions from the concerned Authority for launching this project as no permission was sought for conversion of use of land. It has been stated that Rs. 4,14,000/- is due to the complainant as buyback by the Op alongwith interest. Alleging deficiency in service on the part of Op,

this complaint has been filed by the complainant to refund the buyback amount and deposited i.e. Rs. 3 Lacs alongwith interest on the same, compensation of Rs. 5 Lacs and Rs. 40,000/- as litigation expenses.

2. Notice was issued to the Op. They refused and unclaimed the notice, therefore, they were proceeded ex-parte vide order dated 7.7.2017.

3. In the ex-parte evidence, the complainant had tendered his affidavit Ex. CW/1 and documents Ex. C-1 to C-5.

4. We have heard the learned counsel for the complainant Ms. Cherry Sofat, Advocate and have carefully gone through the case file.

5. There is letter Ex. C-4 written by the Op vide which they thank the complainant for depositing the amount in their upcoming project to buy an plot of approximately 200 sq. yards @ Rs. 15,000/- per sq. yard. Pecuniary jurisdiction is to be determined by the Commission as per the cost of the unit agreed to be paid plus compensation, if any. Market value of the plot in this case is Rs. 30 Lacs, therefore, we are of the opinion that after adding the amount of compensation, if any, demanded by the complainant, its value comes more than Rs. 20 Lacs and less than Rs. 1 Crore, therefore, it falls within the pecuniary jurisdiction of this Commission.

6. The complainant deposited Rs. 3 Lacs i.e. Rs. 1,00,000/- vide receipt dated 15.12.2011 Ex. C-2 and Rs. 2,00,000/- vide receipt dated 15.12.2011 Ex. C-3. Ex. C-1 is the advertisement of their upcoming project Chinar Homes. Vide letter

Ex. C-4 dated 15.12.2011, it was stated by the Op to the complainant that in case they demanded the installments before 1 year from the date of issuance of this letter and in case he did not like to retain this plot after one year, the Company will buyback the plot @ Rs. 15,000/- per sq. yard. Apart from that affidavit of the complainant is Ex. CW-1. The evidence produced on the record by the complainant is un rebutted. The complainant had just paid the booking amount. Whether in that circumstances, the complainant can be held as a consumer as defined under Section 2(1)(d) of the Act? 'Consumer' has been defined under Section 2(1)(d)(ii) of the Act and 'services' have been defined under Section 2(o), which reads as under:-

(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

7. Surely, the complainant availed the services from Op and according to definition given under Section 2(o) even potential user could be considered as a 'consumer'. It has been so held by the State Commission, U.T. Chandigarh in case "**Sarvpreet Singh**

Vs. The Managing Director/Prop., Chandigarh Royale City Promoters (P) Limited”, F.A. No. 13 of 2015, decided on 10.3.2015. Reliance was also placed upon “Lucknow Development Authority v. M.K. Gupta”, AIR 1994 Supreme Court 787 and “Chandigarh Housing Board versus Avtar Singh and others” 2010(4) RCR (Civil) 579.

8. Since Op has not come forward to rebut pleas raised by the complainant, therefore, we are of the opinion that the complainant comes under the definition of ‘consumer’. The amount paid by the complainant is Rs. 3 Lacs. In case Op failed to introduce the project and complete the construction, according to letter Ex. C-4, the amount was to be refunded after one year but it has not been refunded so far. In the absence of any rebuttal, there is nothing not to believe the evidence of the complainant, accordingly, we accept the complaint and direct the Op as under:-

- (i) Refund a sum of Rs. 3 Lacs alongwith interest @ 12% p.a. from various dates of deposit till the date of payment;
- (ii) pay Rs. 50,000/- as lumpsum compensation for mental tension and harassmet and litigation cost.

The above directions be complied by the Op within a period of 45 days from the date of receiving of the copy of the order, failing which the complainant shall be at liberty to execute the order by filing application under Sections 25 & 27 of the CP Act against the Ops.

9. The consumer complaint could not be decided within the statutory period due to heavy pendency of Court cases.

10. Order be communicated to the parties as per rules.

**(GURCHARAN SINGH SARAN)
PRESIDING JUDICIAL MEMBER**

**(RAJINDER KUMAR GOYAL)
MEMBER**

October 31, 2017.

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