

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 100 OF 2016

1. AMRIK SINGH GILL & ANR.

S/o. Sh. Deva Singh, R/o. 686, Phase -2, SAS Nagar
Mohali

.....Complainant(s)

Versus

1. M/S. ANSAL PROPERTIES AND
INFRASTRUCTURE LTD. (COMPANY)

Registered Office 115, Ansal Bhawan, K.G. Marg,
New Delhi - 110 001.

.....Opp.Party(s)

BEFORE:

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

For the Complainant : Mr. Karan Dewan, Advocate

For the Opp.Party : Mr. Rohit Gupta, Advocate
Mr. Sumit Malhotra, Advocate

Dated : 02 Aug 2017

ORDER

JUSTICE V.K.JAIN, PRESIDING MEMBER (ORAL)

The OP was interested in acquiring or purchasing land parcels situated in upcoming Sectors of Greater Mohali such as Sector-114, 116 etc. The complainants provided a sum of Rs.47,50,000/- to the OP and requested it to procure parcel of land from the said funds. The parties entered into an agreement dated 12.01.2011 incorporating their respective obligations in respect of the aforesaid transaction. The OP agreed to allot residential plotted area admeasuring 625 sq. yds. to the complainants out of the land to be developed by it, including the land which it was to acquire from the funds made available by the complainants. The aforesaid agreement to the extent it is relevant, reads as under:

“5. That, in consideration of contributing ½ (Half) acres of land in the project of the first party, the second party shall be entitled to 625 sq. yds. of developed residential plotted area only for every half acre, wherein each acre consists of 4840 sq. yds.

6. The allotment of plots shall be within the township project being developed by the first party in Sector 116, Golf Links II, Mohali. In case the first party is unable to make allotment of the developed plots in terms of this agreement within the time span of two years from the date of execution of this agreement then the first party will pay to the second party an amount of Rs.80,00,000/- (Rupees Eighty Lacs Only). The second party shall under no circumstances ask for refund before the expiry of 24 (Twenty Four) months

from the signing of this agreement and shall be entitled to refund only if first party is unable to make the entire allotment within the period mentioned above and makes only a partial allotment in terms of the sanctioned layout plan to second party within the period mentioned above, then the second party shall not be entitled for any compensation as agreed hereinabove, provided however that the first party shall allot the remainder of the entitled 625 sq. yds. within a further period of 6 months.

7. That, in case during finalization of allotment of plots, pursuant to grant of license, any fraction of total area agreed to be allotted to the second party remains un-allotted (area of smallest plot carved out in the colony is less than the area agreed to be allotted) in that event the first party shall refund the proportionate value of such unallotted fraction to second party at the time of allotment or may charge for the surplus area as the case may be at the rate applicable on the date of such allotment.

8. That, the location and sizes of the plots while allotment, shall be finalized by the first party, at its sole discretion.”

2. Thus, the plot admeasuring 625 sq. yds. was to be allotted to the complainants within 30 months from the date on which the aforesaid agreed was executed. This included the grace period of six months envisaged in clause 6 extracted hereinabove. Thus, the possession of the plot(s) admeasuring 625 sq. yds. ought to have been offered to the complainants on or before 12.07.2013. On 24.08.2013, the OP sent two separate allotment letters to the complainants, seeking the documents specified therein. The call notice annexed to the aforesaid letter shows that plot no. B-0074 admeasuring 209.16 sq. yds. and plot no. B-0024 admeasuring 351 sq. yds. were sought to be offered to the complainants on payment of the balance amount mentioned therein. The aforesaid letters are stated to have been delivered to the complainants on 02.09.2013. The complainants sent letter dated 07.09.2013, with reference to the letters sent from the OP and inter-alia pointed out that the area offered to them was less than 625 sq. yds. In nutshell, the offer made by the OP was not acceptable to the complainants. The complainants thereafter, served a legal notice dated 07.10.2013 to the OP. Being aggrieved from the failure of the OP to fulfill its contractual obligations, the complainants are before this Commission by way of this consumer complaint, seeking possession of the land admeasuring 625 sq. yds., compensation in the form of interest @ 18% per annum on the amount of Rs.47,50,000/- and compensation of Rs.50,00,000/- on account of an alleged unfair trade practice and deficiency in rendering services to the complainants.

3. The complaint has been resisted by the OP which has admitted the agreement with the complainants as well as the payment received from them. The OP has also admitted the offer made to the complainants vide letter dated 24.08.2013 and has claimed that though one plot admeasuring 351 sq. yds. and another plot admeasuring 209.16 sq. yds. was offered to the complainants, the balance area was adjusted in PLC and EDC payable by the complainants, taking the rate of the land to be Rs.11,900/- per sq. yard, making a total sum of Rs.7,71,596/-. It is further stated in the written version filed by the OP that after the aforesaid adjustment, the balance PLC and EDC amount payable by the complainants as on 20.09.2013 came to Rs.6,52,211/-. It is also alleged that on 10.10.2013, OP received letter from the complainants accepting plot no. B-0024 but declining to accept plot no. B-0074 on the ground that it was close to high-tension wires.

4. It would thus be seen that the OP was under a contractual obligation to allot one or more plots admeasuring 625 sq. yds. of developed land to the complainants. Admittedly, the OP did not

offer either one plot admeasuring 625 sq. yds. or two plots admeasuring 625 sq. yds. or more to the complainants at any point of time. If EDC and PLC were applicable to the plots offered to the complainants and were payable by them, the OP could have demanded the said charges from them but it could not have unilaterally reduced the size of the plotted land from 625 sq. yds. to about 560 sq. yds. The OP therefore, failed to fulfill its contractual obligation under the agreement dated 12.01.2011 and therefore, has been deficient in rendering services to them.

5. The learned counsel for the OP states that they are ready to offer possession of plot no. B-0024 admeasuring 351 sq. yds. which the complainants have already accepted and another plot bearing no. B-185 admeasuring 225 sq. yds. to the complainants. The area of the aforesaid two plots comes to 576 sq. yds. meaning thereby that there will be a shortfall of land admeasuring 49 sq. yds. even if the complainants accept the aforesaid two plots being offered to them. The learned counsel for the OP states that considering the size of the plots available with them, they are not in a position to offer either one plot or more than one plots admeasuring exactly 625 sq. yds. If that is the position, the OP has to either pay the market price for the deficient area. Alternatively, it can offer one or more plots admeasuring more than 625 sq. yds. and ask the complainants to pay the market price of the excess area. However, the fact remains that as on today, there is no offer from the OP for allotting one or more than one plots admeasuring more than 625 sq. yds. to the complainants. Therefore, it must necessarily compensate the complainants for the deficient area at the prevailing market area, which according to the learned counsel for the OP, is Rs.21,100/- per sq. yard. The OP therefore, should pay a sum calculated at Rs.21,100/- per sq. yard for the deficient area of 49 sq. yds. after the possession of plot no. B-0024 and B-185 admeasuring 351 sq. yds. and 225 sq. yds. respectively is delivered to the complainants. It goes without saying that the aforesaid two plots should be in habitable condition and should not have any defects such as being close to high-tension wires or being of irregular size.

6. Since the possession of the plots ought to have been offered to the complainants on or before 12.07.2013, the OP also needs to pay suitable compensation to the complainants for the delay in offering possession, the offer made earlier being defective since no cash compensation for the deficient area at the prevailing rate was offered by the OP to the complainants at that time and the OP sought to compensate the complainants by making adjustments in the PLC and EDC to the extent of Rs.7,71,596/-.

7. The learned counsel for the complainants states that the complainants are ready to pay EDC and PLC to the OP, at the rates applicable on 12.07.2013 by which the possession ought to have been offered, though the learned counsel for the OP states that the complainants should pay PLC and EDC at the current rates. In my view, the complainants cannot be compelled to pay PLC and EDC at the current rates though they must pay suitable interest on the amount of EDC and PLC w.e.f. 12.07.2013 till the date on which the said charges are paid/adjusted.

8. For the reasons stated hereinabove, the complaint is disposed of with the following directions:

- (i) The OP shall deliver possession of Plot No. B-0024 admeasuring 351 sq. yds. in Sector-116 of Mohali and Plot No. B-185 admeasuring 225 sq. yds. in the aforesaid Sector of Mohali to the complainants within three months from today.

- (ii) The plots shall be free from any encroachment at the time the possession is delivered.
- (iii) The plot No. B-185 shall not have any defect such as being close to a high-tension wire or any other defect which would diminish its value.
- (iv) The OP shall pay a sum of Rs.10,33,900/- to the complainants towards market price of developed land admeasuring 49 sq. yds. calculated @ Rs.21,100/- per sq. yard.
- (v) The OP shall pay compensation in the form of interest @ 8% per annum to the complainants on the amount of Rs.47,50,000/- w.e.f. 12.07.2013 till the date on which the possession in terms of this order is delivered.
- (vi) The complainants shall pay EDC and PLC amount applicable as on 12.07.2013 alongwith interest at the rate of 8% per annum, on those amounts w.e.f. 12.07.2013 till the date on which the said charges are adjusted out of the amount payable to the complainants or are otherwise paid.
- (vii) The OP shall adjust the PLC and EDC calculated at the rates applicable on 12.07.2013 as well as interest payable on those amounts from the compensation and other amounts payable to the complainants in terms of this order.
- (viii) The balance amount if any, payable to the complainants in terms of this order, shall be paid within three months from today.
- (ix) There shall be no order as to costs.

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V.K. JAIN
PRESIDING MEMBER