

Dated: 09.02.2018

- 1) **National Stock Exchange of India Limited [NSE]**  
Listing Compliance  
'Exchange Plaza', Bandra-Kurla Complex,  
Bandra (East), Mumbai – 400 051
  
- 2) **BSE Limited**  
Listing Compliance  
P. J. Towers,  
Dalal Street, Fort,  
Mumbai – 400 001

**Sub. : Clarification / Confirmation on Media Report**

Dear Sir(s).

With reference to the Media Reports appeared titled "Unitech fined 1 cr for delay in flat possession", we wish to state that the Order of the Hon'ble National Consumer Disputes Redressal Commission [NCDRC] dated 5<sup>th</sup> February, 2018 is self explanatory.

Copy of the said Order of Hon'ble National Consumer Disputes Redressal Commission [NCDRC] dated 5<sup>th</sup> February, 2018 is attached herewith.

This is for your information, record and compliance under applicable Clauses of the Listing Regulations.

Thanking you,

Truly yours  
For **Unitech Limited**



**Rishi Dev**  
**Company Secretary**

Encl : Copy of Order dated 05.02.2018.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 1604 OF 2017**

1. JOTI LAL KHANNA & ANR.

S/o Shri R.L. Khanna, R/o A-25/18, DLF City, Phase - 1,  
Gurgaon  
Haryana

2. Meenakshi Khanna

W/o Shri J.L. Khanna, R/o A-25/18, DLF City, Phase-1,  
Gurgaon,  
Haryana

.....Complainant(s)

Versus

1. M/S. UNITECH LTD.

Through its Managing Director 6, Community Center,  
Saket,  
New Delhi - 17

.....Opp.Party(s)

**BEFORE:**

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

**For the Complainant :** Ms. Himanshi Singh, Advocate

**For the Opp.Party :** Mr. Babanjeet Singh Mew, Advocate  
Mr. Danish Jhamb, Advocate

**Dated : 05 Feb 2018**

**ORDER**

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

The complainants booked a residential flat with the opposite party in a project namely "Exquisite Nirvana Country 2" which the opposite party was to develop in Sector 69, 70, 70A, 71 and 72 of Gurgaon and Unit No. 1003 in Block 01 was allotted to the complainant for a consideration of Rs.1,96,68,320/-. The parties then entered into a Builder-Buyer Agreement dated 02.7.2014, incorporating their respective obligations in respect of the aforesaid booking. As per clause 4a of the said agreement, the possession was to be delivered within thirty six months from the date of its execution, meaning thereby that the possession ought to have been delivered by 02.7.2017. The grievance of the complainant is that the possession has not even been offered to them despite they having already paid an amount of Rs.1,31,12,152/- to the opposite party. The complainants are therefore before this Commission, seeking refund of the aforesaid amount along with compensation.

2. The opposite party did not file its written version, despite service and therefore its right to file written version was closed vide order dated 10.10.2017. I have heard the learned counsel for the parties and have considered the affidavit filed by the complainant by way of evidence.

3. The Builders Buyers Agreement executed between the parties fortifies the case set out in the complaint and shows that the possession of the flat allotted to the complainant ought to have been delivered by 02.7.2017. Since the possession of the flat has not even been offered to the complainants, they cannot be compelled to wait any more and are entitled to refund of the amount paid to the opposite party.

4. The learned counsel for the complainants submits that in fact this matter is covered by several previous decisions of this Commission including **CC/1100 of 2015 Vibha Gupta Vs. Unitech Ltd., decided on 28.11.2016.**

5. The decision of this Commission in Vibha Gupta (supra), to the extent it is relevant reads as under:

*"2. The complaints have been resisted by the OP on several grounds though it has admitted allotment of the flat to the complainants as well as receipt of the consideration from them. It has been alleged in the written version filed by the OP that the possession of the flats could not be handed over to the complainants on account of reasons beyond its control. The following according to the OP, were the reasons on account of which the possession could not be offered to the complainants:*

*i. There was slump in the real estate market, because of overall economic conditions, as a result of which the supply of labour and raw-material became scarce.*

*ii. There was shortage of labour and the building material due to Common Wealth Games held in October 2010.*

*iii. There was shortage of labour due to implementation of social schemes such as National Rural Employment Guarantee Scheme (NREGS) and Jawahar Lal Nehru National Urban Renewal Mission (JNNURM)*

*iv. The use of ground water for building purposes was stayed by Punjab & Haryana High Court vide its order dated 16.7.2012.*

*v. Restrictions were placed by Ministry of Environment and Forests vide Notification dated 14.9.1999 which resulted in the reduction in availability of bricks in the market since manufacture of clay bricks was stopped within a radius of 50 km from Coal and Ignite based Thermal Power Plants without mixing at least 25% of ash with soil.*

*vi. The Ministry of Environment & Forest had issued a notification in terms of the National Environment Policy approved by the Government on 18.05.2006 requiring environment clearance. The said notification was published on 14.09.2006.*

3. In CC No. 472 of 2015 Anil Kumar Gupta Vs. M/s Unitech Ltd., this Commission had the occasion to consider a similar complaint in respect of a residential flat booked in the same project i.e. Exquisite Nirvana Country-2, Gurgaon. The complainant in that case was issued allotment letter dated 27.10.2010 and as per clause 4(a) of the Buyers Agreement executed between him and the OP, possession was to be delivered by 11.11.2013. The aforesaid complaint was resisted by the OP on identical grounds. Rejecting the resistance to the complaint, this Commission inter-alia observed and held as under:

4. All the above referred grounds have repeatedly been rejected by this Commission in a number of cases including CC No. 182 of 2015 and connected matters decided on 29.09.2016. The following view taken in the aforesaid matters is relevant for the purpose of deciding this complaint:

“6. As regards the delay in obtaining the environmental clearance, the opposite party knew before accepting booking from the complainants and allotting a flat to them that since the size of the project was more than 20,000 sq.ft. of built up area, environmental clearance in terms of the Notification dated 14.9.2006 would be necessary and the said clearance would be given only after the project was approved by State Environment Impact Assessment Committee and then by State Level Environment Impact Assessment Authority. It was, therefore, necessary for the opposite party to either obtain the requisite environmental clearance before accepting the booking or at least inform the buyers that the construction would commence only after obtaining the requisite environmental clearance which they were yet to receive. This is particularly necessary in a case where the builder is promising delivery of the apartment in a time-bound manner linked with the date of the Buyer's Agreement and not with the date on which the construction actually commences after obtaining all the requisite clearances. If such a disclosure is made to the buyer and still he chooses to make a booking knowing fully well that the builder may not be held responsible for the delay to this extent it is attributable solely to the concerned environmental authority, it will not be possible to hold the builder responsible for the delay in the aforesaid extent.”

5. As regards the alleged non-availability of ground water on account of the use of ground water in building activities, having been stayed by the Punjab and Haryana High Court, the following view taken by this Commission in Cap. Gurtaj Singh Sahni Vs. Unitech Limited, Consumer Complaint No.603 of 2014 and connected matters, decided on 2.5.2016 is pertinent:-

“6. The next question which arises for consideration is the quantum of compensation which should be paid to the complainants for the delay in completion of the villas. As far as the prohibition on use of underground water in construction is concerned, the learned counsel for the complainant has drawn my attention to the order dated 21.08.2012 passed by a Divisional Bench of Punjab & Haryana High Court in Civil Writ Petition No. 20032 of 2008

wherein the High Court noted that the public notice issued under Section-5(3) of the Environment Protection Act, 1986 was published in the newspaper on 26.12.2000. It further shows that the said notice had imposed a complete ban upon the use of underground water in the construction without prior approval of the competent authority. It was noted by the High Court that despite publication of the aforesaid notice, the builders continued to use underground water for construction purposes. If there was a complete ban on use of underground water for construction and the said prohibition was notified on 26.12.2000, the opposite party must have taken into account, the impact of the said prohibition while entering into Buyers Agreements with the complainants. Therefore, it is not open to the opposite party to rely upon the said prohibition in order to justify the delay in construction of the villas sold to the complainants. The opposite party knew at the time of entering into agreements with the complainants that it will not be able to use underground water for construction of the villas and therefore, will have to make alternative arrangements from authorized sources for making the water available for the said construction. Therefore, the aforesaid prohibition on use of the underground water for construction purpose does not justify the delay in completion of the construction. In any case, no material has been placed by the opposite party on record to show that efforts were made by it during the relevant period to procure water from alternative sources but it was unable to obtain the water from the said sources. More importantly, in the Buyers Agreement executed between the parties, it was not disclosed to the buyers that since no underground water can be used for construction purpose, the developer will have to arrange water from alternative sources and in case it is not able to arrange water, the construction would be delayed and in that case, it will not be held responsible for the delay in completion of the construction."

6. As regards the alleged shortage of labour and building material on account of Commonwealth Games, the plea taken by the opposite party is wholly misplaced since the said games were over in October 2010 much before the allotment in this project was made to the complainant.

7. As regards the alleged economic slowdown and consequent recession in the real estate market, the same cannot be a valid ground for delaying the possession of the flats to the complainant since some of the buyers made advance payment of almost 95% of the sale consideration whereas the other buyers were to make payment linked with the progress of construction and this is not the case of the opposite party that they had defaulted in performing their contractual obligations as regards the payment of the sale consideration. Therefore, it cannot be said, as far as this project is concerned, that the construction was delayed on account of funds not being available with the opposite party.

8. As regards the alleged shortage of labour due to NREGS and Jawahar Lal Nehru National Urban Renewal Mission, there is no evidence of the opposite party

*having attempted to recruit labour and having not found the requisite labour available in the market. Ordinarily such big builders operate by giving contracts/sub-contracts to third parties. There is no evidence of the opposite party having not been able to get any contractor/sub-contractor on account of non-availability of labour and/or building material in the market. Moreover, this is not the case of the opposite party that no construction activity took place in Gurgaon in the last 5 years or so. Had the labour and/or building material not been available in the market, the problem would have been faced not only by the opposite party but by all other builders as well as the individuals who were seeking to construct houses in this area. Therefore, I find no merit in the aforesaid plea taken by the opposite party.*

9. *As regards the alleged shortage of bricks and sand, there is no evidence of the opposite party having invited tenders for supply of bricks and sand and the said material having not been available in the market. Moreover, there is no evidence of any sub-contractor/contractor of the opposite party having stopped the work awarded to him on account of non-availability of labour and/or building material in the market. It is possible that the wages of the labour and the cost of the building material may have gone up with the passage of time but it would be difficult to accept that neither the required labour nor the building material in sufficient quantity was available in the open market."*

6. The learned counsel for the complainants also submits that in order to avoid any further litigation in the matter, the complainants are restricting their claim to refund of the principal amount paid by them, along with compensation in the form of simple interest @ 10% per annum, in terms of Clause 4E of the Buyers Agreement, which reads as under:

***"4.e. Default***

*If for any reason the developer is not in a position to offer the Apartment, as agreed herein, the Developer may offer the Apartment Allottee (s) alternative property or refund the amount paid by the apartment Allottee (s) in full with interest @ 10% per annum from the date of payment (s) by the Apartment Allottee (s) without any further liability to pay any damages, charges or compensation."*

7. For the reasons stated hereinabove the consumer complaint is hereby disposed of with the following directions:

(i) The opposite party shall refund the entire principal amount of Rs.1,31,12,152/- to the complainants, along with compensation in the form of simple interest @ 10% per annum from the date of each payment till the date of refund.

(ii) The opposite party shall pay a sum of Rs.25,000/- as the cost of litigation to the complainants.

(iii) The payment in terms of this order shall be made within three months from today.

.....J  
**V.K. JAIN**  
**PRESIDING MEMBER**