



**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
AT NEW DELHI**

CONSUMER COMPLAINT NO. 2749 OF 2017
WITH

I.A. NO. 16218 AND 16219 OF 2017
AND

4933 AND 4989 OF 2019

**(Directions, Directions, Condonation of Delay in filing the Evidence and
Condonation of Delay)**

1. Basanta Kumar Nandy
Aged about 57 Years
S/o Manmath Kumar Nandy,
Res. At FD-81,
HAL Senior Officers Enclave,
Old Madras Road,
CV Ramana Nagar Post,
Bengaluru -560093.
Karnataka.
2. Manoranjan Dash,
Aged about 52 years,
S/o Late Ganeswar Dash,
Res. Of FC-92,
HAL Senior Officers Enclave,
Old Madras Road,
CV Ramana Nagar Post,
Bengaluru -560093.
Karnataka
3. Anand Gupta
Aged about 33 years,
S/o Sitaram Gupta,
Res. Of Flat No.1402, Block-B,
Sumadhura Shikharam Apartment,
138, Seegehalli, Ashram Road,
Bengaluru – 560067,
Karnataka



04. Aditya Narayan Bir
Aged about 36 years,
S/o Pulin Kumar Bir,
Res. Of G-501,
Lttina Mahaveer Apartment,
Niladri Nagar, 12 Cross,
Electronic City Phase-1
Bengaluru – 560100,
Karnataka
05. Sudeep Sarkar,
Aged about 45 years,
S/o Late Bijoy Prasad Sarkar,
Res. Of # 301,
Reva Signature,
KNR Hills, Anjali Garden,
Inside Diamond Hills,
Manikonda, Hyderabad – 500089,
Telengana.
06. Dharmendra KR Shaw,
Aged about 35 years,
S/o Sidhi Shaw,
Res. Of Flat No. 305,
Skanda Elina Apartment,
Balagere Road,
Bengaluru – 560087,
Karnataka
07. Somasekhar Vankadari,
Aged about 44 years,
S/o Mallaiah Sresty,
Res. Of Flat No. 302,
Sirijallu Apartment,
Anjaneyanagar,
Moosapet,
Hyderabad- 500018,
Telengana.
08. Vikash Kumar Gupta
Aged about 33 years,
S/o Babulal Gupta,
Res. Of #, 211, 2nd Floor,



Spring Bloom Apartments,
Behind Bethel Church,
Muthsandra Main Road,
Varthur,
Bengaluru – 560087,
Karnataka

09. Vabya Kumar Pandit
Aged about 27 years,
S/o Ram Lakhani Pandit,
Res. Of Flat No. 202, 1st Floor,
#61, Ridhi Apartments, 3rd Main,
8th Cross, 3rd Block,
Talakaveri Layout,
Amruthahalli,
Bengaluru- 560092,
Karnataka.
10. Soni Singh,
Aged about 39 years,
W/o Sanjay Kumar Singh,
Res. of MVRA -43,
Srishti Nivas,
Kallumala, Vattiyoorkavu,
Trivandrum- 695013,
Kerala.
11. Mallesh Marepalli,
Aged about 56 years,
S/o Marepalli Mallaiah,
Res. Of MD-12,
HAL Old Township,
Opposite HAL Hospital,
Suranjandas Road,
Vimanapura Post,
Bengaluru – 560017,
Karnataka.
12. Promod Kumar Pandit,
Age 43 years,
S/o Suresh Pandit
Army NO. JC-245915H,
Rank NB RIS,



48 Armoured Regiment,
C/o 56 APO.

13. Ganesh Yemaji Parate,
Aged bout 38 years,
S/o Yemaji Mahadeo Parate,
Res. Of Flat No. 203,
2nd Floor,
N. Rajagopal Reddy Building,
3rd Main,
Opposite Basavanagar Bus Stand,
Behind Value Bazar,
Basavanagar,
Bengaluru – 560037,
Karnataka
14. Ankita Sharma,
Aged about 33 years,
W/o G.K. Srivastava,
Res. Of Flat No. -101,
Vasu Residency,
7th Cross,
LBS Nagar,
Bengaluru-560017,
Karnataka.
15. Shivram Radhakisan Dafade,
Aged about 37 years,
S/o Radhakishan Dafade,
Res. Of 3A,
1st Cross,
Force Avenue,
Near Ryan International School,
Kundanhalli,
Bengaluru – 560037,
Karnataka
16. Ram Narain Singh
Through- GPA Holder Vandana Singh,
Res. Of : Village Pokariyar,
Post- Bishunpur,
Via- Ghughli,
Dist- Maharajganj,



Pin-273 151,
Uttar Pradesh.

17. Pankaj Kumar
Through-POA Holder
Shambhu Dayal Singh
Res. Of -C/4, Vijay Nagar,
Road No.2, Hanuman Nagar,
Kankarbagh,
Patna - 800 026
Bihar

18. Rahul Kumar Singh
Res. Of -House No. 71,
1st Floor, Defence Estate Phase-2,
Agar-282 001,
Uttar Pradesh.

.. Complainants

Vs

Dreamaz Infra India Ltd.
(Formerly Known as Dreamz Infra India Pvt. Ltd.)
Through: Its Managing Director,
Ms. Disha Choudhary,
Registered address: No. 577/B,
2nd Floor, Outer Ring Road,
Teachers Colony,
Koramangala,
Near Silk Board,
Bangalore- 560034.

... Opposite Party

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT
HON'BLE DR. S.M. KANTIKAR, MEMBER

For the Complainants : Mr. Chandrachur Bhattacharyya, Advocate and
Mr. Basanta Kumar Nandy, Complainant no.1 in
Person

For the Opposite Party : N E M O
(Right to file Written Version closed vide Order
dated 13.02.2018)



ORDER
(Pronounced on 27th day of June, 2022)

R.K. AGRAWAL, J., PRESIDENT

1. The present Consumer Complaint has been filed under Section 12(1)(C) read with Section 13 (6) of the Consumer Protection Act, 1986 (for short "the Act") by the Complainants, in their representative capacity, agitating their joint, personal as well as collective grievance against the Opposite Party, M/s. Dream Infra India Ltd. (hereinafter referred to as the "Developer") for the inordinate delay in handing over possession of the Flats booked by them in the Project launched by the Developer under the name and style of "**Dreamz Sneh**" (hereinafter referred to as "the Project"). Since the interest of the Complainants and other Flat Buyers in the aforesaid Project is the same and identical reliefs have been claimed on behalf of all the Complainants, Interim Application No. 16217/2017 under Section 12 (1) (C) of the Act, was also filed with the Complaint to treat the Complaint as a joint or class-action Complaint. Vide Order, dated 13.02.2018, the said Application was allowed and the Complaint was treated as Joint Complaint on behalf of all the Allottees of the said Project. A notice was also directed to be published u/s 13 (6) of the Act in the Newspapers. Subsequently, I.A No. 10324 of 2018 was filed by some of the Allottees of the same Project seeking impleadment in the Complaint. The Application was allowed by this



Commission, vide Order dated 29.05.2018 and accordingly, the amended Memo of Parties was filed on record.

02. The facts as narrated in the Complaint are that the Complainants had applied for allotment of Dwelling Units/Flats in the Project, namely, "**Dreamz Sneh**" to be developed by the Opposite Party Developer in Bengaluru. The Project was supposed to have a total number of 190 Flats, i.e. Block 'A' with 110 Flats and Block 'B' with 80 Flats. For the first time, the Project was advertised in March, 2012. The Memorandum of Understandings had also been executed between the parties from April, 2012. As per Clause No. 4 of the Memorandum of Understanding (hereinafter to be referred to as "MOU") executed between the Complainant No.1, Basanta Kumar Nandy and the Developer on 05.04.2012, the possession of the booked Flat was promised to be delivered within a period of 18 months from the date of execution of the MoU, which time period was further extendable by a period of 6 months as grace period. Hence, the possession was to be given within a period of 24 months from the date of execution of MOU including the grace period of 6 months. It was also mentioned that in case of delay of the Project beyond 6 months after 18 months, the Opposite Party Developer shall be liable to pay the rent to the Flat Buyers at the prevailing market rate of the area till the actual date of handing over of possession of the Flat. It is stated that in terms of the MOU dated 05.04.2012, the possession of the booked Flat was to be given to the Complainant No.1 on or before 05.04.2014 including the grace period of 6 months, however, the Opposite Party



Developer has completely failed to hand over the possession as promised in the MOU. It is alleged that in A Block, all the 5 floors have been constructed upto 80% and the work of flooring, bathroom fittings, window fittings, electrical fittings, outside plastering, corridor, lift and amenities is yet to be completed. In B Block, construction is still in the initial stage and only 10% of the Construction work is completed. It is further stated that vide letter dated 12.06.2013, the Opposite Party Developer unilaterally revised the date of handing over possession to April, 2015, however, the possession was not handed over even on or before the said date. The Opposite Party Developer vide letter dated 28.09.2016 informed to one of the Complainants (Vikas Gupta) that they were running short of funds and unable to satisfy the reasons for the delay in Project, however, it was promised that possession would be started to be given within a period of 8 months. It is alleged that the Opposite Party Developer had been regularly raising demands on the Complainants for payment of installments and as such there was no question of shortage of funds. The Opposite Party Developer has diverted the funds so collected elsewhere for its own purpose. It is further stated that the Opposite Party Developer has no intention of completing the Project and handing over the possession of the Flats to the Complainants despite having collected the huge amount towards Sale consideration from them.

03. For ready reference, the necessary details of name of Complainants, Flat Number, Booking Date, Date of Agreement, Schedule Date of Possession as MOU, Total Consideration and amount paid are given below:-



SL. NO.	Name of Applicant	Flat No. A Block)	Booking Date	Date of Agreement	Schedule Date of Possession As per MUS/SA	Total Consideration (In Rs.)	Amount Paid
1	Basanta Kumar Nandy	309	16.03.2012	05.04.2012	04.04.2014	28,00,000/-	24,86,723/-
2	Manoranjan Dash	009	16.03.2012	05.04.2012	04.04.2014	28,00,000/-	25,05,925/-
3	Anand Gupta	318	30.04.2012	30.04.2012	31.05.2017	29,00,000/-	28,05,800/-
4	Aditya Narayan Bir	206	08.05.2012	01.06.2012	01.09.2016	31,50,000/-	29,53,520/-
5	Sudeep Sarkar	201	19.06.2012	19.06.2012	18.03.2014	29,50,000/-	28,96,800/-
6	Dharmendra KR Shaw	305	22.04.2012	24.11.2012	31.05.2017	26,00,000/-	23,47,035/-
7	Somasekhar Vankadari	005	16.04.2013	16.04.2013	31.08.2014	18,00,000/-	20,35,000/-
8	Vikash Kumar Gupta	215	31.08.2013	01.09.2013	31.07.2015	24,00,000/-	22,26,150/-
9	Vabya Kumar Pandit	209	22.06.2014	23.06.2014	22.05.2016	33,25,000/-	31,49,304
10	Soni Singh	211	18.07.2014	19.07.2014	17.06.2016	24,00,000/-	26,28,000/-
11	Mallesh Marepalli	102	29.11.2014	30.11.2014	31.05.2017	26,00,000/-	25,63,000/-
12	Promod Kumar Pandit	408	23.11.2014	12.12.2014	11.11.2016	22,00,000/-	18,95,888/-
13	Ganesh Yemaji Parate	407	31.01.2015	28.02.2015	28.05.2017	26,00,000/-	25,10,573/-
14	Ankita Sharma	001	18.05.2015	18.05.2015	31.05.2017	30,00,000/-	28,25,156/-
15	Shivram Radhakisan Dafade	119	07.03.2016	07.03.2016	06.02.2018	29,60,000/-	15,60,000/-
16	Ram Narain Singh	011 B-Block	14.09.2013	15.09.2013	14.08.2015	21,77,889/-	11,20,000/-
17	Pankaj Kumar	315 B-Block	18.07.2014	19.07.2014	18.06.2016	25,00,000/-	20,08,000/-
18	Rahul Kumar Singh	415 (A-Block	07.01.2014	07.01.2014	06.12.2015	31,00,000/-	26,67,221/-

04. Aggrieved by the delay in getting possession of their Flats, the Complainants have filed the present Complaint before this Commission with the following prayer:-

- (i) **Direct opposite party to hand over possession of the fully constructed; completed flats without any further delay to all the complainants and other flat**



buyers with same interest along with permanent utilities promised as per agreement, copies of all the relevant plans, approvals and Occupancy Certificate, issued by the relevant authorities;

- (ii) Direct opposite party no. 1 to pay to all the Complainants and other Flat Buyers with same interest compensation @ 12% per annum for the entire period of delay on the amount deposited by each of them with the Opposite Party till the date, actual legal possession is given;**
- (iii) Direct the opposite party to provide to the Complainants and other Flat Owners with same interest at the time of possession each of the facilities and amenities which were promised in the agreement;**
- (iv) Direct the Opposite Party to pay to the Complainants and other Flat Owners with same interest additional compensation @ 18 % interest per annum on the amount deposited for the delay in provision of the promised facilities and amenities Or in the alternative, in case of non provision of the promised amenities and facilities, direct Opposite Party to pay to the Complainants and other Flat Owners with same interest a sum of Rs.10,00,000 each;**
- (v) Direct the Opposite Party to pay to the Complainants and other Flat Owners with same interest a compensation of Rs.10,00,000 each by way of compensation for mental harassment and agony, to be distributed, equally among the Complainants along with 18 % interest;**
- (vi) Direct Opposite Party to refund to the Complainants and other Flat Owners with same interest the amount charged on account of service tax along with 18% interest;**
- (vii) Impose on the Opposite Party punitive damage of Rs. 20 Lakh to be paid to each of the Complainants and all other Buyers having the same interest;**
- (viii) Direct Opposite Party to refund to the Complainants and other Flat Buyers with same interest the amount of Rs.73,000/- collected on account of electricity and Water Charges and further restrain Opposite Party from collecting such amount from the buyers in the near future;**
- (ix) Award cost of the complaint to the Complainants;**
- (x) Pass any such further order or orders which this Hon'ble Commission deems fit and proper in the facts and circumstances of the present case.**

05. Despite dasti service of notice, neither anyone put in appearance on behalf of the Opposite Party Developer nor any Written Version in terms of the Order dated 17.10.2017 was filed by them. Accordingly, vide Order dated 13.02.2018, their right to file the Written Version was forfeited.



06. We have heard Mr. Chandrachur Bhattacharya, learned Counsel appearing for the Complainants and also perused the material available on record as well as the Written Submissions filed by the Complainants.

07. Mr. Bhattacharya has rigorously contended that as per the MOU, the possession of the Flats was to be delivered from April, 2014 but till date, i.e. March, 2019, the Opposite Party Developer is not in a position to complete the construction of the Project despite having received approx. 90% of the total Sale Consideration from the Complainants in the year 2016. In fact, the construction work is stopped since October, 2016 and at present no construction activity is going on at the site. He further submitted that vide letter dated 12.06.2013, the Developer informed to one of the Complainants, Mr. Dharmendra Shaw, that they would be providing a host of amenities like indoor swimming with child safety lock, kitchen with height adjustable platform, gymnasium, baby crèche and super market and the completion date of the Project would be April 2015. He urged that the excuse of shortage of funds taken by the Developer for delay in construction of the Project does not hold any water inasmuch as the Developer had been regularly raising demand from the Complainants for payment of instalments which were being promptly paid by them. The Newspaper Reports revealed that the Opposite Party Developer had floated multiple Projects and collected the substantial amount from the Investors but did not start the Project. When the Buyers wanted refund of the deposited money, cheques were issued which got dishonoured.



08. A bare perusal of the afore-extracted Chart containing the details of the name of the Complainants, Flat Nos., booking date, date of agreement, schedule date of possession as per MOU, total costs, amount paid etc. would reveal that the Complainants had booked their flats during the period from 16.03.2012 to 07.03.2016 and accordingly the respective MOUs were executed between the parties. The promised date as per MOU to hand over the possession of the booked Flats to the Complainants was from 04.04.2014 to 05.02.2018 and most of the Complainants have paid the major amount of the total costs ranging from 80% to 95% but despite that the Developer has completely failed to complete the construction of the Project and hand over the possession of the booked Flats, Complete in all respects, to the Complainants within the time as promised in the MOU. Though served by dasti notice, the Developer did not take the pain to put in appearance in the matter and resist the allegations levelled against them in Complaint by filing their Written Version. Accordingly, Vide Order, dated 13.02.2018, their right to file the Written Version was closed. Hence, the facts averred in the Complaint remain unrebutted and under these circumstances, the questions regarding reasons for delay in completing the Project and as to when the Developer will be able to complete the Project and hand over the possession to the Complainants also remain unanswered.

09. As stated above, the main prayer of the Complainants is a direction to the Opposite Party Developer to complete the Project and hand over the possession of the booked Flats to them with reasonable compensation. However, as



submitted by the Learned Counsel for the Complainants in his Written Submissions, the construction of the Project was still incomplete even in the year 2019 and there is no possibility at all to complete the Project in near future and hand over the possession to the Complainants. In the absence of the Opposite Party Developer we cannot come to the conclusion as to when the Project will be completed and possession will be handed over to the Complainants.

10. In the case of **Emmar MGF Land Ltd. & Ors. vs. Amit Puri - [II (2015) CPJ 568 (NC)]**, this Commission has held that after the promised date of delivery, it is the discretion of the Complainant whether to accept the offer of possession, if any, or to seek refund of the amounts paid by him with some reasonable compensation and it is well within his right to seek for refund of the principal amount with interest and compensation.

11. Further, in the case of **Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra - II (2019) CPJ 29 SC**, the Hon'ble Supreme Court has observed as under :-

".....It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund.



In the circumstances, we are of the view that the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified."

12. In the result, this Complaint filed under Section 12(1)(c) of the Act i.e., for the benefit of all Consumers/Complainants is allowed in the following terms:-

- (i) The Opposite Party Developer is directed to complete the construction of the Project within a period of one year from today and obtain the occupancy certificate and thereafter the possession of the respective flats to be delivered to the Complainants;
- (ii) The Opposite Party Developer shall be liable to pay delayed compensation @9% per annum from the promised date of delivery till the actual possession to the Complainants;
- (iii) The Opposite Party Developer shall also be liable to pay ₹50,000/- as costs to the each of the Complainants.

ALTERNATIVELY

In case, the Complainants are not interested to wait for one more year for the possession of the booked flat **OR** the Opposite Party Developer is not able to complete the construction of the Project within the said period and hand over the possession of the booked flats to the Complainants, the Developer shall be liable to refund the entire deposited amount to the Complainants with simple interest @9% p.a. from the respective date of deposit till actual payment, within a period



of six weeks failing which the amount shall carry interest @ 12% p.a. for the said period. The Developer shall also be liable to pay costs of ₹50,000/- to each of the Complainants.

13. The Consumer Complaint is allowed in above terms. The pending applications, if any, also stand disposed of.



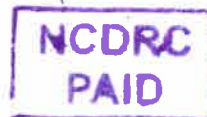
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(R.K. AGRAWAL, J.)
PRESIDENT

Sd/-

(DR. S. M. KANTIKAR)
MEMBER

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27/06/2022



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