

ALOK RANJAN SINHA & ANR. V. MAHINDRA LIFESPACE DEVELOPERS LTD.

1. ALOK RANJAN SINHA & ANR.

R/o. Flat No. 351, Plot – 6B, SapnaGhar CGHS Lts., Sector 11,
Dwarka,
New Delhi – 110 075.

.....Complainant(s)

Versus

1. MAHINDRA LIFESPACE DEVELOPERS LTD.

UGF, Mahindra Towers, 2-A, Bhikaji Cama Place,
New Delhi – 110 066.

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 691 OF 2016

Date of Judgement: 16 Jan 2023

Judges:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER

HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Mr. Sitikanth Nayak, Advocate

For the Opp.Party : Mr. Rohit Jolly, Advocate

Mr. Parth Singh, Advocate

Facts:

Complainants booked a flat in 'Mahindra Aura' project by Mahindra Lifespace Developers Ltd (OP). As per agreement, possession was to be delivered by 04.10.2014. Possession was delayed and offered only on 29.09.2016. Complainants took

possession in Feb 2017.

Court's Opinions:

Issue confined only to rent/delayed compensation for delayed period. SC has held that delayed compensation of Rs 5 or 7.5 per sqft per month is inadequate. SC has fixed delayed compensation as 6% interest per annum on amounts paid by home buyers. Complainants are entitled for delayed compensation from 05.10.2014 to 28.09.2016 as per SC order. Any delayed compensation already paid to be adjusted.

Arguments by Complainants:

Seeking reimbursement of rent paid during delayed period. Also seeking interest as delayed compensation.

Arguments by OP:

Delayed compensation of Rs 5 per sqft per month as agreed has already been paid. Not liable to pay any rent amount.

Cases Referred/Cited:

Wg Cdr Arifur Rahman Khan & Ors Vs DLF Southern Homes Pvt Ltd (2020) 16 SCC 769

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Court

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Full Text of Judgment:

1. Heard counsel for the parties.
2. Above complaint has been filed for directing the opposite party (i) to deliver possession of flat no.901 in Tower J in the project 'Mahindra Aura' and other consequential reliefs. Vide order dated 23.09.2021, the complaint has been confined only for issues i.e. (i) whether the complainants are entitled for re-imbusement of rent amount, if any paid by them due to delay in delivery of possession and (ii) the period for which they are entitled for rent. At the time of arguments, the counsel for the complainants confined arguments for delayed compensation and the rent paid during the delayed period.

3. The complainants have stated that Mahindra Lifespace Developers Ltd. was a company registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project. The opposite party launched a group housing project in the name of 'Mahindra Aura' at village Chouma, Sector-110A, district Gurgaon in the year 2011 and made vide publicity of its amenities and facilities. The complainants were in need of a residence and therefore, they applied for a flat and deposited the booking amount on 03.02.2012 and the opposite party allotted Apartment no.J-901, Super area 2300 sq. ft. Thereafter, the opposite party executed Apartment Buyers Agreement on 13.02.2012 in respect of the said flat. The Payment Plan was "construction linked payment plan". As per demand of the opposite party, the complainants have timely deposited the installments. Clause 15 of the Apartment Buyers Agreement provides that 32 months period from the date of actual start of construction for delivery of possession. Date of start of construction of the tower in which the complainants were allotted flat was 04.02.2014 and due date of possession is 04.10.2014 but the possession was delayed and offered on 29.09.2016. In pursuance thereof, the complainants took possession of the apartment in February 2017.

4. The opposite party has filed its written reply, in which material facts, relating to allotment, execution of ABA and deposits made of the complainants have not been disputed. The opposite party states that under the Apartment Buyers Agreement, the delayed compensation was agreed to be paid @ Rs.5/- per sq.ft. per month on super area which had been adjusted in the final statement of account. The opposite party is not liable for the rent paid by the complainants.

5. We have considered the arguments of the counsel for the parties. Supreme Court in Wg. Cdr. Arifur Rahman Khan & Ors. Vs. DLF Southern Homes Pvt. Ltd., (2020) 16 SCC 769, held that the delayed compensation @Rs.7.5 per sq.ft. p.m. was inadequate and fixed delayed compensation in the form of interest @6% per annum on the deposit of the home buyer. The

counsel for the opposite party states that in the present case, the complainants themselves have prayed for delayed compensation @Rs.5/- per sq.ft. per month, which has already been paid, therefore, no amount can be granted. But in the present case, the complainants have also prayed for reimbursement of rent @Rs.24080/- per month for the delayed period. Therefore, the delayed compensation can be awarded in terms of the order of Supreme Court in Wg. Cdr. Arifur Rahman's case (supra), in lieu of prayer no.3. We are awarding delayed compensation in the form of interest @6% per annum on the deposit of the complainants in lieu of the rent paid by the complainants. The delayed compensation already paid by the opposite party at the time of final statement of account shall be adjusted in it. So far as period for delayed compensation and re-imbursement of rent is concerned, since the due date of possession was 04.10.2014 and possession was offered on 29.09.2016, the complainants are entitled for rent/delayed compensation from 05.10.2014 to 28.09.2016.

ORDER

In the result, the complaint is partly allowed. The opposite party is directed to pay the rent/delayed compensation in the form of interest @6% per annum on the deposit of the complainants from 05.10.2014 to 28.09.2016, within two months from today. The opposite party would be entitled to adjust the delayed compensation already paid to the complainants.