

ANIL RANA V. M/S. ATS ESTATES PVT. LTD. & ANR.

1. ANIL RANA

.....Complainant(s)

Versus

1. M/S. ATS ESTATES PVT. LTD. & ANR.
THROUGH ITS DIRECTORS, REGD. OFFICE AT: 711/92,
DEEPALI NEHRU PLACE,
NEW DELHI-110019.

2. M/S. ATS INGRASTRUCTURE LTD.
REGD. OFFICE AT: 711/92, DEEPALI NEHRU PLACE,
NEW DELHI-110019.

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 234 OF 2018

Date of Judgement: 05 Jan 2023

Judges:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER
HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Mr. Aditya Parolia, Advocate
Mr. Nitin Chandran, Advocate
Ms. Sambul Ismail, Advocate
For the Opp.Party : Mr. Sandeep Thukral, Advocate

Facts:

Complainant Anil Rana booked a villa in 'ATS Golf Meadows' project launched in 2012 at Mohali by opposite parties ATS Estates Pvt Ltd and ATS Infrastructure Ltd. Villa no. 226 allotted to Anil Rana. Buyer's agreement executed on

09.03.2012. Total sale price Rs. 1.88 crores. Anil Rana paid Rs. 57,68,544/- as per payment plan. Possession was to be given by 08.02.2015 as per clause 11(a) of agreement. In May 2016, Anil Rana sought cancellation and allotment of a plot since construction was delayed with no likelihood of completion till 2020. Opposite parties did not respond. Hence, the complaint seeking refund with interest, compensation and costs for deficiency in service due to inordinate delays.

Arguments by Anil Rana:

Committed date of possession expired in September 2015 but opposite parties failed to offer possession even after 4 years. Construction progress very slow and not likely to complete even in near future by year 2020. Despite requesting cancellation and transfer to a plot, opposite parties failed to respond. Seeking refund of paid amount with interest, compensation for harassment and legal costs.

Arguments by Opposite Parties:

Anil Rana was an intentional defaulter right from beginning and failed to make timely payments as per schedule. Stopped making payments after initial amounts. Construction held up due to his defaults. Could not accept request for transfer to plot due to persistent payment defaults. Anil Rana liable to forfeit 10% earnest amount as per clause 5 of Agreement due to defaults. No deficiency of service since possession was subject to timely payment by allottee.

Court's Observations and Decision:

It is seen Anil Rana defaulted on timely payments right from beginning as per the schedule. He cannot allege deficiency of service by developer when clause 11(a) itself ties possession to timely payments. Since Anil Rana seeks refund, he is liable to forfeit 10% of basic sale price as earnest money under clause 5 of Agreement. As per SC decision, additional compensation not justified when interest awarded as damages

for delays. Another SC decision held 9% p.a. interest as just compensation in case of refunds. Complaint partly allowed. ATS Estate directed to refund paid amount after deducting 10% earnest money and applicable loan, alongwith interest @9% p.a. till realisation.

Sections:

Consumer complaint filed under the Consumer Protection Act, 1986.

Cases Referred:

DLF Homes Panchkula Pvt Ltd vs D.S. Dhanda (SC): No additional compensation if interest already awarded as damages. Experion Developers Pvt Ltd vs Sushma Ashok Shiroor (SC): 9% interest just compensation in case of refund.

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Full Text of Judgment:

1. Heard Mr. Aditya Parolia, Advocate, for the complainant and Mr. Sandeep Thukral, Advocate, for the opposite parties.
2. Anil Rana has filed above complaint, for directing the opposite party to (i) refund Rs.5768544/- with interest @18% per annum from the date of respective deposit till the date of actual payment, (ii) pay Rs.500000/-, as compensation for mental agony and harassment, (iii) pay Rs.100000/-, as litigation cost; and (iv) any other relief which is deemed fit and proper in the facts and circumstances of the case.
3. The complainant stated that M/s. ATS Estates Private Limited and M/s. ATS Infrastructure Ltd. (the opposite parties) were companies, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project and selling its unit to the prospective buyers. M/s. ATS Infrastructure Ltd., who was owner of the project land, entered into development agreement

dated 20.07.2007, with M/s. ATS Estates Private Limited, by which, the works of development and construction of the project and selling its unit were assigned to M/s. ATS Estates Private Limited (the opposite party). The opposite party launched a group housing project, in the name of "ATS Golf Meadows" at villages Sadhemajra and Madhopur, tehsil Dera Bassi, district S.A.S. Nagar, Mohali, in the year 2012 and made wide publicity of its facilities and amenities. The complainant booked a villa on 09.02.2012 and deposited booking amount of Rs.1900000/- . The opposite party allotted Villa no.-226, "ATS Golf Meadows-1", area 500 sq. yard, total sale price of Rs.188/- lacs and executed Buyer's Agreement in his favour on 09.03.2012. Under Payment Plan entire consideration was payable in 5 instalments. Last instalment was payable on offer of possession on 08.02.2013. The complainant deposited total amount of Rs.5768544/- . Clause-11(a) of the agreement provides that the opposite party will offer possession within 36 months from the date of allotment subject to timely payment of the instalments and force majeure reasons. Clause 11(c) provides a grace period of 120 days. Although due date of possession expired in September, 2015 but the opposite party did not offer possession. The construction was moving at very slow pace and was not likely to be completed till 2020. Therefore, the complainant, vide email dated 04.05.2016, requested to cancel his allotment of villa No.226 and transfer his money for allotment of Plot No.115-116, "ATS Golf Meadows-1" but the opposite party did not respond. Then this complaint was filed on 23.01.2018, alleging deficiency in service.

4. The opposite party filed its written reply on 26.04.2018 and contested the matter. The opposite party did not dispute, booking of the villa, allotment of the villa No.226, execution of Buyer's Agreement dated 09.03.2012 and deposits made by the complainant. The opposite stated that allotment letter was issued on 21.07.2012 and received by the complainant on 23.07.2012 and the complainant has deliberately made false allegation in this respect. Annexure-1 of the agreement

contained "Time Linked Payment Plan" under which Rs.6667750/- was required to be deposited till 14.05.2012. The complainant deposited Rs.19/- lacs, on 09.03.2012, Rs.1940052/-, on 01.08.2012 and Rs.1928492/-, on 31.07.2013 (total Rs.5768544/-) although till November, 2012, Rs.16067750/- was payable. The opposite party raised construction by expending Rs.58/- lacs. The complainant stopped payment of instalment as such the construction was not proceeded further. EDC was statutory charge. Delayed payment of EDC attracts 10% interest and 3% delayed penalty. The opposite party issued demand/reminders dated 05.06.2014, 05.09.2014 and 05.12.2014 but the complainant did not respond. The complainant was a rank defaulter in payment of instalment and failed to perform his obligation under the agreement. Clause 11(a) of the agreement was subject to timely payment of the instalment. The complainant was defaulter from very beginning as such his request to transfer his allotment into plot was not accepted. Terms & Condition No.5 of the booking application form and clause-5 of the agreement provides that 10% of Basic Sale Price would be earnest money which was liable to be forfeited. The opposite party has not committed any deficiency in service. The complaint is liable to be dismissed.

5. The complainant filed Rejoinder Reply and Affidavit of Evidence of Anil Rana on 26.10.2018. The opposite party filed Affidavit of Evidence of Kunwar Sammaan Prakash. The complainant filed short synopsis of the arguments.

6. We have considered the arguments of the parties and examined the record. All the terms and conditions were disclosed in the Application Form as such it cannot be said that the terms and conditions were one sided. Annexure-1 of the agreement contained "Time Linked Payment Plan" under which Rs.6667750/- was required to be deposited till 14.05.2012. The complainant deposited Rs.19/- lacs, on 09.03.2012, Rs.1940052/-, on 01.08.2012 and Rs.1928492/-, on 31.07.2013 (total Rs.5768544/-) although till November, 2012, Rs.16067750/- was payable. The opposite party issued demand/reminders dated 05.06.2014, 05.09.2014 and 05.12.2014 but the

complainant did not respond. The complainant was a rank defaulter in payment of instalment from very beginning and failed to perform his obligation under the agreement. Since the complainant was defaulter, he cannot allege deficiency in service against the opposite party. Clause 11(a) of the agreement was subject to timely payment of the instalment. Now the complainant demands for return of his money as such earnest money, which is 10% of Basic Sale Price would be liable to be forfeited under clause-5 of the agreement. In DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda, (2020) 16 SCC 318, held when interest is awarded as compensation then awarding additional compensation was not justified. In Experion Developers Private Limited Vs. Sushma Ashok Shiroor, 2022 SCC OnLine SC 416, held that 9% interest, in case of refund, is just compensation.

ORDER

In view of the aforesaid discussions, the complaint is partly allowed. M/s. ATS Estates Private Limited (opposite party-1) is directed to refund entire amount deposited by the complaint with interest @9% per annum from the date of respective deposit till its payment, within period of two months from the date of this judgment. M/s. ATS Estates Private Limited (opposite party-1) is entitled to deduct 10% of Basic Sale Price as earnest money, from the amount payable to the complainant. If the complainant has taken loan mortgaging the villa in question, M/s. ATS Estates Private Limited (opposite party-1) will be entitled to satisfy the loan of the bank first and return remaining amount to the complainant.