

BAHADUR SINGH & 3 OTS. V. M/S. LANDMARK APARTMENTS PVT. LTD. & 4 ORS.

1. BAHADUR SINGH & 3 OTS.

S/O LATE SH. SHAMBU SINGH R/O VILL. DARBARIPUR,
GURGAON
HARYANA

2. MS. BALA DEVI

W/O SH. BAHADUR SINGH R/O VILL. DARBARIPUR,
GURGAON
HARYANA

3. SH. ASHOK KUMAR

S/O SH. BAHADUR SINGH R/O VILL. DARBARIPUR,
GURGAON
HARYANA

4. SH. RAJKUMAR

S/O SH. BAHADUR SINGH R/O VILL. DARBARIPUR,
GURGAON
HARYANA

.....Complainant(s)

Versus

1. M/S. LANDMARK APARTMENTS PVT. LTD. & 4 ORS.

REGD. OFFICE AT: A-8, CR PARK,
NEW DELHI

2. SH. SANDEEP CHILLAR (DIRECTOR)

REGD. OFFICE AT: A-8, CR PARK,
NEW DELHI

3. SH. YASHWIN KADIAN, DIRECTOR

REGD. OFFICE AT: A-8, CR PARK,
NEW DELHI

4. SH. DINESH KUMAR, DIRECTOR

REGD. OFFICE AT: A-8, CR PARK,
NEW DELHI
5. SH. RAVI DABAS, EMPLOYEE
REGD. OFFICE AT: A-8, CR PARK,
NEW DELHI

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 1411 OF 2018

Date of Judgement: 09 Jan 2023

Judges:

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

For the Complainant : Mr. Satish Dabas, Advocate

For the Opp.Party : Mr. Narender Hooda, Sr.Advocate with Mr. Shaurya Lamba, Advocate

Facts:

Complainants sold agriculture land in 2008 and were looking for income source for livelihood and kids' education. In June 2008, OPs contacted complainants regarding their upcoming project "Landmark The Mall" in Sector 66, Gurgaon. OPs assured clean title, all approvals, possession in 36 months, and returns of Rs. 93,480 per month if full payment made. Complainants booked Shop No.42 (820 sq yds) by paying Rs. 93,48,000 and agreement signed in July 2008. Despite reminders, OPs failed to start construction even after 3 years and defaulted on assured returns payment. On 30.09.2010, complainants sought refund or possession but were made to sign a new agreement showing increased shop area of 880 sq ft and enhanced assured returns of Rs. 1,00,320 per month for 3 more years. Again construction did not start in next 4 years, so on 04.12.2014 complainants met OPs demanding refund with interest and arrears. OPs stated they were making new project "Landmark Cyber Park" in Sector 67 and made complainants sign agreement

for 1910 sq ft space there for Rs. 1,05,05,000 with assured returns of Rs. 1,05,050 per month. After 15 months OPs stopped assured returns payment and offered false possession without completion certificate. Complainants found site incomplete without OC when they visited; OPs had also got blank documents signed from them. Complaint filed alleging cheating, fraud and deficiency in service; sought refund with interest, damages of Rs. 25 lakhs and litigation cost.

Court's Opinions:

Rejected OPs' contention that complaint not maintainable since complainants booked commercial space for investment; no evidence to prove same. Inordinate delay of over 10 years in offering possession; complainants cannot be made to wait indefinitely. Complainants have legitimate right to claim refund with fair interest after promised delivery date elapses. As OPs paid assured returns for certain periods, interest will not apply on principal amount for those periods. Allowed complaint; directed OPs to refund principal amount of Rs. 93,48,000 with 9% simple interest from each payment date till refund (minus periods when assured returns paid). OPs to prepare statement of account within 30 days for complainants' verification. Refund amount to be paid within next 3 months of verification. OPs directed to pay Rs. 50,000 as litigation cost.

Arguments:

By Complainants:

Booked shop for family's livelihood so are consumers under Consumer Act. Inordinate delay of over 10 years in offering possession without completion certificate. Have right to refund under SC judgments when possession not given after committed timeline. Payment of Rs. 93.48 lakhs admitted by OPs.

By OPs:

Complainants not consumers as booked commercial space for investment and assured returns. Offered possession in 2015

after applying for OC but complainants never took it. Paid assured returns totaling Rs. 84,87,687 as per terms in MOUs signed. Delay in development due to market conditions; new project offered after issues in original project.

Sections and Case Laws:

Sections:

Definition of consumer under Section 2(1)(d) of Consumer Protection Act 1986 cited

Case Laws:

No specific case laws have been cited in the order. Reference made to various judgments of Supreme Court and National Commission upholding right of refund and interest where inordinate delay in offering possession.

Referred Laws:

Consumer Protection Act 1986 referred at various places, but no specific sections mentioned apart from Sec 2(1)(d) definition of consumer.

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Court

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Full Text of Judgment:

1. The present Consumer Complaint (CC) has been filed by the Complainants against the opposite parties (OPs) as detailed above, inter alia praying for directing the OPs to:-

(i) refund of amount paid by the complainants to the opposite parties for the shop in mall and accrued interest of 18%.

(ii) pay Rs.25,00,000/- by way of damages for harassment, pain & suffering, mental & physical agony, loss of credibility and reputation and financial losses, and inconvenience caused to complainants on account of deficiency in service on the part of the OPs.

(iii) pay cost of litigation etc.

2. Notice was issued to the opposite parties on 17.07.2018 giving them maximum 45 days' time to file their written statement.

3. It is averred/stated in the complaint that:-

i) That the complainants had sold their agriculture land in early 2008 and were looking for some income source to earn their livelihood and self employment and generate some income to fund the education of the kids of the family in good schools. The OPs contacted the complainants in June 2008 and told them about the project of the OP "Landmark The Mall" at Sector 66, Gurgaon and assured that complainants can easily get handsome returns for meeting their household expenditure for their livelihood by getting income from good shop in the said mall. The OPs assured that they had clear title of the land and all requisite permissions/approvals from all Govt. Statutory bodies/Authorities and their layout plans were duly approved and the possession of the plots/units will be given within 36 months. They also assured returns of Rs.93,480/- per month for three years on the investment. The complainants were also told that they shall give investment returns only if the complainants make 100% payment of sale price at the pre-launch booking. On the assurances by the OPs the Complainants booked a Shop No. 42 (820 sq.yds.) in "Landmark The Mall" at Sector 66, Gurgaon and all the receipts and M.O.U./agreement were signed in July 2008. The complainants paid a total sum of Rs.93,48,000/- as sale amount for said Shop in 'The Mall'.

ii) It is averred by the complainants that the OPs allotted shop No. 42 to the complainant without any approvals of layout plans of the project. But the OP could not even start the construction of the said Mall in three years despite the promises and assurances. The OPs also partly paid the promised assured returns of Rs.93,480/-. The OPs kept on delaying the possession despite various requests and reminders and personal visits to OPs' office in this regard. On 30.09.2010, the complainants went to the office of OP-1 and sought refund of

their amount or possession of the shop. The OP-2 cunningly entrapped the complainants into signing another false and fraud MOU/Agreement of even date and told them that the pending assured returns amount of Rs.6,84,000/- shall be adjusted in the new agreement/sale price and the area of the shop is being increased to 880 sq.ft. The OP-1 told the complainants that the OP-1 has no funds to refund them and are in financial crisis and further told the complainants that they have to bear with OP-1. Without cancellation of the old agreement dated 01.07.2008, a new MOU/agreement was got signed from the complainants. The time the OPs promised enhanced assured returns of Rs.1,00,320/- to the complainants for another three years. The OPs again sold/resold the said shop No. 42 to the complainants in pre-launch offer, without any approval. The same story continued for another four years and OP-1 could not even lay a single brick of construction of the "said Mall" and also defaulted in payment of the assured returns.

iii) On 04.12.2014 the complainants met OPs-2 & 3 and sought their refund with interest and arrears of assured returns as the construction of the said Mall was not yet started. The complainants have stated in their complaint that the OPs again coaxed the complainants to sign another agreement by telling them they were making "Landmark Cyber Park" in Sector 67, Gurgaon and their pending return amount of Rs.4,74,012/- shall be adjusted in the new sale priced. The OPs again told the complainants that they are short of funds for refund and they shall give assured returns of Rs.1,05,050/- for the said investment in their new project. The OPs got signed a new agreement /MOU on 04.12.2014 for selling 1910 sq.ft. space in their 'Landmark Cyber Park, Sector 67, Gurgaon. The sale price for the same was fixed at Rs.1,05,05,000/- and assured returns of Rs.1,05,050/- till possession. The possession was promised within 36 months. The old agreement dated 30.09.2010 was also never cancelled or amended by the OPs.

iv)The OPs again stopped paying assured returns to the complainants after 15 months and in order to avoid further payment of assured returns, gave a false information of possession of the incomplete project to the complainants. The complainants visited the site and found that the site is not complete and OP-1 also did not have any OC or Completion Certificate at the time of giving intimation/offer of possession. During this period, the OPs taking advantage of the illiteracy of the complainants, had also got signed from the complainants some blank documents typed in English and some of the documents which have been signed by the complainants i.e. indemnity bond, provisional allotment agreement/letter have been got signed from the complainants, with blank spaces (to be filled later by the OP to their advantage.

v)It is stated by the complainants in their complaint that the OPs have been duping the complainants since the year 2008 in the name of false fabricated documents and MOU/agreements and acted in gross violation of the laws and rules. The OPs had taken Rs.93,48,000/- from the complainants in July 2008. The OP-1 in collusion with other OPs sold pre-launch properties, illegally and unlawfully to the complainants without any statutory approvals and permissions of the same. The OPs lured the complainants into signing new agreements/MOU's without cancelling the old agreements. Hence, the complainants claim 18% interest on their investment of Rs.93,48,000/- and till date the investment of the complainants could have got returns of Rs.1,68,26,400/- totalling to Rs.2,61,74,400/-. The OPs have paid only Rs.65,50,612/- to the complainants.

vi)The complainants had also filed a criminal complaint against the OPs in P.S. Badshahpur, Gurugram as the acts of the OP-1 to 5 clearly show that they have committed offences under various sections of I.P.C. and their only intention was to cheat, dupe, defraud the complainants. The OPs also inflicted huge financial loss to the complainants and destroying their financial and social reputation. The OPs are

engaged in widespread fraud criminal breach of trust, cheating, and forgery of documents for the purpose of cheating the complainants and the public at large.

vii)The complainants sent a legal notice dated 23.05.2018 through their counsel to the OPs. However, the OPs failed to refund any amount despite service of notice. Hence, the complainants filed the complaint before this Commission.

4. OPs in their written statement/reply stated that :-

i. It is contended by the OPs that the complaint is not maintainable as the complainants are not consumer as defined in Section 2 (1) (d) of the CP Act, 1986. The complainants booked a commercial shop with the OP-1 in one of the projects of the OP known as 'Landmark The Mall', against which the complainants were regularly drawing assured monetary returns as promised. As per complainants' own undertaking i.e. evident from the Indemnity Bond dated 06.01.2015, the complainants were allotted a different space in another commercial project of the OP-1 known as 'Landmark Cyber Park', against the complainants also drew assured returns as promised. The space allotted to the complainants is commercial in nature and can only be run by I.T. professionals and none other than them. The complainants had booked the commercial space for drawing assured returns and not for their own utilization. Even if it is to be believed that the complainants had booked the I.T. Space (commercial) for their own use, the same could not have been used by them since the space in question can only be run by I.T. Professional or I.T. Company, as per the notification of the Government of Haryana.

ii. It is further contended by the OPs that the complaint preferred by the complainants by mis-representing the true and correct facts and is liable to be dismissed. The project in question stands completed by the OPs and to the extent the possession of the I.T. space (commercial) booked by the complainants is also readily available. In fact OP-1 had offered possession of the space in question to the

complainants in the year 2015, vide letter dated 11.08.2015. Despite receiving the said letter the complainants never approached the OP-1 to clear its pending dues or to take possession of the space in question. The other allegations by the complainants are denied by the OPs and prayed that the complaint be dismissed.

5. Evidence by way of affidavit was filed by the complainants and affidavit of evidence was filed by the OPs broadly on the lines of averments made in the complaint.

6. Heard counsels of both sides.

7. Complainants contended that they are the consumers, having booked the said shop for earning livelihood for the whole family. OP offered possession without Occupation Certificate/ Completion Certificate, OP failed to give possession even after 10 years of taking full sale consideration in advance and failed to give refund which was demanded on various occasions. The MOUs were got extended from the complainants to buy time and defraud the complainants, OPs sold the project land of originally booked shop (Land Mark, the Mall) without approval and intimation of the complainants wherein they were shareholders in the said land as they have paid full sale price. Relying on various judgments of the Hon'ble Supreme Court and this Commission, the complainants argued that after the promised date of delivery, it is the discretion of the complainants whether they want to accept offer of possession or seek refund. Payment of Rs.93.48 lakhs by the complainants has been admitted by the OPs. It was contended by the OPs that two MOUs dated 01.07.2008 and 30.09.2010 were signed wherein the OPs agreed to pay assured returns to the complainants till the date of possession or three years. OPs admit that they could not develop the earlier project, which they attributed to unavoidable circumstances such as market recession, and that they informed the complainants that they would not be able to make the payments of assured returns indefinitely, and offered the complainants to either take refund or get the

allotment transferred to another project of OPs. The complainants thereafter decided to shift its allotment to 'Landmark Cyber Park' project. A fresh MOU between complainants and OPs was signed on 04.12.2014, as per which the OP-1 was requested to pay monthly assured returns till intimation of possession. OPs have complied with the terms so agreed under the MOUs and paid assured returns of Rs.84,87,687/- to the complainants. OPs approached to DGTCP Haryana for OC of the project on 17.04.2015, did not receive any communication from DGTCP within 60 days of application and therefore, based on deemed O.C., have evidently offered possession of the I.T. Space/Unit way back on 11.08.2015, and demanded lawful dues, which were not paid by the complainants. The OC was granted by DGTCP on 26.12.2018.

8. The contention that complainants are not the consumers as they purchased the unit for commercial/investment purpose is rejected as no such evidence has been adduced by the OPs in this regard. The plea of OPs that delay was due to unavoidable circumstances is not valid as even after a gap of more than 10 years from the first booking, possession of unit has not been given.

9. In the instant case, there is an inordinate delay in handing over the possession of unit by the OPs. The complainants cannot be made to wait for an indefinite time and suffer financially. Hence, the complainants in the present circumstances have a legitimate right to claim refund alongwith fair delay compensation/interest from the OPs. However, considering that for certain periods OPs have paid assured return on the amount paid by the complainants, for these periods, complainants will not be entitled for any interest on their principal amount.

10. For the reasons stated hereinabove, and after giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised by the learned Counsel for

the parties, the Consumer Complaint is allowed/disposed off with the following directions/reliefs: –

i. The OPs shall refund the entire principal amount of Rs.93,48,000/- (Rupees Ninety three lakh and forty eight thousand only) to the complainants, alongwith compensation in the form of simple interest @ 9% per annum from the date of each payment till the date of refund except for the period for which OPs have paid assured returns to the complainants. The OPs shall prepare a statement of accounts and calculate the amount payable to the complainants as per this order within a maximum of 30 days of this order and send a copy of the same to complainants for verification within next one month and thereafter pay the admissible amount as per this order to the complainants within three months from the date of this order. The principal amount refundable mentioned in this para is subject to verification of records/receipts etc.

ii. The OPs shall pay a sum of Rs.50,000/- as cost of litigation to the complainants.

iii. The liability of the OPs shall be joint as well as several.

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

11. The pending IAs, if any, also stand disposed off.