

Claim for possession and compensation due to delay in handing over of property purchased from builder: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

M/S. PREMIUM ACRES INFRATECH PVT. LTD. & 2 ORS.

...Appellant

RAVINDER SINGH & 2 ORS.

...Respondent

Case No: FIRST APPEAL NO. 63 OF 2016

Date of Judgement: 02 January 2024

Judges:

DR.INDER JIT SINGH – PRESIDING MEMBER

For Appellant: MR. PAWAN KUMAR RAY, MR. ASHISH YADAV, ADVOCATES

For Respondent: MR. RAVINDER SINGH

Facts of the Case:

Complainants booked a villa in builder's project by paying booking amount and instalments. Builder issued allotment letter for Villa No.140 and Buyer's agreement was executed. Complainants made payments as per builder's demands till full consideration of Rs.46,99,967/-. Builder handed over possession on 26.03.2014 but connectivity not provided. Complainants did house-warming ritual on 31.01.2015. Next day, found builder had locked the villa entrance alleging wrong-

doings. Complainants not allowed to enter the villa since then. Filed complaint before State Commission seeking possession and compensation.

State Commission's Order:

The State Commission partly allowed the complaint with following directions:

Complainants to pay balance amount of Rs. 1,09,939/- within 1 month. Builder to handover possession within 2 months of payment. Builder to execute sale deed within 1 month of handing over possession. Builder to pay compensation of Rs. 2 lakhs for harassment within 2 months. Builder to pay litigation cost of Rs. 50,000/-. Interest and higher cost if order not complied with.

Builder's Main Grounds of Appeal:

Cause of action has not arisen in Chandigarh as villa situated in Mohali. Dispute involves allegation of document fabrication by complainants. Such issues cannot be dealt summarily under Consumer Protection Act. Complainants failed to make payments on time as per construction linked plan. Delay in construction was due to court stay order. Clause 11 of agreement provides for escalation charges. Complainants were given opportunity to take possession but did not do so.

Commission's Consideration of Key Aspects:

Jurisdiction:

Builder has office in Chandigarh where agreement was signed. Part cause of action like allotment, payments etc. arose in Chandigarh. State Commission has territorial jurisdiction.

Allegation of Fabricated Documents:

Builder has not conclusively established fabrication charges. Execution of agreement by builder's authorized signatory is binding.

Construction Linked Plan:

Builder has not shown communication regarding escalation calculations as per Clause 11. Onus is on builder to establish calculations are correct.

Possession Delay:

Builder has not indicated actual date of offer of possession. Possession letter shows possession handed over on 26.03.2014. This is within 30 days of builder's claimed date of offer of possession.

Holding Charges:

Builder has not shown calculations for holding charges as per Clause 9. Prima facie, possession was taken by allottee within 30 days of offer.

Balance Payment:

Even if Rs. 1,09,939/- is payable as per State Commission's order, it does not justify refusal to hand over possession.

Deterioration of Unit:

Builder's withholding of possession led to deterioration of unit's condition.

Non-Compliance of Earlier Order:

Despite expressing willingness earlier to handover possession, builder has failed to do so due to which order not complied.

Cases Referred:

*Supreme Court in Sonic Surgical Vs National Insurance Co. Ltd
National Commission in Satish Chand Gosain & Anr. Vs. Canara Bank
Raghuvir Singh Vs. Branch Head Axis Bank & Anr
Laxmi Engineering Works Vs. PSG Industrial Institute
Jagdish Gurnami Vs. Lucknow Development Authority*

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Court

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Full Text of Judgment:

1. The present First Appeal has been filed by the Appellants against Respondents as detailed above, under section 19 of Consumer Protection Act 1986, against the order dated 26.10.2016 of the State Consumer Disputes Redressal Commission, U.T., Chandigarh (hereinafter referred to as the 'State Commission'), in CC No. 166 of 2015, inter alia praying for (a) setting aside the order dated 26.10.2015 passed by the

State Commission in CC No. 166 of 2015, (b) allowing the cost of litigation, and (c) remanding the matter in the court of competent jurisdiction or civil court.

2. While the Appellants (hereinafter also referred to as Opposite Party(s)) were Opposite Parties- 1, 2 & 3 and the Respondents-1 & 2 (hereinafter also referred to as complainants) were Complainants-1 & 2 and Respondent No. 3 (hereinafter referred to as LIC Housing Finance) was OP-4 in the said CC/166/2015 before the State Commission.

3. Notice was issued to the Respondents on 02.03.2016. Parties filed Written Arguments/Synopsis on 19.06.2023 (Respondents 1 & 2) and 01.02.2023 (Respondent No. 3) respectively.

4. Brief facts of the case, as emerged from the First Appeal, Order of the State Commission and other case records are that: –

The complainants applied for a villa of 1700 sq.ft. in the project of the OP, namely 'courtyard' situated at TDI City Sector -110 Mohali by paying the booking amount of Rs.1,00,000/- on 01.04.2010 and Rs.1,30,000/- on 01.03.2012. The complainants further paid Rs. 15,00,000/- on 17.03.2012, Rs.3,59,600/- on 08.09.2012 and Rs.1,25,943/- on 08.09.2012 to the OPs. The complainants were allotted Villa No. 140 for a total consideration of Rs.43,21,400/- and an allotment letter dated 10.02.2012 was issued to the complainants. Buyer Agreement was executed between the parties on 10.02.2012. The complainants further paid Rs.3,13,500/- on 14.10.2012 and Rs.5,00,000/- on 20.03.2013. Vide letter dated 30.03.2013 the OPs demanded Rs.9,60,010/- and a statement was also sent showing that Rs.30,20,443/- has been paid by the complainants. The complainants availed loan facility from LIC Housing Finance Ltd. (Respondent No.3) for paying the balance amount to the OPs. The complainants paid the demanded amount to the OPs on 30.03.2013 and the same was acknowledged by the OPs vide their letter and account statement dated 19.04.2013 and OPs informed the complainants vide said letter that Rs.2,94,001/- is due towards them. Vide letter dated 20.02.2014, the OPs informed the complainants that the Villa shall be ready for possession by 15.03.2014 and a demand of Rs.4,32,898/- was raised. The complainants had already paid Rs.42,83,455/- till that date to the OPs. On

15.03.2014, the complainants paid Rs.4,16,512/- to the OPs through LICHFL and possession of the villa was duly handed over the complainants on 26.03.2014 and keys were also handed over. The complainants could not shift there as electricity, water and sewerage connection was not provided by the OPs. The complainants performed Havan/Pooja in the said villa on 31.01.2015 and informed the OPs that they shall be coming tomorrow for Greh Parvesh and lunch has been hosted by them for their friends. When the complainants visited on 01.02.2015, the very next day, they found that main entrance of the villa was bolted with locks over the existing locks of the complainants. The complainants reported the matter to the caretakers, who informed that they have bolted the lock on the directions of their Director and threatened the complainants not to break open the said lock. The complainants were not allowed to enter in the Villa for which they have already made the entire payment of Rs.46,99,967/- to the OPs. Hence, the complainants filed the complaint before the State Commission.

5. Vide Order dated 26.10.2015, in the CC No. 166/2015, the State Commission partly allowed the complaint and passed the following order:-

" (i) Complainants are directed to make the payment of sale consideration of the balance amount of Rs.1,09,939/- to Opposite Parties No.1 and 2, within a period of one month from the date of receipt of a certified copy of the order, as detailed vide para No.21 above.

(ii) Opposite Parties No.1 and 2 shall jointly and severally hand over the legal physical possession of the villa/unit, in question, within a period of two months, to the complainants, from the date of receipt of a certified copy of this order, on payment of the legally due amount, by the complainants, as indicated in Clause (i) above.

(iii) Opposite Parties No.1 and 2 shall jointly and severally execute the sale/conveyance deed and get it registered in the name of the complainants after handing over the actual physical possession of unit, in question, within a period of one month thereafter. The stamp duty, registration charges and all other incidental and legal expenses for execution and registration of sale deed shall be borne by the

complainants.

(iv) Opposite Parties No.1 and 2 are further jointly and severally, directed to pay compensation, in the sum of Rs.2.00 lacs (Two Lacs) for causing mental agony and physical harassment, to the complainants, within two months from the date of receipt of a certified copy of this order.

(v) Opposite Parties No.1 and 2 are further jointly and severally, directed to pay cost of litigation, to the tune of Rs.50,000/- to the complainants.

(vi) In case the order is not complied with, within the stipulated period, as indicated above, then Opposite Parties No.1 and 2 shall be jointly and severally liable to pay the amount mentioned in Clause (iv) along with interest @12% per annum from the date of default, till realization, besides payment of cost of litigation.

27. However, the complaint against Opposite Parties No.3 and 4 is dismissed with no order as to cost."

6. Petitioners have challenged the said Order dated 26.10.2015 of the State Commission mainly on following grounds:

(i) the State Commission failed to appreciate that the cause of action has not arisen in Chandigarh as the Villa in question is located in Mohali at State of Punjab and the head office of the appellants was in Delhi. The State Commission ignored the fact that the bundle of facts/bundle of cause of action arose in Mohali. The State Commission ignored the judgment passed by the Hon'ble Supreme Court in the case of Sonic Surgical Vs. National Insurance Co. Ltd.

(ii) The State Commission ignored the legal aspect while deciding the complaint that the present dispute involved the complicated aspect i.e. fraud and fabrication of document filed by the complainant is forged and fabricated relying upon such document is against the natural justice without the examination of authenticity of the document. Such provision is not available under the Consumer Protection Act, 1986 and cannot be dealt summarily. The National Commission in Satish Chand Gosain & Anr. Vs. Canara Bank, II (2009) CPJ 31 and Raghuvir Singh Vs. Branch Head Axis Bank & Anr. (2010) 4 CLT 134 had held that when the allegation of fraud and fabrication are levelled in the complaint or against the complainant relates to fraud

and fabrication of document then the same could not be decided by the consumer fora and on the other hand, consumer fora should relegate the parties to the civil court for adjudication of the dispute. However, in terms of the order passed in Laxmi Engineering Works Vs. PSG Industrial Institute, reported in (1995) 3 SCC 583 the Complainant may seek his remedy before the Civil Court of competent jurisdiction if desired so. The State Commission has completely ignored the well settled law by the Apex Court in umpteen number of judgments where the court had laid down that agreement should be read in whole and not in part.

(iii) The State Commission erred by holding that the possession was not provided on time to the complainant. The complainant had opted for construction linked plan and the complainant himself failed to pay the consideration on time and failed to strict to the timeline mentioned in the agreement. The State Commission has wrongly appreciated the payment made to the Appellant is more than the actual Basic Cost but failed to appreciate that the payment made in terms of Construction Linked Payment Plan was not as per schedule and stage of construction.

(iv) The State Commission has not appreciated the on record facts or admitted fact that the payment plan opted by the complainant was a construction linked plan and delay in part of payment by the complainant caused the appellant to use their own resources to develop the villa purchased by the complainant/respondent and in return appellant is charging interest on the delayed payment which should be justified. The State Commission has failed to appreciate that the complainant had given all the opportunity to take the possession of the villa but the complainant deliberately did not take the possession of the same and also failed to pay the valid and legal dues of the appellant against the consideration of villa knowing the fabrication of documents which was procured to benefit the complainant in this embezzlement.

(v) The State Commission has ignored the settled law by the National Commission in the case of Jagdish Gurnami Vs. Lucknow Development Authority, 2010 (1) CPJ 265 (NC). The State Commission ignored the clause 11 of the agreement which clearly make the obligation to the complainant to pay the escalation charge. The State Commission has rightly allowed the Escalation charge till 2013 but failed to allow

the Escalation of year 2014-2015. The State Commission should have appreciated the fact that the account of statement shows that the complainant had paid Rs.46,99,967/- excluding interest on delayed payment. The State Commission ought to have appreciated that the delay if any in the construction of the villa was due to force majeure as there was stay order by the Court from June, 2010 till 2011. The State Commission ought to have appreciated that as per clause 36 of the agreement relied upon the Respondent/complainant, the courts situated alone at Delhi shall have the jurisdiction to adjudicate any dispute between the parties arising out of agreement. The order passed by the State Commission is not justified in view of the facts of the photographs of the villa in question, which have been placed on records by the appellants, itself indicates that villa in question is ready in all respect but it was the complainant who did not come forward to take the possession of the villa.

7. Heard both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

7.1 Appellants were represented through a Counsel and Mr. Ravinder Singh appeared in person on his behalf and on behalf of Respondent No. 2, who is his wife and the jointal lottee of the unit in question. At the outset, counsel for the Appellants has drawn our attention to the chart showing item-wise amounts as stated in para 14 of the State Commission's order and stated that they will not be pressing for the item under Sr. No.12 of this chart that is delayed interest i.e. balance amount of Rs.8,12,542/- out of a total of Rs.32,84,458/-, against which the State Commission has determined the amount payable as Rs.1,09,939/- only under various head items given in the table in table 21 of the order. On joint reading of these two tables show that two major items are PLC Rs.7,10,600/- and EDC Rs.3,50,400/-. Perusal of the Buyer's Agreement dated 10.02.2012 show that under the payment plan opted PLC is shown as Zero, which leads to a presumption that the unit in question was not a preferential location. Although the counsel for the Appellants contends that it was a preferential location, he was not in a position to show any evidence or documents to establish beyond doubt that the unit in question allotted/offered was a

preferential location unit for which they were entitled to charge Rs.7,10,600/-.

7.2 Counsel for the Appellants further contends that if the respondents are relying on the said Buyer's Agreement or not paying the PLC charges, being shown as Zero, under the same agreement, which need to be read and relied upon in totality, and EDC of Rs.3,50,400/- is payable which has been dis-allowed by the State Commission while calculating the amount of Rs.1,09,939/-. Both the sides agree that there is no reference in the order of the State Commission as to why this EDC amount of Rs.3,50,400/-, which is payable as per the Buyer's Agreement, has been dis-allowed by the State Commission.

7.3 The counsel for the Appellants has further contended that one of their Director Mr.Sanjay Jain was involved in some wrong-doing and for that they have taken appropriate legal action along with respondent. However, a perusal of the Buyer's Agreement shows that the Agreement is signed by the Appellant/Builder through its authorized signatory Mr. Amit Jain. Once a Buyer's Agreement is signed by the authorized signatory of a builder, unless the builder shows any wrong-doing on the part of the allottees (Respondents herein) they have to honour the contents of the Buyer's Agreement. As regards inflation, the Appellant has claimed Rs.3,29,621/- against which the State Commission allowed only Rs.1,54,664/-. In this regard Appellants have drawn our attention to clause 11 of the Buyer's Agreement. However, Appellants have not shown any communication which will show as to how the amount payable under the above said clause have been calculated. In all fairness, even if it is accepted that such amount is payable under clause 11, allottee have a right to know the basis of calculations along with detailed calculations in this regard and it is the duty of the buyer to satisfy that such calculations have been correctly made strictly in accordance with the provisions of the Buyer's Agreement.

7.4 As regards holding charges, amount of Rs.1,80,000/- claimed by the Appellants are not allowed by the State Commission, Appellants have drawn our attention to clause 9 of the Agreement, which states that allottee would be liable to pay holding charges @ Rs.5/- per sq.ft. per month, if he fails to take possession within 30 days of issue of offer of possession. Although the Appellant states that the date of offer of possession is 26.02.2014, he is not in a position to indicate the

correct date of actual possession, which according to the Respondent is 26.03.2014. Appellant contends that on this date, possession was given only for Pooja and this is not the actual date of possession. However, he is not in a position to indicate as to what was the actual date of possession till which the holding charges have been calculated as per clause 9 and show any document which will show that possession on 26.03.2014 was given only for Pooja and the actual possession was given subsequently on a specific date. Looking at that two dates, prima facie, the possession was taken within 30 days of offer.

7.5 The respondent has drawn our attention to possession letter and undertaking by the customer as per which the respondent has taken over the possession of the unit in question on 26.03.2014 and this letter is signed by both the builder and the allottee.

7.6 Counsel for the Appellants contends that even going by the State Commission's order, an amount of Rs.1,09,939/- is payable. Hence, even if the possession was delayed, it was because this amount was not paid (although the Respondent has claimed that no such amount was payable. Hence, according to Appellants, there was no deficiency on its part and he should not be loaded with compensation of Rs.2,00,000/-.

7.7 Respondent states that although the actual possession was taken on 26.03.2014, they did the 'grah pravesh' (House Warming) on 31.01.2015 only, but right on the next day i.e. on 01.02.2015, when they had locked the house with their lock, the Appellants' officials came and put their own lock alleging that some embezzlements/wrong-doings have been taken place with respect to the unit in question and since then, till today, locks of both petitioner and respondent herein are on the flat and actual physical possession of the flat is not with the respondent. Respondent states that in compliance of the order of the State Commission they have paid Rs.1,09,939/- to the petitioner on 21.11.2015. Respondent has drawn our attention to the order dated 05.09.2019 of this Commission in which it is stated that the Appellant expressed his willingness to hand over the possession to complainant within four weeks and complainant also agreed with the same subject to final out-come of the present Appeal. However, till date, the possession has not been handed over. Respondent contends that he made various communications/visits to the petitioner but possession was not handed over. He also states that in one of the visits to the site of

the unit they found that the unit has deteriorated in its condition and as the thing stands today, possession of the unit has not been handed over.

8. We have carefully gone through the impugned order of the State Commission, other relevant records and rival contentions of the parties. State Commission has given a well-reasoned order and we do not find any reason to interfere with the findings of State Commission. After careful consideration of entire facts and circumstances of the case, we do not find any illegality in the order of the State Commission. Hence, the same is upheld. Accordingly, the First Appeal is dismissed. Appellants herein/ OPs 1 to 3 shall implement the order of the State Commission within 30 days from today.

9. The pending IAs in the case, if any, also stand disposed off.