

Consumer complaint for delay in delivery of possession of residential flat and compensation: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

RAJESH GUPTA & ANR.

...Appellant

M/S. SHIPRA ESTATE LTD.

...Respondent

Case No: CONSUMER CASE NO. 1881 OF 2018

Date of Judgement: 01 January 2024

Judges:

SUBHASH CHANDRA
PRESIDING MEMBER

For Appellant: MR. SHANTO MUKERJEE, ADVOCATE

For Respondent: MR. CHAITANYA, MR. SHUBHANSHU GUPTA, ADVOCATES

Facts:

Complainants Rajesh Gupta and another booked a residential flat with Shipra Estate Ltd in 2006 for Rs 61,27,500. Possession was promised in December 2008. Opposite party failed to deliver possession in December 2008 as promised. They apologized and agreed to pay compensation @Rs 5 per sq ft per month from January 2009 to July 2009. Further compensation was paid till March 2011. Possession was finally delivered on 04.04.2016 after repeated follow-ups. Complainants sent

legal notice in October 2017 seeking compensation from April 2011 to April 2016. No compensation paid for this period. Hence, complaint filed before National Consumer Disputes Redressal Commission seeking compensation with interest for delay from April 2011 to April 2016, damages for mental agony and litigation costs.

Arguments by Complainant:

There was inordinate delay of over 8 years in handing over possession. Opposite party failed to deliver possession in December 2008 as promised despite extending the timeline. Construction was not completed even after assurances. Repeated emails and calls did not yield results. Possession finally delivered only on 04.04.2016 after a long wait. Compensation paid only till March 2011. No compensation paid from April 2011 to April 2016. Complainants entitled to compensation for the entire period of delay in light of Supreme Court judgments.

Arguments by Opposite Party:

Complaint barred by limitation as filed beyond 2 years of cause of action. Complaint overvalued to get jurisdiction of National Commission. Pecuniary jurisdiction not made out if interest component excluded. No deficiency of service. Complainants duly compensated for delay as per agreed terms. Possession offered and taken over on 04.04.2016. Claim for compensation after offer of possession not justified. Complaint liable to be dismissed.

Observations and Decision by National Commission:

There was inordinate delay in handing over possession, entitling complainants to compensation as per Supreme Court judgments. However, compensation cannot be granted beyond valid offer of possession as per judicial precedents. It is not complainants' case that possession offered on 04.04.2016 was invalid. Compensation already paid from January 2009 to March 2011 to be deducted. Allowed compensation @ 6% per annum from December 2008 till 04.04.2016 after adjusting paid compensation. No order as to costs.

Laws/Cases Referred:

Section 21(a)(i) of Consumer Protection Act, 1986 – deficiency in

service.

Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, Civil Appeal No. 3182 of 2019 – compensation for delay in possession.

Pioneer Urban Land and Infrastructure Ltd. vs Govindan Raghavan, Civil Appeal no. 12238 of 2018 – compensation till valid offer of possession.

The National Consumer Disputes Redressal Commission allowed the consumer complaint filed by Rajesh Gupta partially. The complainants had booked a residential flat with the opposite party M/s Shipra Estate Ltd. in 2006 and were promised possession in December 2008. However, there was an inordinate delay of over 8 years in handing over possession which was finally given only in April 2016.

The Commission held that the complainants were entitled to compensation for the delay as per Supreme Court judgments. However, compensation cannot be granted beyond the date of valid offer of possession as per judicial precedents. In this case, the complainants had not disputed the validity of the offer of possession made on 04.04.2016 when physical possession was handed over.

The Commission observed that compensation had already been paid by the opposite party from January 2009 to March 2011. This amount was to be deducted from the compensation now payable to the complainants.

Accordingly, the Commission partly allowed the complaint and directed the opposite party to pay compensation @ 6% per annum from the date of promised possession in December 2008 till the date of offer of possession on 04.04.2016, after adjusting the compensation already paid. No costs were imposed.

Thus, the consumer complaint highlighted the right of homebuyers to receive fair compensation for delays in possession as per applicable laws and judicial precedents. The Commission balanced the interests of both parties while determining the compensation payable.

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Full Text of Judgment:

1.This complaint under section 21 (a) (i) of the Consumer Protection Act, 1986 (inshort, 'the Act') alleges deficiency in service and

unfair trade practice on the part of the opposite party in rendering service to the complainants.

2.The facts according to the complainants, are that they had booked a residential unit/flat GUL-301, Krishna-Shrishti, Plot No. 15, Ahinsa Khand, Indirapuram, Ghaziabad for a total sale consideration of Rs.61,27,500/- and the same was allotted vide letter dated 05.10.2006. The promised date of possession was December, 2008. However, opposite party did not hand over possession on the promised date and vide letter dated 24.08.2009 apologized and promised to pay compensation of delay possession @5/- per sq. ft. per month for the period from January, 2009 to July, 2009. As construction of the flat could not be completed, compensation of Rs.1,35,815/- for the period of September to November, 2009 was also paid by the opposite party. Another cheque of Rs.1,07,231/- was again paid for settling compensation till March, 2011. After waiting for a considerable period of time, repeated efforts and follow up, complainants finally got possession of the flat on 04.04.2016. After taking over possession, Legal Notice dated 16.10.2017 was sent by the complainants to the opposite party for compensation for the period from April, 2011 to April, 2016. No compensation for the above period was given. Being aggrieved, complainant is before this Commission with the prayer to:

- (i) award a sum of Rs.48,69,796/- as compensation from April, 2011 to April, 2016 with interest @ 14% for the further 1 year's delay in payment;
- (ii) pay appropriate punitive damages on account of mental agony, harassment and trauma underwent by the complainants;
- (iii) pay Rs.55,000/- towards the cost of the case;
- (iv) any other order as deemed fit and proper by this Commission.

3.The complaint was resisted by way of reply by the opposite party denying the averments of the complaint. As per opposite party the value of the flat in question is Rs.60,27,500/- which is below the prescribed pecuniary jurisdiction of this Commission. Hence the complaint is liable to be dismissed on this ground alone. It is averred by the opposite party that possession of the flat was handed over on 15.04.2016 and the complaint has been filed after almost two

years in 2018. In these circumstances, the claim ought to be rejected and complaint be dismissed.

4.It is also averred by the opposite party that possession of the flat in question has already been taken by the complainants and opposite party has duly compensated the complainants as per the agreed terms for the delay in offer of possession. As such relief claimed for payment of amounts towards further compensation cannot be entertained. They had already increased the delay compensation from Rs.5 per sq. ft. per month to 7%p.a. paid quarterly on the amount paid by the complainants. Thus, the complainants are duly compensated for the delay period and the compensation was finally settled to the satisfaction of the complainant and therefore, the claim for further compensation is unacceptable.

5.Parties led their evidence and filed written arguments. I have heard the learned counsel for the parties and have carefully considered the material on record.

6.On behalf of the complainant, it was argued that the opposite party failed to deliver the possession of the flat in December, 2018, as had been assured. Opposite party promised to pay compensation for the delay and vide letter 24.08.2009 compensation @ Rs.5 per sq.ft. per month was paid to the complainant. Further compensation after expiry of the extended period is admitted to have been received by the complainant. Opposite party further assured that the construction of the flat will be completed by 30.12.2009 and sent a letter dated 24.09.2011 whereby they promised to complete the construction within 45 days from the date of completion of registration process. Complainants got assured with this promise. However, nothing fructified and the project was still incomplete. Opposite party did not hand over possession of the flat even after several emails and repeated calls till 04.04.2016 i.e., after 8 years. The opposite party also did not pay compensation for the period from April, 2011 to April, 2016. Compelled by the situation created by the opposite party, complainants filed the present consumer complaint.

7.On the other hand, learned counsel for the opposite parties

contended that the complaint was filed by the complainants beyond the limitation period i.e. much after two years of the cause of action. Thus the complaint is barred by limitation and is not maintainable under the Act. It is also contended that the complaint was grossly overvalued with the object of bringing it within the jurisdiction of this Commission. The interest claimed by the complainants cannot be termed as 'compensation' and if that interest component is excluded, the pecuniary value of the complaint is not beyond Rs.1,00,00,000/-. No deficiency of service on the part of the opposite party is contended. Hence, the present complaint needs outright dismissal.

8. From the foregoing, it is manifest that there was an inordinate delay in the handing over of the flat. The complainants are entitled to compensation for the delay in light of a catena of judgments of the Hon'ble Supreme Court and this Commission, notably Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, Civil Appeal No. 3182 of 2019 decided on 25.03.2019, and in Pioneer Urban Land and Infrastructure Ltd., vs Govindan Raghavan (2019) 5 SCC 725 in Civil Appeal no. 12238 of 2018 decided on 02.04.2019. However, it is also evident that the opposite party had paid compensation for the delay initially at the rate of Rs.5/- per sq ft per month for the period January 2009 to July 2009 and thereafter, @ 7% per annum on the amount deposited for the period September to November 2009. Possession was offered on December 2008 and handed over on 04.04.2016.

In various judgments of the Hon'ble Supreme Court that have been followed by this Commission, compensation for delayed possession is paid till the valid offer of possession. It is not the complainants' case that possession offered was not valid. It is an admitted fact that possession was handed over and taken over on 04.04.2016. The issue of compensation beyond the date of offer of possession is therefore, not a justifiable prayer. However, in view of the fact that compensation has been paid till April 2011 to April 2016 @ Rs.5/- per sq ft per month, this amount needs to be accordingly deducted from the amount payable.

9. For the above stated reasons, and in the facts and circumstances of the case, this Consumer Complaint is allowed partly. The opposite

party is directed to pay the complainant, compensation for the delay in handing over the possession of the flat @ 6% per annum on the amount disputed as on December 2008 (promised date of possession) till 04.04.2016 the date of offer of possession after adjusting the compensation already paid to the complainant. There shall be no order as to costs. Pending IAs, if any, stand disposed of with this order.