

Consumer dispute regarding delay in handing over 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 booked a residential flat with opp party for Rs. 61,27,500. Flat was allotted vide letter dated 05.10.2006. Promised possession was December 2008 but opp party failed to handover possession. Opp party apologized vide letter dated 24.08.2009 and promised compensation @Rs. 5 per sq.ft. per month for delay from January 2009 to July 2009. As construction was not completed,

compensation of Rs. 1,35,815 paid for September to November 2009. Another cheque of Rs. 1,07,231 paid till March 2011. Despite follow ups, complainants got possession on 04.04.2016 after 8 years delay. Legal notice sent on 16.10.2017 seeking compensation from April 2011 to April 2016. No compensation paid for this period.

Hence complaint filed seeking:

Compensation of Rs. 48,69,796 from April 2011 to April 2016 with interest @14% for 1 year delay in payment. Punitive damages for mental agony and harassment. Costs of Rs. 55,000.

Arguments by Complainant:

Opp party failed to deliver possession in December 2008 as promised. Opp party paid compensation @Rs. 5 per sq. ft. per month vide letter dated 24.08.2009. Further compensation paid after extended periods. Opp party assured completion by 30.12.2009 but failed. Again promised completion in 45 days vide letter dated 24.09.2011 but did not materialize. Possession given after 8 years delay on 04.04.2016 despite follow ups. No compensation paid from April 2011 to April 2016. Complainants compelled to file complaint due to delays by opp party.

Arguments by Opp Party:

Complaint time barred as filed over 2 years after cause of action. Complaint overvalued to get jurisdiction of National Commission. Excluding interest, value is less than Rs. 1 crore. No deficiency in service. Complainants duly compensated as per terms. Complainants took possession in April 2016 but filed complaint in 2018. Gross delay in filing. Interest cannot be termed compensation. Complainants settled compensation finally and cannot claim further compensation.

Court's Reasoning and Decision:

Inordinate delay in handing over possession is manifest. Complainants entitled to compensation as per SC judgments. Opp party paid compensation initially @Rs. 5 per sq.ft. per month from January 2009 to July 2009. Thereafter @7% p.a. on amount paid from September to November 2009. Possession offered in December 2008 but given in April 2016. Compensation is payable till valid offer of possession as per SC

judgments. It is not complainants case that possession offered was invalid. Possession taken on 04.04.2016. Claim for compensation beyond offer of possession in April 2016 not justified. As compensation paid from April 2011 to April 2016 @Rs. 5 per sq.ft. per month, this needs deduction from amount payable. Complaint allowed partly. Opp party to pay compensation @6% p.a. on amount from December 2008 till 04.04.2016 after adjusting compensation already paid.

Sections:

Section 21(a)(i) of Consumer Protection Act, 1986 – Deficiency in service and unfair trade practice alleged.

Cases Referred:

Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, Civil Appeal No. 3182 of 2019 decided on 25.03.2019

Pioneer Urban Land and Infrastructure Ltd. Vs Govindan Raghavan, Civil Appeal No. 12238 of 2018 decided on 02.04.2019.

Laws Referred:

Consumer Protection Act, 1986. Judgments of Supreme Court followed by National Consumer Disputes Redressal Commission.

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Court

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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 over valued 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.