

Delay in handing over possession of flat; compensation awarded: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

RAM TIRATH GUPTA

...Appellant

M/S. V.N. SHARMA BUILDERS PRIVATE LIMITED

...Respondent

Case No: FIRST APPEAL NO. 2327 OF 2019

Date of Judgement: 01 January 2024

Judges:

DR. SADHNA SHANKER
PRESIDING MEMBER

For Appellant: MR. DEEPAK KUMAR GARG, ADVOCATE

For Respondent: MR. DINESH MAURYA AND MR. G S SANDHU,
ADVOCATES

Facts:

Complainant booked a flat in builder's project "Savitry Greens" by paying Rs. 2.25 lakhs as earnest money on 12.05.2011. Builder allotted Flat No. 1201/Block 15, 12th Floor with super area 1360 sqft. Total consideration was Rs. 36.29 lakhs. Builder failed to construct flats or execute agreement despite receiving booking amount. Agreement finally executed on 12.02.2015 with price fixed at Rs. 34.68 lakhs along with preferential location charges of Rs. 81,600. Builder agreed

to complete construction and handover possession by 15.12.2015. Builder also agreed to charge Rs. 50,000 as club fee when 30% project occupancy achieved. Builder failed to obtain approval from authorities, handover possession, provide parking, register flat, handover club etc. Builder delivered possession on 24.07.2018 after a delay of 2 years 7 months. Complainant deposited total Rs. 35.49 lakhs. On possession, builder claimed additional Rs. 38.89 lakhs including GST, interest etc. Specific interest of Rs. 72,359 also charged for delayed payment of Rs. 5.43 lakhs. Complainant had to spend Rs. 1 lakh to complete incomplete construction.

Arguments by Complainant:

Builder failed to act as per agreement terms and handover possession on time. Builder illegally retained money during delay period from 12.12.2015 to 24.07.2018. Interest at 18% p.a. should be paid. Preferential Location Charges already included in sale consideration as per agreement clause. Cannot be charged extra. Refund of IFMS charges and club membership charges with interest justified since facilities not provided. Compensation of Rs. 6.5 lakhs for harassment, unfair trade practice etc should be granted.

Arguments by Builder:

Delay by complainant in executing agreement and making payments led to delay in possession. Not entitled to any interest. GST and interest correctly charged as per terms and conditions. Preferential location charges as directed by State Commission should not be refunded since it contradicts agreement clause. Interest on IFMS and Club charges deserves to be set aside. Builder not responsible for any delay.

State Commission Order:

Builder to pay 10% interest for delay in possession from 12.12.2015 till occupation certificate obtained. Refund preferential location charges of Rs. 81,600 with interest. Refund IFMS charges of Rs. 30,000 and Club charges of Rs. 50,000 with interest. Pay Rs. 50,000 compensation for harassment and litigation costs.

NCDCR Order:

Builder to pay interest @6% p.a. as compensation for delay from respective deposit dates till possession date i.e 24.07.2018 based on Supreme Court judgements. Preferential location charges not to be refunded since agreement clause states inclusive of all charges. State Commission order set aside. IFMS and Club charges ordered to be refunded but interest set aside. Compensation by State Commission disallowed being duplication.

Cases Referred:

Wing Commander Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd

DLF Home Developers Ltd. vs. Capital Greens Flat Buyers Assn

DLF Homes Panchkula Pvt. Ltd. vs. D.S. Dhanda

Sections:

Section 19 – Consumer Protection Act 1986 – Appeals against order of State Commission

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Court

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Full Text of Judgment:

1. These cross appeals have been filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as “the Act”) against the Order dated 18.09.2019 passed by the State Consumer Disputes Redressal Commission, Punjab, Chandigarh (hereinafter to be referred to as “State Commission”) in complaint No. 99 of 2019, whereby the complaint of the complainant was partly allowed.

2. The appellant (here-in-after referred to as ‘the complainant’) has filed appeal no. 2327 of 2019 for enhancement of compensation whereas M/s V. N. Sharma Builders Private Limited (here-in-after referred to as the ‘builder company’) has filed appeal no. 2074 of 2019 for setting aside the order dated 18.09.2019 of the State Commission.

3. The brief facts of the case are that on 12.05.2011 the complainant applied for the allotment of a flat in the project namely “Savitry Greens,” of the builder company along with Rs. 2,25,000/- as earnest

money. The builder company allotted flat No. 1201 / Block 15, 12th Floor, having a super area of approximately 1360 sq. ft., within Savitry Greens, located on VIP Road, Zirakpur. The total consideration of the flat was Rs. 36,29,600/-. It is alleged that after receiving the booking amount, the builder company had neither constructed the flats nor executed the builder – buyer's agreement and after great persuasion, the builder company executed the agreement on 12.02.2015 with the following terms:

i.OP fixed the price of flat at Rs.34,68,000/-.

ii.Claimed preferential location charges of Rs.81,600/-.

iii.OP agreed to construct, complete and handover the possession of the said flat upto 15.12.2015.

iv.OP would charge Rs.50,000/- as club fee and club was to be put in operation after minimum 30% occupancy of the project.

v.OP was also to earmark the parking space of one car for exclusive use of the complainant in the said complex.

vi.OP was to give notice to the complainant about the date on which it has to deliver possession of the apartment to the complainant.

4.The grievances of the complainant are that the construction of the colony was not approved by the PUDA and other concerned authorities; the builder company had failed to act upon the terms and conditions of the agreement; the builder company had not handed over the possession of the club so far, the registration of the flat had not been done; no space had been earmarked for parking and the builder company had illegally retained Rs. 2,25,000/- for which, the complainant is entitled to interest at the rate of 18% from 12.05.2011 to 12.02.2015. It is further alleged that the builder company agreed to complete the construction within ten months from the date of execution of the agreement i.e. upto 12.12.2015 but the builder company delivered the possession of the flat on 24.07.2018 i.e. with a delay of about two years and seven months. The complainant had deposited total amount of Rs. 35,49,000/-. Therefore, the complainant is entitled to interest at the rate of 18% per annum from 12.12.2015 till 24.07.2018. It is further contended that the builder company agreed to accept a sum of Rs. 36,29,000/- as full and final payment for the flat, inclusive of PLC (preferential location charges), IFMS (interest-free maintenance

security), Club Membership, and all other taxes. However, on 24.07.2018, the builder company claimed and charged Rs. 38,89,625/- which included GST and interest on GST, along with interest on delayed payment. A specific interest of Rs. 72,359/- was calculated @ 18% per annum on the delayed payment of Rs. 5,43,000/-.

5. An offer of possession was issued on 09.08.2017 requesting payment, including the excess amount. In pursuance thereof the complainant deposited Rs. 2,13,666/- via receipt No. 9865 dated 26.06.2018 and Rs. 2,81,100/- via receipt No. 9910 dated 21.07.2018. After making the full payment on 24.07.2018, a no due certificate was issued and possession of the flat was handed over by issuing a letter of possession on the same date but due to incomplete construction complainant had to spend Rs. 1,00,000/- more to complete the construction.

6. The complainant filed a complaint before the State Commission with the following prayer:-

I. To refund the amount of Rs. 27,37,660/- along with interest at the rate of 18% per annum from the date of payment till its realization.

II. To pay a sum of Rs. 6,50,000/- on account of harassment, unfair trade practice, pain and suffering and deficiency in service.

III. Any other relief, which this Commission may deem fit.

7. Upon notice, the builder company contested the complaint by raising preliminary objections that the complainant had booked the flat through Ms. Neetu Mittal, his attorney. All necessary documents, including the application dated 12.05.2011 were submitted through Ms. Neetu Mittal and this application was duly signed by her. The application form contained details such as the price of the flat and other terms and conditions. Furthermore, the builder company asserted that they had appropriately charged the sales tax/GST in accordance with Sr. No. 8 of the terms and conditions for registration for the allotment. It was averred that complainant and Ms. Neetu Mittal were called multiple times by the builder company to execute the Buyer's Agreement, but their calls were disregarded. In an attempt to address this, the builder company wrote a letter dated 20.10.2014, specifically addressing Ms. Neetu Mittal and urging her to execute the

Buyer's Agreement. Eventually, the Buyer's Agreement was executed on 12.02.2015. The builder company further averred in its reply that the complainant had not paid the installments on time and interest on delayed payment was charged from him before handing over the possession of the flat and no due certificate was issued and possession of the flat was handed over on 24.07.2018.

8. After appreciation of the facts of the case, the State Commission partly accepted the complaint and directed as under:

i. to pay interest @10% w.e.f. 12.12.2015 on account of delay in handing over the possession till the time occupation certificate and completion certificate from the competent authorities is obtained by the OP in respect of the said unit.

ii. to deliver actual physical possession of the apartment/flat, complete in all respects, to the complainants along with all the promised facilities and the Completion and Occupation Certificates obtained from the concerned competent authorities within a period of 45 days, from the date of receipt of certified copy of this order.

iii. to refund the amount of Rs.81,600/- taken as Preferential Location charges along with 9% interest from 24.07.2018 till the date of payment.

iv. to refund the amount of Rs.30,000/- taken as IFMS charges and Rs.50,000/- taken as Club Membership charges along with 9% interest from 24.07.2018 till the date of payment.

v. to pay 50,000/- as compensation on account of mental agony and harassment as well as litigation expenses."

9. The builder company has filed appeal No. 2074 of 2019 before this Commission with the following prayer:

"It is, therefore, most respectfully prayed that instant appeal may kindly be allowed and order dated 18.09.2019 passed by ld. State Consumer Disputes Redressal Commission, Punjab, Chandigarh may kindly be set aside.

Pass any such further or other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case in favour of the appellant and against the respondent."

10. Dissatisfied with the order dated 18.09.2019 of the State

Commission, the complainant has filed appeal No. 2327 of 2019 before this Commission with the following prayer:

"It is therefore, most respectfully prayed that instant appeal / cross appeal may kindly be allowed and the order dated 18.9.2019 passed by the Ld. State Commission, Punjab, Chandigarh may kindly be modified so as to allow the claim as a whole.

Or

may pass any such order as this Hon'ble Commission may deem fit and appropriate in the facts and circumstances of the present case in favour of the appellant and against the respondent, in the interest of justice."

11. The learned counsel for the builder company vehemently argued that the State Commission failed to acknowledge that the non-execution of the buyer's agreement for nearly four years is an act of deficiency on the part of the complainant and as the complainant had failed to make the payment on time, there was delay in handing over possession to the complainant. Therefore, the order of the State Commission to pay interest at 10% from 12.12.2015 due to the delay in handing over possession, is not legally tenable and be set aside. Moreover, the builder company further contended that the refund of Rs.81,600/- on account of Preferential Location Charges (PLC) as directed by the State Commission contradicts the condition mentioned in clause 2(a) of the agreement and thus, it should also be set aside. He further argued that against the refund of Rs.30,000/- taken as Interest-Free Maintenance Security (IFMS) charges and Rs.50,000/- taken as club membership charges, 9% interest from 24.07.2018, till the date of payment, is illegal and deserves to be set aside.

12. Further, learned counsel for the builder company reiterated the grounds of the present appeal and argued that the builder company is not liable to pay any interest on any amount as the fault lies with the complainant and not with the builder company.

13. In rebuttal, the learned counsel for the complainant argued that the builder company failed to complete the project on time and did not hand over possession as promised. Ultimately, possession was handed over, albeit incomplete, on 24.07.2018, which was 2 years and 7 months

beyond the promised possession date. During this period i.e. from 12.12.2015 to 24.07.2018, a total sum of Rs.35,49,000/- was illegally retained by the builder company. Moreover, the learned counsel for the complainant argued that Preferential Location Charges (PLC) was already included in Clause 2(a) of the Sale Consideration of the Agreement, which explicitly states that "The sale Consideration is inclusive of basic price, preferential location charges, if any." Additionally, the club was not constructed until the date of taking over possession on 24.07.2018 and the question of Interest-Free Maintenance Security (IFMS) cannot be raised until the delivery of the flat has been taken.

14. We have heard the learned counsel for both the parties and have gone through the record including the Order dated 18.09.2019 of the State Commission and the memorandum of appeal.

15. The main question which falls for our consideration is the compensation to be awarded to the Complainants for delay in handing over the possession.

16. From a perusal of the agreement dated 12.02.2015, it is clear that the possession of the flat was to be handed over within ten months from the date of the execution of the agreement i.e. on or before 12.12.2015. It is admitted that the physical possession was handed over on 24.07.2018. It is clear that there has been a delay on the part of the builder company in handing over the possession of the unit to the complainant. The partial completion certificate was issued by 'Office of the Municipal Council Zirakpur' to 'Savitry Green' on 15.10.2015 as mentioned in the letter of the Council dated 10.05.2019. The relevant part is reproduced as under:

"Regarding the information sought on the above subject, it is written that partial completion certificate has been issued to Savitry Green, VIP Road, Zirakpur Group Housing Project vide letter No.1612 dated 15.10.2015. Municipal Council, Zirakpur does not issue occupation certificate separately. The partial completion certificate issued earlier be considered as occupation certificate. It is for your information." Therefore, there is substantial delay on the part of the builder company and the complainant has rightfully claimed delay compensation.

17. There are a number of landmark judgments of the Hon'ble Supreme Court holding builders responsible for compensation for delay in delivery of possession.

18. The issue to be decided in this case is what would be the reasonable quantum of interest.

19. In this regard, we would like to quote the recent judgment of the Hon'ble Supreme Court in the case of

Wing Commander Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd., (2020) 16 SCC 512

wherein it was held as:

"54. ... The general appreciation in land values results in an increase in the value of the investment made by the buyers. Difficulties in determining the measure of compensation cannot however dilute the liability to pay. A developer who has breached a clear representation which has been made to the buyers of the amenities which will be provided to them should be held accountable to the process of law."

"69.1. ... the first and second respondents shall, as a measure of compensation, pay an amount calculated @ 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the execution of the respective ABAs

until the date of the offer of possession after the receipt of the occupation certificate."

20. In a similar case of the Hon'ble Supreme Court DLF Home Developers Ltd. vs. Capital Greens Flat Buyers Assn., (2021) 5 SCC 537 decided on December 14, 2021, wherein it was held as under:

"It is true that in the present case, the contractual rate of Rs.10 per square foot per month is double the rate fixed in the agreements in the above case. On the other hand, the court must be conscious of the fact that the situation in the real estate market in Delhi is very distinct from that in Bengaluru both in terms of rentals and land values. This has not been disputed. The flat buyers had to suffer on account of a substantial delay on the part of the appellants. In such a situation, they cannot be constrained to the compensation of Rs.10 per

square foot provided by the agreements for flat purchase. However, having regard to all the facts and circumstances, we are of the view that the compensation on account of delay should be brought down from 7% to 6%. Moreover, the amount, if any, which has been paid in terms of the contractual rate shall be adjusted while computing the balance”

21. The builder buyer's agreement represents a legally binding contract that imposes obligations on both buyers and builders/Developers. In line with the Order of the Hon'ble Supreme Court, we are of the view that the rate of interest at the rate of 6% per annum for delay in handing over possession of the flat is just and appropriate. The compensation should be applicable from the respective date of deposit till the date of offer of possession i.e. 24.07.2018 as the complainants were not obligated to make payments when the builder company failed to meet its obligation of delivering possession of the unit within the prescribed period.

22. Upon examining the agreement provided it is explicitly stated in Clause 2(a) that

“...The Sale Consideration is inclusive of basic price, preferential location charges, if any.”

The agreement notes that the sale amount shall be Rs.35,49,000/-. The argument advanced by the learned counsel for the complainant that Preferential Location Charges (PLC) was above and beyond the basic sale consideration mentioned in the Agreement seems to be incorrect. The discrepancy arises from the complainant's statement, mentioning the sale price as Rs.34,68,000/- and Preferential Location Charges as Rs.81,600/-. However, the sum of both these amounts is equal to the amount explicitly mentioned in the agreement's clause regarding the sale consideration. Therefore, the Complainant's request for a refund of PLC on the grounds of it being a “hidden charge” appears to be incorrect based on the explicit terms agreed upon in the signed Agreement.

23. The Hon'ble Supreme Court in the case of DLF Homes Panchkula Pvt. Ltd. vs. D.S.Dhanda, in CA Nos. 4910-4941 of 2019 decided on 10.05.2019 has held that multiple compensations for singular deficiency is not justifiable. Therefore, the award of compensation of

Rs.50,000/- for mental agony and harassment as well as cost of litigation granted by the State Commission is found to be not tenable.

24. In view of the aforesaid discussion and in view of the fact that the complainant has taken possession of the flat, we modify the award made by the State Commission:

a. the builder company shall pay compensation in the form of simple interest @ 6% per annum from the respective dates of deposit till the date of possession i.e. 24.07.2018 within 2 months of this order, failing which the applicable rate of interest shall be 9% per annum till realization.

b. Directions with regard to interest at the rate of 9% per annum on IFMS charges and Club Membership charges are set aside and the builder company is directed to refund the amount of Rs.30,000/- taken as IFMS charges and Rs.50,000/- taken as Club Membership charges.

c. There shall be no order as to costs.

25. The appeal, no. 2327 of 2019 of the complainant, being totally sans merit is dismissed. The appeal no. 2074 of 2019 of the builder company is also disposed of in the above terms. All pending applications, if any, stand disposed of.