

DR. GEORGE EASOW V. MANAGING DIRECTOR, M/S. SELENE

1. DR. GEORGE EASOW

.....Complainant(s)

Versus

1. MANAGING DIRECTOR, M/S. SELENE
CONSTRUCTIONS LIMITED & ANR.

M/S SELENE CONSTRUCTIONS LIMITED M 62-63, FIRST
FLOOR, CONNAUGHT PLACE, NEW DELHI-110001

2. THE MANAGING DIRECTOR

M/S INDIABULLS HOUSING FINACE PVT. LTD.REGD
OFFICE AT INDIABULLS HOUSE,UDYOG VIHAR
PHASE,GURUGRAM-122001

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 2109 OF 2019

Date of Judgement: 13 Jan 2023

Judges:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,PRESIDING MEMBER

HON'BLE DR. INDER JIT SINGH,MEMBER

For the Complainant : Ms. Pallavi Parmar, Advocate

For the Opp.Party : For Opposite Party-1 : Mr. Pravin Bahadur,
Advocate

Mr. Amit Agarwal, Ms. Kanika,

Mr. Saurabh Kumar and

Mr. S. Anjani Kumar, Advocates

For Opposite Party-2 : Ms. Aakanksha Kaul, Advocate

Mr. Pranav Gupta, Advocate

Mr. Uttam Kumar, AR

Facts:

Complainant Dr. George Easow booked a 4BHK+SQ flat with builder Selene Constructions Limited (OP-1) in their housing project "Indiabulls Centrum Park". Complainant paid Rs. 100,000 on 11.02.2013 and Rs. 2,482,719 on 22.05.2013 as booking amount. Builder allotted Unit No. 241, area 2875 sq. ft. to complainant on 05.06.2013. Builder got complainant's signatures on home loan application form at time of booking. Financer Indiabulls Housing Finance Limited (OP-2) sanctioned a home loan of Rs. 12,000,000 to complainant on 31.08.2013. A Tripartite Agreement was executed between complainant, OP-1 and OP-2 on 05.09.2013. OP-2 disbursed the loan amount of Rs. 12,000,000 directly to OP-1 on 11.09.2013. OP-1 executed Flat Buyer's Agreement with complainant on 31.07.2014 with 36 months construction period + 6 months grace period. OP-1 failed to offer possession of flat to complainant within committed timeframe. OP-1 issued demand letter dated 21.06.2019 asking complainant to pay Rs. 3,804,152/- for possession without adjusting pre-EMI interest and delayed compensation. Complainant filed consumer complaint on 24.10.2019 against OP-1 and OP-2 alleging unfair trade practices and deficiency in services.

Court's Opinions:

No unreasonable delay by OP-1 in completing construction and offering possession after obtaining occupation certificate on 01.01.2019. Complainant not entitled to refuse possession offered on 28.03.2019. Complainant's claim regarding OP-1 paying EMI for full 24 months is time-barred as limitation period expired on 05.05.2017. No evidence that OP-2 has adopted any unfair trade practices. OP-2 disbursed loan as per complainant's written instructions. While complainant has prayed for refund of entire money, he is committing breach of buyer's agreement. Hence, earnest money equal to 10% of basic sale price can be forfeited by OP-1.

Arguments:

Complainant:

Builder failed to offer possession within committed timeframe. Seeking refund of entire money paid. Builder only paid pre-EMI till Feb 2015 against commitment of 24 months. Financer disbursed loan without permission and did not start subvention plan from loan disbursal date.

OP-1:

Construction delayed by only 4 months which is reasonable. Complainant concealed letter offering possession on 28.03.2019. No fraud committed. Paid pre-EMI interest for 24 months from booking date as per Tripartite Agreement. Agreements being questioned after 5 years. Complaint frivolous.

OP-2:

Disbursed loan on complainant's written instructions. Interest rate disclosed as adjustable/floating. Complied with all applicable guidelines. No concept of post-disbursal moratorium. Allegations bereft of merits.

Referred Sections:

Section 24A – Consumer Protection Act 1986 (Time limit for complaint regarding deficient service)

Cases Referred:

IREO Grace Tealtech Pvt. Ltd. Vs. Abhishek Khanna (2021) 3 SCC 241; Bangalore Development Authority Vs. Syndicate Bank (2007) 6 SCC 442

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Court

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Full Text of Judgment:

1. Heard Ms. Pallavi Parmar, Advocate, for the complainant, Mr. Pravin Bahadur, Advocate, for opposite party-1 and Ms. Aakanksha Kaul, Advocate, for opposite party-2.

2. Dr. George Easow has filed above complaint, for directing opposite party-1 to (i) refund entire amount of Rs.14641294/- with interest @15% per annum, (ii) pay pre-EMI of 6 months during the liability period, (iii) pay Rs.25/- lacs, as compensation for delay in delivery of possession, mental agony and harassment, (iv) pay Rs.one lac as litigation costs; and for directing opposite party-2 to (v) start subvention plan, from the date of disbursement of loan and declare moratorium for 6 months from the date of disbursement of loan, (vi) restructure the loan repayment schedule from the date of disbursement of the loan, giving moratorium of 6 months and adjusting the amount already paid towards future instalments, (vii) Reverse the adverse CIBIL score entry, if any; and (viii) any other relief which is deemed fit and proper in the facts and circumstances of the case;

3. The complainant stated that Selene Construction Limited (opposite party-1) (the builder) was a company, registered under the Companies Act, 1956 and sister concern and subsidiary of Indiabulls Real Estates Limited and engaged in the business of development and construction of group housing project and selling its unit to the prospective buyers. Indiabulls Housing Finance Limited (opposite party-2) (the financier) was a finance company, registered under the Companies Act, 1956 and engaged in the business of providing home loans. The builder launched a group housing project, in the name of "Indiabulls Centrum Park" at village Daulatabad, Sector-103, Gurgaon, in the year 2013 and made wide publicity of its facilities and amenities. The builder advertised subvention scheme for payment, under which 15% of BSP was payable by the buyer, 80% of BSP had to be advanced by the financier as loan to the buyer and 5% of BSP was payable on offer of possession. Pre- EMI was payable by the builder for a period of 24 months. Believing upon the representations and promises of the builder, the complainant booked a 4BHK+SQ flat and deposited Rs.100000/- on 11.02.2013 and Rs.2482719/- on 22.05.2013. The builder allotted Unit no.241, area 2875 sq.ft., on 05.06.2013. The builder got signatures of the

complainant on loan application form at the time of booking, on which the financier sanctioned a loan of Rs.12000000/- on 31.08.2013. A Tripartite Agreement was executed between the parties on 05.09.2013. Thereafter, the financier directly disbursed the amount of Rs.12000000/- to the builder on 11.09.2013, without any permission of the complainant. The builder executed Flat Buyer's Agreement with unreasonable delay on 31.07.2014. Clause-21 of the agreement provides 36 months period from the date of agreement with grace period of six months, for completion of the construction. Clause-22 of the agreement provides for delayed compensation @Rs.5/- per sq.ft. per month on super area. The builder realized 95% of BSP till 11.09.2013 but failed to offer possession on due date. Due date of possession including grace period expired on 31.01.2018. Clause-22 of the agreement provides for payment of delayed compensation, but the builder did not pay delayed compensation. Under subvention scheme, the builder had to pay Pre-possession EMI, for a period of 24 months but stopped payment, after February, 2015. The builder, vide letter dated 21.06.2019, offered possession and demanded Rs.3804152/-, in which, pre-EMI interest and delayed compensation were not adjusted rather an interest of Rs.147467/- was charged. The complainant was in India, in September, 2019 and went in the office of the builder and requested for inspection of the flat, which was denied. The complainant protested the demand and asked to cancel his allotment and return his money with interest @18% per annum. When oral request was not accepted, the complainant gave a legal notice dated 16.09.2019, to the builder, for cancellation of the allotment and return of his money with interest @18% per annum. Subvention scheme was a fraud and unfair trade practice. The financier disbursed the loan on 11.09.2013 but subvention period was started February, 2013, although six months moratorium period has to be given after disbursement. Due to which 24 months of subvention period was not provided. The builder is under obligation to pay interest on the loan for 24 months. Loan has been granted on floating rate of interest. The financier has received

Rs.9834312/- from the complainant and Rs.2176000/- from the builder till August, 2019, still a loan of Rs.one crore stands in the credit of the complainant. The financier has violated Fair Practice Code and NBFC-MFIs (Reserve Bank) Directions, 2011 committed unfair trade practice. The complaint was filed on 24.10.2019, alleging unfair trade practice and deficiency in service.

4. The builder has filed its written reply on 27.12.2019 and contested the complaint, in which, booking of the flat on 12.02.2013, allotment of flat on 05.06.2013 and deposits made by the complainant have not been disputed. The builder stated that the complainant opted for payment plan under "subvention scheme". The complainant submitted Loan Application Form on 27.02.2013, on which, loan was sanctioned to the complainant by the financier on 31.08.2013. Thereafter, a Tripartite Agreement was executed on 05.09.2013. Under Clause-3 of this agreement, the builder assumed liability of interest on the loan for a period of 24 months from the date of booking i.e. up to 12.02.2015. The builder paid total amount of Rs.2258983/-, towards interest up to March, 2015. The builder vide email dated 25.09.2013, informed the complainant that subvention period would expire on 10.02.2015. Clause-21 of Flat Buyer's Agreement dated 31.07.2014, provides 36 months period from the date of agreement with grace period of six months, for completion of the construction. The builder completed the construction and applied for issue of "occupation certificate" on 31.05.2018. "Occupation certificate" was issued on 01.01.2019 and the builder offered possession to the complainant vide letter dated 28.03.2019 along with demand of Rs.3756416/-, in which, delayed compensation of Rs.58575/- was credited. The complainant has deliberately concealed the letter dated 28.03.2019. The construction was delayed for a period of about four months, which is not unreasonable delay in civil construction work. Cancellation of allotment, after offer of possession was not justified. No fraud or misrepresentation was committed by the builder. Tripartite Agreement and Flat Buyer's Agreement were

signed 05.09.2013 and 31.07.2014 respectively and are being questioned after expiry of more than five years. The complaint has been filed on various false and frivolous allegations and is liable to be dismissed.

5. The financier filed its written reply on 09.01.2020 and contested the case. The financier stated that the complainant had submitted a Loan Application Form on 27.02.2013, before the financier, for sanction of home loan of Rs.120/- lacs, for making payment to the builder. After examination of the papers, loan of Rs.120/- lacs was sanctioned on 31.08.2013, in which, it has been disclosed that interest would be Adjustable Interest Rate/Floating Reference Rate. Thereafter, the complainant executed a Loan Agreement and gave a letter dated 02.09.2013, to the financier for disbursement of loan amount of Rs.120/- lacs to Selene Construction Limited. Then, a Tripartite Agreement dated 05.09.2013 was executed between the parties and the financier disbursed the loan of Rs.120/-lacs to the builder on 11.09.2013. The financier had no concern with Flat Buyer's Agreement. Loan was disbursed on the letter of the complainant. In the Loan Agreement and Tripartite Agreement, it has been mentioned that EMI would commence from 05.09.2013 and the complainant took liability to pay EMI, if it is not paid by the builder. The builder paid interest up to March, 2015, as per Tripartite Agreement. Thereafter, the complainant paid EMI up to September, 2019 and total Rs.9409080/- has been paid by him. The complainant is under obligation to pay remaining EMI, in Loan Agreement and Tripartite Agreement. Circular of RBI dated 01.07.2015 was issued much after disbursement of loan to the complainant and is not applicable. The financier followed guidelines of National Housing Board. The financier has not committed any misrepresentation and has not charged any interest prior to disbursement of the loan. The financier has neither violated the Fair Practice Code and NBFC-MFIs (Reserve Bank) Directions, 2011 nor committed unfair trade practice. No moratorium has been prescribed in any guidelines. The complaint is liable to be dismissed.

6. The complainant filed Rejoinder Replies to the Written Replies filed by the builder and financier, Affidavit of Evidence of Anish Balachandran and documentary evidence. The builder filed Affidavit of Evidence of Sushil Singh and documentary evidence. The financier filed Affidavit of Evidence of Uttam Kumar and documentary evidence. All the parties have filed their written submissions.

7. We have considered the arguments of the parties and examined the record. The builder completed the construction and applied for issue of "occupation certificate" on 31.05.2018. "Occupation certificate" was issued on 01.01.2019 and the builder offered possession to the complainant vide letter dated 28.03.2019 along with demand of Rs.3756416/-, in which, delayed compensation of Rs.58575/- was credited. The complainant refused to take possession and demanded for return of his money including loan amount advanced by the financier along with interest @18% per annum, vide notice dated 16.09.2019, on the ground of unreasonable delay in offer of possession. Clause-21 of the agreement provides 36 months period from the date of agreement with grace period of six months, for completion of the construction. Flat Buyer Agreement was executed on 31.07.2014 as such due date for completion of construction was 31.01.2018. The builder completed the construction and applied for issue of "occupation certificate" on 31.05.2018, as such there was no unreasonable delay in offer of possession. Supreme Court in Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 442, held that in civil construction matter, time cannot be an essence of contract. As such, the complainant was legally not entitled to refuse possession, which was offered vide letter dated 28.03.2019, after obtaining occupation certificate and obligated to take possession as held by Supreme Court in IRE0 Grace Tealtech Pvt. Ltd. Vs. Abhishek Khanna, (2021) 3 SCC 241.

8. The complainant claimed that the builder be directed to pay EMI for the full period of 24 months. The builder relied upon Clause-3 of Tripartite Agreement dated 05.09.2013, in which,

the builder had assumed liability of EMI for a period of 24 months from the date of booking i.e. up to 12.02.2015. In the application form "subvention for 24 months" has been mentioned, which only mean that the builder took liability to pay EMI for the period of 24 months but in Tripartite Agreement, 24 months from the date of booking has been mentioned, which is arbitrary and unreasonable as before disbursement of loan, there was no question of EMI as held by this Commission in First Appeal No.117 of 2015, IDBI Bank Limited Vs. Prakash Chandra Sharma (decided on 30.05.2018). But relief in this respect has become time barred inasmuch as the builder stopped payment of EMI after 05.04.2015 and the complainant started payment of EMI from 05.05.2015. Two years limitation as provided under Section 24-A of Consumer Protection Act, 1986 has expired on 05.05.2017.

9. The financier had nothing to do with subvention plan. The complainant could not point out any provision for 6 months moratorium date of disbursement of loan as such the financier cannot be directed to restructure the loan repayment schedule, which was started from the date of sanction of the loan. The financier disbursed the loan on the written letter of the complainant. The complainants could not prove any unfair trade practice adopted by the opposite parties.

10. The complainant has prayed for refund of his money, including loan advanced by the financier. As the complainant is committing breach of contract as such, the earnest money is liable to be forfeited under clause-10 of Flat Buyer Agreement. In the agreement 15% of total sale price along with interest on delayed payment, processing fee and brokerage paid, if any has been mentioned as earnest money. But this Commission in CC/438/2019 Ramesh Malhotra Vs. EMAAR MGF Land Ltd. (decided on 29.06.2020) and CC/3328/2017 Mrs. Prerana Banerjee Vs. Puri Construction Ltd. (decided on 07.02.2022), held that 10% of basic sale price as earnest money was reasonable for forfeiture. The complainant has taken loan from financier, who has charge over the flat allotted to the complainant.

ORDER

In view of the aforesaid discussions, the complaint is partly allowed. Opposite party-1 is directed to refund entire amount deposited by the complainant including loan amount advanced by opposite party-2, along with interest @9% per annum, from the date of respective deposit till the date of refund, after deducting 10% of basic sale price and brokerage if any paid, within a period of two months from the date of the judgment. Opposite party-1 would be entitled to satisfy the loan of opposite party-2 first and return balance amount to the complainant. The complainant shall surrender all the documents relating to the flat in question to the opposite party-1.