

GAURI SHARMA V. DLF UNIVERSAL LTD. PREVIOUSLY KNOWN AS DLF

1. GAURI SHARMA

D/o Col. B. S. Ahlawat, Through Col. Bhup Singh Ahlawat R/oA-28, Vijay Rattan Vihar, Sec 15, part 2, Gurugram

.....Complainant(s)

Versus

1. DLF UNIVERSAL LTD. PREVIOUSLY KNOWN AS DLF INDIA LTD.

DLF Universal Ltd. 3rd Floor, Arjun Marg, DLF City, Phase-I, Gurgaon 122002
Haryana

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 814 OF 2017

Date of Judgement: 16 Jan 2023

Judges:

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

HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Mr. Amarjeet Singh, Advocate

For the Opp.Party : Mr. Pravin Bahadur, Advocate

Ms. Sonia Dhamija, Advocate

Mr. Prabhat Ranjan, Advocate

Ms. Seema Sundd, Advocate

Facts

Three consumer complaints (CCs) filed by the complainants Anil

Sehgal & Anr., Col. B.S. Ahlawat & Anr., and Gauri Sharma against DLF Universal Ltd. (previously DLF India Ltd.) regarding delay in offering possession of flats booked by them in the residential project "Hyde Park Terraces" in Mullanpur, New Chandigarh. Complainants booked flats of size 1881 sq. ft. on 16.08.2012, 18.08.2012 and 29.08.2012 respectively. Independent Floor Buyers Agreements executed on 23.09.2013 and 12.03.2013. As per agreements, committed date of possession was 16/18/28.02.2015 with grace period. However, DLF offered possession only on 28.09.2016 after obtaining part Occupancy Certificate (OC) on 10.09.2014. Actual physical possession given only to Anil Sehgal on 17.05.2018. Possession status not clear for other complainants. Complainants paid Rs. 90-91 lakhs against total flat cost of Rs. 76-79 lakhs as per IFBAs. Complainants allege that DLF failed to deliver possession within committed timeframe, demanded additional charges illegally without clarifications, did not provide promised facilities, issued threats of cancellation, and prayed for refunds, possession, compensation, interest, withdrawal of demands etc. DLF raised objections on jurisdiction, limitation, contractual terms already agreed in IFBAs, lack of deficiencies or unfair trade practices in service, force majeure clause applicability, compensation as per agreement paid, early payment rebate given etc.

Court's Opinion

Commission has pecuniary jurisdiction as per Section 21 of Consumer Protection Act. Complaints not barred by limitation as cause of action continuing. Parties not bound conclusively by one-sided terms of agreement as per Supreme Court decision in Pioneer Urban Land case. Execution of conveyance deed does not preclude claim for compensation as per Supreme Court decision in Wg. Cdr. Arifur Rahman Khan case. Failure to give timely possession amounts to deficiency in service as per Supreme Court verdicts in Wg. Cdr. Arifur Rahman Khan and Ireo Grace Realtech cases. Consumer fora empowered to award fair compensation under different heads as per various Supreme

Court judgements. OP admits delay of 1 year 7 months in offer of possession. Further delay in physical possession attributable to OP not established. Complainants not able to clearly establish illegal demands or lacking facilities. Hence only entitled to interest compensation from committed date of possession till date of offer of possession. If physical possession yet to be given in some cases, OP directed to handover within 30 days as per promised specifications/facilities.

Arguments by Parties

Complainants:

OP failed to deliver possession within timeframe committed, despite assurances. Additional charges demanded illegally without clarifications. Facilities promised initially not provided fully. False commitments, cheating, harassment, mental agony caused. Seeking refunds, possession, compensation, withdrawal of illegal demands etc.

OP:

Commission lacks pecuniary jurisdiction. Complaints barred by limitation. Parties bound by mutually agreed contractual terms. No deficiencies or unfair trade practices. Delay due to authorities, paid compensation, early payment rebate as per terms. Cannot seek amendments to binding contracts.

Sections & Cases Referred/Cited

Section 21 of Consumer Protection Act, 1986 (Pecuniary jurisdiction); Section 2(r) of Consumer Protection Act, 1986 (Unfair trade practice definition)

Pioneer Urban Land case (2019 CPJ 34 SC)

Wg. Cdr. Arifur Rahman Khan case (2020 16 SCC 512)

Ireo Grace Realtech case (2021 3 SCC 241)

DLF Homes Panchkula case (2020 16 SCC 318)

R.V. Prasannakumar case (C.A. Nos. 1232, 1443-1444/2019)

Dr. Shipra Tripathi case (C.A. No. 1742/2022)

So in summary, the CCs claimed deficiencies by DLF in timely

offering possession and providing facilities, and prayed for refunds, possession, compensation etc. DLF disputed jurisdiction, contractual terms, deficiencies. Court relied on various SC cases to hold DLF deficient, allowed limited compensation. Directed payment with interest for delay in offer of possession, else handing over physical possession within timeframe.

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Full Text of Judgment:

1. The present Consumer Complaints (CCs) have been filed by the Complainants against the opposite party as detailed above, inter alia praying for directing the OP to:-

(i) hand over the physical and legal possession of the Unit complete in all respects in accordance with the allotment letter and independent floor buyers agreement with all the promised facilities and amenities mentioned in brochure/advertisement;

(ii) pay interest calculated @15% p.a. on the amount deposited i.e. from the date of delay in handing over the possession till the date of possession.

(iii) withdraw the illegal demand/additional charges and subsequent/consequential taxes and interest levied on the said demands.

(iv) refund the amount charged in the name of parking.

(v) pay compensation on account of causing financial hardship, mental agony, harassment, emotional disturbance to the complainants.

(vi) pay litigation expenses.

2. Since the facts and question of law involved and the reliefs prayed for in these complaints are similar/identical and against the same Opposite Party except for minor variations in the dates, events and flat numbers etc., which

are summarized in the Table in para 5 below, these complaints are being disposed off by this common order. However, for the sake of convenience, Consumer Complaint (CC) No. 791 of 2017 is treated as the lead case and facts enumerated herein under are taken from CC/791/2017.

3. It is averred/stated in the complaint that:-

i) That the complainants booked a flat admeasuring 1881 sq.ft. on 29.08.2012 in the residential Project launched by the OP in the name of "Hyde Park Terraces" situated at Mullanpur, New Chandigarh. Floor Buyers Agreement dated 12.03.2013 was entered between the parties. The total consideration for the flat was Rs.77,36,860/-. However, the OP issue final statement of account to complainants in which the price of the flat was indicated as Rs.91,30,955/-, out of which, the complainants paid Rs.91,16,717/- till 02.11.2016. The Independent Floor Buyers Agreement was executed on 12.03.2013 whereby a unit bearing No.R2-F 812 FF (First Floor) with parking number P-1F was allotted to the complainants. The OP was liable to handover the possession of the unit within 30 months from the date of application, i.e. by 28.02.2015. The OP inserted many illegal clauses in the floor buyer agreement and on raising the objection by the complainants the OP informed the complainants to forfeit their complete amount alongwith booking about, in case the complainant does not enter in agreement with the OP and thus, the complainant had no option except just to sign the agreement with many arbitrary clause.

ii) Despite promising several times and written commitments made in the independent Floor Buyers' Agreement, the OP failed to deliver the possession as promised and a new date of delivery of the unit was informed to the complainants whenever the complainants visited their office. The OP office also published an advertisement in newspaper Hindustan Times dated 13.01.2014 wherein OP again made another promise to handover the possession in 2014 but also failed to handover the possession in 2014. The complainants visited the office of the

OP to know the date of possession but no satisfactory answer was given by the OP. The OP also promised to complainants to pay the compensation for delaying the possession as per clause 14 of the agreement, which is very meagre and just inserted while taking the benefit of their dominant position. Vide letter dated 28.09.2016, the OP offered physical possession of the unit while admitting the fact of the receipt of OC and asked the complainants to deposit amount of Rs.19,23,303/- within one month with a condition that non submission of payment within 30 days of final statement of account would attract interest "Holding Charges" @ Rs.10/- per sq.ft. per month as per the terms and conditions of clause 13 of the Floor Buyer Agreement. The OP vide letter dated 28.09.2016 asked the complainants to deposit the amounts on various heads. On receiving the huge, illegal and additional demands, the complainants inquired the office of OP and asked clarification qua all the illegal additional demands but the OP failed to clarify such demands with proper justification and further warned the complainants that in case complainants does not deposit the amount, the complainants have to pay holding charges as per agreement and furthermore their allotment of unit may be cancelled. As per clause 14 of the agreement, the OP did not pay compensation @ Rs.10 per sq.ft. for delay in handing over the possession which is around more than one and half year.

iii) The OP was supposed to give the possession on 28.02.2015 from the date of application and thus in that eventuality complainants are not liable to pay any other taxes and charges which occurred due to delay of the OP in handing over the possession. The OP raised the demands to make the profit at the cost of hard earned money of the complainants is illegal, unethical and liable to be quashed.

iv) The OP has not received any completion certificate from Punjab Country Town Planning Department. It is also stated by the complainants that the State Commission also in CC/87/2016

decided on 27.05.2016 –Pardeep John David Vs. DLF Universal held against the same builder qua same project that basic construction work and amenities are not provided.

v) The OP has not provided several facilities, as promised initially. The complainants are not liable to pay the club charges as till date no club and community hall and other promised facilities available in the township. The OP had given false promises and assurances to the complainants and had malafide intention with the motive to cheat and extract money on various illegal grounds from the complainants and further the OP's dealings were vague from the very inception resulting into harassment and mental agony to the complainants and also amounts to breach of trust. Furthermore the OP is giving the possession without promised facility while demanding the illegal payments under many heads which were never part of agreement, thereby allowing the complainants to take legal possession of the independent floor. Hence, the complainants are before this Commission.

4. OP in their written statement/reply stated that :-

i. OP received a Partial OC on 10.09.2014. Basic amenities such as roads, sewerage, drinking water, electricity, street lights, drainage etc. etc. have been provided in terms of the agreement. The partial OC is issued to the promoter only when the conditions were fulfilled. It is also contended by the OP that the complainants have challenged the mutually agreed and concluded and binding Agreement entered into between the parties. The complainants have made baseless allegations of unfair trade practice etc. with an ulterior motive to amend/modify or re-write any concluded agreement/contract duly executed between the party to illegally invoke jurisdiction of this Commission. This Commission cannot adjudicate upon the matter where the prayers are for modification of the Clauses of the Independent Floor Buyer's Agreement. The complainants are virtually inviting the Commission to assume the powers conferred on the Fora under the Competition Act and/or under

Civil Court. The complainants are not the Consumers and booked the Floor for investment purpose. The OP relied upon the judgment passed by this Commission in Smita Roy Vs. Excel Construction II (2012) CPJ 204 that after possession is taken, the person booking the unit no more remains consumer. The possession of the said floor was handed over to the Complainants on 17.05.2018.

ii. The complaint was filed in March 2017. As per Section 24A of the C.P. Act, 1986 the complaint can be filed within two years from the date when the cause of action arose. In the present case, the complaint has been filed in March, 2017, whereas the reliefs sought are such that the alleged cause of action in relation thereto arose more than two years prior to the filing of the complaint. As such, the entire complaint in relation to the allegation contained therein and alleged relief sought, are completely barred by limitation. The present complaint is a challenge to the binding inter-se agreement entered into between each allottee and the OP, and the reliefs sought would virtually amount to amendment/modification/re-writing of the said agreement as per the whims and wishes of the complainants. The agreement was entered in 2013, which is three years prior to filing of the complaint. As such, the complaint on this count is ex-facie barred by limitation. The complainants in the complaint have vaguely stated about the limitation and cause of action to be continuing one without stating or disclosing as to when it first arose and how it is continuing. The complaint is liable to be set aside on the sole ground of limitation alone.

iii. It is also contended by the OP that the parties are bound by the terms and conditions mentioned in the agreement. The Buyers Agreement was entered between the parties on 12.03.2013. The said agreement was duly signed by the complainants after going through the same and understanding each and every clause contained in the Agreement and agreed to perform his obligations as per the conditions stipulated in

the Agreement. The said agreement is binding between the parties and the same cannot be withdrawn/modified by the complainants as per their own convenience. The OP has relied upon the judgment of the Hon'ble Supreme Court in the case of Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704 and in the case of Secretary, Bhubaneswar Development Authority v Susanta Kumar Mishra (2009) 4 SCC 684.

iv. It is also contended by the OP that there is no deficiency in service or unfair trade practice on the part of the OP. The delay, if any, has been caused due to time taken by the appropriate authorities in granting the approvals, which was much beyond the normal course and procedure. The OP has been pursuing the matter with various authorities and OP has suffered much loss, financially and otherwise, on account of such delay in grant of approvals. No case for unfair trade practice can be alleged unless it is proved that the trade practice is for the purpose of promoting the sale or services. The restrictions alleged in the present complaint do not prove promotion of sale or services as contemplated which defines unfair trade practice. The OP made an endeavour to offer possession of independent floor within 30 months from the date of application. In case of delay in delivery of possession, delayed compensation for the same has been fully accounted for in the agreement itself.

v. It is further contended by the OP that the party in breach cannot insist that the non-defaulting party perform its obligations in the time frame originally contemplated in the agreement, when a contract consists of reciprocal promises. In cases where the consumer has defaulted in making the payments, the consumer cannot insist that the builder perform its obligations. The complainants in breach of the terms of the agreement as they defaulted in payment of instalments. Despite the complainants being defaulters in timely payment of instalments, OP has compensated the complainants and paid Rs.3,88,683/-. The OP submitted that the timely payment of instalments is the essence of agreement.

vi. It is further contended by the OP that in accordance with clause 14 of the terms of the agreement, compensation clause has been duly incorporated. If the OP fails to offer possession of the said floor, within 30 months from the date of application, the intending allottee having made all the payments as per payment plan and subject to the terms and conditions set out in the Agreement and barring force majeure conditions, the company shall pay compensation at the rate of Rs.10/- per sq.ft. of the super area per month. The delay in offering the possession of the independent floor to the complainants, which was beyond the control of the OP, a remedy for breach has already been incorporated in the agreement executed between the parties. The OP also submitted that the complaint cannot be adjudicated under summary jurisdiction. The complaint be dismissed with costs.

5. Evidence by way of affidavit was filed by the complainants as well as by the OP broadly on the lines of averments made in the complaint. The details of the floors allotted to the Complainants/other relevant details of the case are given in the Table below:-

| Sr No | Particulars | Case No/ Complainant | Case No/ Complainant | Case No/ Complainant |
|-------|------------------------------------|--|--|--|
| | | CC/791/2017 Anil Sehgal & Anr. | CC/792/2017 B.S. Ahlawat & Anr. | CC/814/2017 Gauri Sharma |
| 1 | Project Name/Location etc. | "Hyde Park Terraces" Mullanpur New Chandigarh | "Hyde Park Terraces" Mullanpur New Chandigarh | "Hyde Park Terraces" Mullanpur New Chandigarh |
| 2 | Apartment no. | R2-F 812 FF | R2-F 812 GF | R2-F 812 SF |
| 3 | Size (Built up/Covered/Super Area) | 1881 sq.ft. | 1881 sq.ft. | 1881 sq.ft. |

| | | | | |
|----|--|----------------|----------------|----------------|
| 4 | Date of application | 29.08.2012 | 18.08.2012 | 16.08.2012 |
| 5 | Date of signing Independent Floor Buyers' Agreement (IFBA) | 12.03.2013 | 23.09.2013 | 23.09.2013 |
| 6 | Committed date of possession as per Independent Floor Buyers' Agreement (with Grace period, if any) (30 months from the date of application) | 28.02.2015 | 18.02.2015 | 16.02.2015 |
| 7 | D/o Offering Possession | 28.09.2016 | 28.09.2016 | 28.09.2016 |
| 8 | Actual D/o Physical Possession | 17.05.2018 | | |
| 9 | Total Consideration as per IFBA | Rs.77,36,860/- | Rs.79,24,960/- | Rs.76,42,810/- |
| 10 | Amount Paid | Rs.91,16,717/- | Rs.93,34,527/- | Rs.90,15,340/- |
| 11 | D/o Filing CC in NCDRC | 21.03.2017 | 21.03.2017 | 23.03.2017 |
| 12 | D/o Issue of Notice to OP(s) | 06.08.2018 | 04.07.2018 | 31.08.2017 |
| 13 | D/o Filing Reply/Written Statement by OP | 08.10.2018 | 29.08.2018 | 08.11.2017 |

| | | | | |
|----|---|------------|------------|------------|
| 14 | D/o filing Rejoinder by the Complainants | 13.11.2018 | 16.01.2019 | 30.10.2018 |
| 15 | D/o Filing Evidence by way of Affidavit by the Complainants | 13.11.2018 | 16.01.2019 | 30.10.2018 |
| 16 | D/o Filing Evidence by way of Affidavit by the OP | 24.12.2018 | 28.02.2019 | 23.01.2019 |
| 17 | D/o filing Written Synopsis by the Complainant | 22.01.2020 | 22.01.2020 | 22.01.2020 |
| 18 | D/o filing Written Synopsis by the OP | 21.11.2022 | 21.11.2022 | 21.11.2022 |

6. Heard counsels of both sides.

7. The contention of OP that this Commission lacks pecuniary jurisdiction is not valid. Under Section 21 of the Act, Commission has the jurisdiction where value of goods and services and compensation, if any, claimed exceeds Rs one crore. The objection that the Complaint is barred by limitation is also not accepted. The OP failed to deliver the possession of the unit to the complainant as per committed date, therefore, the cause of action is continuing. The contention that complainant is not a consumer as he has already taken possession, is also rejected. The plea of OP that delay was due to delay in getting approvals of authorities, is not valid. The contention of the OP that the parties are bound by the

agreement is also not acceptable. Hon'ble Supreme Court in Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raglivan II (2019) CPJ 34 (SC) decided on 02.04.2019 held that "a term of a contract will not be final and binding if it is shown that the flat purchasers had no option to sign on the dotted line, on a contract framed by the builder the incorporation of one sided clause in an agreement constitute an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling flats by the builder, the appellant-builder cannot seek to bind the respondent with such one sided contractual terms." Hon'ble Supreme Court in Wg. Cdr. Arifur Rahman Khan And Aleya Sultana and Ors. vs DLF Southern Homes Pvt. Ltd. & Ors. (2020) 16 SCC 512 and in Ireo Grace Realtech Pvt.Ltd. Vs. Abhishek Khanna & Anr. (2021) 3 SCC 241, held that failure of the developer to comply with contractual obligations to provide flats within contractually stipulated period would amount to deficiency in service and thus amenable to the jurisdiction of consumer fora. Further the Hon'ble Supreme Court in Wg. Cdr. Arifur Rahman Khan case (supra) also observed that "to uphold the contention of the developer that the flat buyer is constrained by the terms of the agreed rate irrespective of the nature or extent of delay, would result in miscarriage of justice— jurisdiction of the consumer forums to award just and fair compensation as an incident of its power to direct the removal of deficiency in service is not constrained by terms of a rate which is prescribed in an unfair bargain— there is no absolute embargo on the award of compensation beyond the rate stipulated in the flat buyers agreement where handing over of the possession of a flat has been delayed". In this case, the Hon'ble Supreme Court also held that execution of conveyance deed would not operate to preclude the flat buyers from claiming

compensation. In R.V. Prasannakumaar & Ors. vs Mantri Castles Pvt. Ltd. Civil Appeal Nos. 1232, 1443-1444 of 2019, decided on 08.06.2018, it was held that "the liability of the developer to pay interest @6% p.a. shall continue to operate until the date on which each of the respective flat purchaser is offered possession". In DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda & Ors. (2020) 16 SCC 318, Hon'ble Supreme Court examined the legality and justifiability of grant of compensation under different heads for delay over possession of flats and held that the award of compensation under different heads is not sustainable.

8. It is admitted by the OP that as per IFBA the committed date of possession was 28.02.2015 (30 months from the date of application), O.C. was obtained on 17.02.2016, offer of possession was made on 28.09.2016 and physical possession was taken on 17.05.2018. OP admits a delay of 1 year 7 months in offer of possession and states that an amount of Rs.3,88,683/- has been credited by way of delay compensation and also an early payment rebate of Rs.14237/- was granted by the OP. OP further contended that any compensation, if payable to complainant, should be interest @6% from 28.02.2015 till 28.09.2016 and nothing beyond that. Relying on judgment of Hon'ble Supreme Court in DLF Home Developers Ltd. Vs. Dr. Shipra Trapathi & Anr. – Civil Appeal No. 1742 of 2022 dated 30.09.2022, the OP contended that liability to pay compensation would continue only so long as no offer of possession was made, in the instant case, valid offer of possession was made after receipt of O.C., thus liability to pay compensation by the developer has to be restricted till offer of possession.

9. Complainant on the other hand argued that OP while allegedly handing over possession had asked complainant to make payments which were arbitrary and illegal and not borne out of the agreement, for instance, the payment towards 'other charges', which is vague

as complainants were already paying payments including all taxes, contingent deposit of VAT, payment for parking space, club charges etc. Complainants contend that at the time of alleged handing over possession, OP had not received completion certificate from Govt.

10. Perusal of offer of possession letter dated 28.09.2016 shows that OP has given the details of amount demanded under various heads, stating also that they have received the OC and that there is an increase of 19 sq. ft. of area. Complainants have not been able to establish as to which payments have been wrongly demanded/taken by the OP. Further, the complainants have not been able to clearly pinpoint as to which of the promised amenities/facilities have not been provided by the OP. Complainants have also not been able to establish whether the delay between the period of offer of possession i.e. 28.09.2016 and date of actual possession i.e. 17.05.2018 is attributable to OP. Hence, possession having been already taken by the complainants, the only relief which complainants are entitled to is delay compensation from the committed date of possession till the date of offer of possession. In CC/791/2017, the OP has stated that physical possession was taken by the complainants on 17.05.2018, but in CC/792/2017 and 814/2017, both the parties are silent on whether the physical possession has been taken by the complainants or not, if yes, on which dates. Hence, if in any of these cases, the physical possession has not been given by the OP yet, the same shall be given, complete in all respects, as per specifications and along with facilities/amenities promised in the brochure/agreement, within 30 days of this order.

11. For the reasons stated hereinabove, and after giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised by the learned Counsel for the Parties, the Consumer Complaint

is allowed/disposed off with the following directions/reliefs:

—

CONSUMER COMPLAINT NO.814 OF 2017

i. The OP shall pay delay compensation in the form of simple interest @ 6% per annum on the deposit of the complainant from the committed date of possession viz 16.02.2015 till the date of offer of possession viz 28.09.2016.

ii. The OP shall pay a sum of Rs.25,000/- as cost of litigation to the complainant.

iii. The payment in terms of this order shall be paid within two months from today.

12. In case, in any of the cases, physical possession has not been handed over yet, the OP shall hand over the physical possession of the unit(s), as per specifications and with facilities/amenities promised in the brochure/agreement, within 30 days of this order.

13. The pending IAs, if any, also stand disposed off.