

HARE RAM RAY & 4 ORS. v. ADEL LANDMARKS LTD.

HARE RAM RAY & 4 ORS.

...Appellant

ADEL LANDMARKS LTD.

...Respondent

Case No: CONSUMER CASE NO. 617 OF 2017

Date of Judgement: 11 December 2023

Judges:

SUBHASH CHANDRA
PRESIDING MEMBER

For Appellant: MR ABHIMANUE SHRESTHA, ADVOCATE

For Respondent: None

Facts:

Complainants booked flats in 'Redwood Residency' project by opposite party (OP) Era Landmarks Ltd. Complainant 1, 2, 3 are subsequent allottees who were transferred flats by original allottees after OP approval. Flats were 1470 sq ft, against sale consideration between Rs 20-26 lakhs. Substantial amounts were paid. As per Apartment Buyers Agreement, possession was to be given within 3 years. But there were delays by OP. Complainants allege deficiency in service, unfair trade practice, and seek refund with interest, compensation.

OP's Arguments:

Complaint not maintainable due to arbitration clause, limitation period, suppression of facts by complainants. Terms of agreement known to complainants, delay covered under force majeure clauses. Tentative possession was to be given during Feb-Oct 2009 period.

Complainants' Arguments:

No offer of possession made, project unfinished, no explanation for delay by OP. Non-delivery of possession is recurring cause of action. Cites Meerut Development Authority vs Mukesh Kumar Gupta judgment. Arbitration clause does not bar complaint, cites MGF Land Ltd vs Aftab Singh. Unreasonable delay entitles complainants refund with interest and compensation, cites Experion Developers and Pioneer Urban Infra judgments.

Court's Reasoning and Conclusions:

Not offering possession is continuing cause of action, so limitation plea fails. Arbitration clause does not bar consumer complaint, following Aftab Singh case. OP has not shown delays attributable to force majeure. No completion certificate or offer of possession by OP till date. Complainants cannot be expected to wait indefinitely for possession – Sushma Ashok Shiroor case. Deficiency in service by OP. Complainants entitled to seek refund. Interest payable from date of deposits – compensatory and restitutionary. For subsequent allottees, reckoning of period starts from re-allotment. Allows complaint. Directs refund of amounts with 9% p.a. interest within 8 weeks.

Relevant Legal Provisions:

Section 2(r), Section 21(1)(a) of Consumer Protection Act

▪ Referred Cases:

- Meerut Development Authority vs Mukesh Kumar
- MGF Land Ltd vs Aftab Singh
- Sushma Ashok Shiroor
- Pioneer Urban Land and Infrastructure Ltd vs Govindan Raghavan

- Award of interest basis – HUDA vs Raja Ram case

Reliefs Granted:

Refund of full paid amount with 9% p.a. interest. Litigation cost of Rs. 30,000 to each complainant.

Full Text of Judgment:

1. This complaint under section 21 (1) (a) of the Consumer Protection Act, 1986 (inshort, the Act') has been filed by the complainant along with an application IA no.3054 of 2017 seeking permission under section 12 (1) (c) of the Act in view of the common cause of action of the complainants.

2. The brief facts of the case are that the complainant had booked a residential flat in the project called 'Redwood Residency' Sector 78, Faridabad, Haryana, promoted and developed by the opposite party which was earlier known as 'Era Landmarks Ltd.'. Complainant nos. 1,2 and 3 are the subsequent allottees as they had been allotted flats by way of transfer from the original allottees after approval by the opposite party. As per the table given below:

S no.	Name of the complainant/New Allottee	Original allottee	Flat no.	Sale Consideration	Amount paid	Agreementdate as per reassignment
1.	Hare Ram Rayand Ms AnitaVatsa	Mr Uday Bhan Singh Teotia	C 05-1	Rs.26,06,310/ -	Rs.24,17,580/ -	23.07.2008
2.	Mr ChandraKishore Prasad Singh	Mr Surender Kumar	C 162	Rs,26,06,310/ -	Rs.24,18,080/ -	23.01.2008
3,	Mr Santosh Kumar Pandey	Mr Chandra Kumar	A 142	Rs.26,06,310/ -	Rs.21,75,100/ -	13.10.2007
4.	Mr Rajesh Chauhan	Mr Rajesh Chauhan	A 182	Rs.26,06,310/ -	Rs.20,38,950/ -	16.05.2008
5.	Mr Rahul Agrawal	Mr Rahul Agrawal	A 192	Rs.26,06,310/ -	Rs.22,58,660/ -	04.05.2009

3. Apartments allotted by the opposite party had measured 1470 sq ft (except in the case of Rajesh Chauhan whose flat ad-measured 1150 sq ft) against the respective sale considerations as per the table above. The allottee/ subsequent allottee paid the respective amounts as

indicated in the table above.

4. An Apartment Buyers Agreement (ABA) was entered into between the allottee and the opposite party on various dates. As per condition of the ABA in article 10.1 schedule for possession of the apartment was stated to be within a period of three years from the date of execution of the ABA subject to reasons mentioned in clauses 11.1, 11.2 and 11.3 and clause 39 pertaining to default in payment by the allottees with reference to the schedule of payment in the ABA. The complainants allege that the opposite party has failed to deliver the possession within three years despite their having received the amount indicated in the table above. This complaint has been filed in view of the inordinate delay in the offer of possession and alleges deficiency in service and unfair trade practice under the Act. The complainants have prayed that the opposite party be directed to:

- a. Pay the current market price of the respective flats booked and allotted to all the complainants and other similarly situated persons;
- b. Refund the amount collected illegally from the complainants and other similarly situated person along with interest @ 24% per annum; and
- c. Pay the interest paid by the complainants and other similarly situated persons towards the loan availed by them, if any; and
- d. Grant appropriate compensation for mental, physical and financial harassment and agony caused to complainant and other similarly situated persons, due to alleged act of the opposite party; and
- e. Grant the cost incurred towards legal expenses by the complainants and other similarly situated persons; and
- f. Pass such other and further order (s)/ direction (s) as this Hon'ble Commission may deem fit in the interest of justice.

5. The complaint was resisted by the opposite party by way of reply denying the averments of the complaint. Preliminary objections were taken that: (i) the complaint was not maintainable and there was no cause of action; (ii) there was suppression of material facts by the complainants; (iii) relief sought to pay the current market price was without any legal basis; (iv) terms and conditions were in the knowledge of the complainants while signing the ABA; (v) clause 10.1

of the agreement was qualified by various force majeure conditionalities including failure of allottees to pay the consideration on time as per the schedule; (vi) the complaint was barred by limitation in view of the tentative date of possession ranging from 22.02.2009 to 30.10.2009 reckoned from the date of the ABA; (vii) in view of the arbitration clause in the AB, the complaint does not lie. It was admitted that the apartments in question had indeed been booked by the respective complainants and the sale consideration and the receipt of money in respect of each flat was also not disputed. The transfer of allotment in the case of Mr Uday Bhan Singh Teotia, Mr C K P Singh and Mr S K Pandey was also not disputed. On merits, the opposite party contended that no assured date of possession was promised and that the period of three years mentioned in Clause 10.1 was subject to the conditionalities in clause 11.1, 11.2 and 11.3.

6. The application under section 12(1)(c) filed by the complainants was allowed by this Commission on 19.07.2017 and the necessary paper publication was also approved. Proof of the same has also been placed on record.

7. The counsel for the opposite party was declared ex parte on 19.07.2017.

8. I have heard the learned counsel for the complainants and perused the material on record carefully. Reply filed by the opposite party is taken to be his final submission and has been accordingly considered.

9. Learned counsel for the complainants argued essentially as per the complaint and the written synopsis. It was contended that there was no offer of possession by the opposite party and the project had not been completed, nor any explanation been provided by the opposite party for the delay in the offer of possession. It was averred that the opposite party and the Directors had misappropriated the amounts received by them towards the flat booked by the complainant which amounts to unfair trade practice within the meaning of section 2 (r) of the Act. It was argued that non-delivery of the possession by the opposite party constituted a cause of action as held by the Hon'ble

Supreme Court in the case of Meerut Development Authority vs Mukesh Kumar Gupta, IV (2012) CPJ 12 and by this Commission in Satish Kumar Pandey and Ors vs M/s Unitech Ltd., CC no. 427 of 2014 dated 08.06.2015. The contention of the opposite party regarding non-maintainability of this complaint in view of the arbitration clause in the agreement is contested on the strength of the judgment of the Hon'ble Supreme Court in MGF Land Ltd., vs Aftab Singh (2019) 12 SCC 751 which held that:

"The complaints filed under the Consumer Protection Act can also be proceeded with despite there being any arbitration agreement between the parties which has been well settled by a catena of decisions as noticed above".

The non-offer of possession of the flats was argued to constitute inordinate delay and therefore, in terms of the judgment of the Hon'ble Supreme Court in the case of Experion Developers Pvt. Ltd., vs Sushma Ashok Shiroor 2022 SCC Online SC 416 and Pioneer Urban Land and Infrastructure Ltd., vs Govindan Raghavan (2019) 5 SCC 725 the complainants had the discretion to seek refund. It was also argued on the basis of Sushma Ashok Shiroor (supra) that the interest payable should be restitutionary as well as compensatory from the date of deposits of the amounts.

10. From the foregoing, it is manifest that the present complainants had booked the apartment in the project of the opposite party either as an original allottee or by way of transfer of allotment from the original allottee which had been consented to by the opposite party. It is also not in dispute that against a sale consideration for the respective flats, the opposite party had received various sums from the respective allottees/ subsequent allottees. The opposite party has not brought on record any document any evidence to indicate whether the project has been completed and completion certificate has been obtained and an offer of possession made to the complainants. His grounds of opposition to the complaint are essentially that the same is barred by limitation is not maintainable, in view of the arbitration clause and that in view of the various force majeure clauses delay is not attributable to the opposite party directly. As far as the issue of limitation is concerned, the complainants have rightly averred on

the strength of the law laid down by the Hon'ble Supreme Court in Meerut Development Authority (supra) that not offering of possession after receiving sale consideration of substantial amounts to a continuing cause of action. This contention cannot be faulted as no offer has been made as on date.

11. As far the issue of arbitration, the law laid down by the Hon'ble Supreme Court in Aftab Singh (supra) makes it explicitly clear that proceedings under the Act are in addition to other remedies available to consumer and therefore, the provisions of an arbitration clause cannot bar this complaint. This contention of the opposite party, therefore, cannot be considered. In so far as the contention of the opposite party that the complaint is not maintainable in view of the force majeure conditions incorporated in the agreement, the opposite party has not brought on record any evidence in support of his case that the delay was on account of any defect not attributable to it. On a mere bald assertion without any evidentiary basis, defence on the basis of force majeure cannot be accepted. This contention of the opposite party, is therefore, rejected as not justified.

12. The apartments were booked on various dates in 2006. Considering that there was transfer of the original allotment to subsequent allottees in the case of Mr Hare Ram Ray, Mr C K P Singh and Mr S K Pandey, the dates of respective transfers are 23.07.2008, 23.01.2008 and 13.10.2007. The Hon'ble Supreme Court in Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 SC that:

"...it would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession...A buyer can be expected to wait for a reasonable period. A period of seven years is beyond what is reasonable".

In Fortune Infrastructure Vs Trevor D'Lima (2018) 5 SCC 442 also the Hon'ble Supreme Court laid down that:

'a buyer cannot be expected to wait indefinitely for possession and in a case of an unreasonable delay in offering possession, the consumer cannot be compelled to accept possession at a belated stage and is entitled to seek refund of the amount paid with compensation'.

13. It is not the case of the opposite party that the construction has been completed and an offer of possession made. The complainants, therefore, cannot be denied their rights to seek refund in view of the fact that the opposite party has neither completed the project which is evident from the fact that there is no completion certificate that has been brought on record nor an offer of possession having been made as on date. It is, thus, evident that there has been deficiency in service on the part of the opposite party qua the complainants.

14. It cannot be the case of the opposite party that the complainants have not made payment in full since the payment schedule itself provides for final instalment to be paid at the time of offer of possession which has admittedly not been made.

15. In the case of HUDA vs Raja Ram 2008 (17) SCC 407, the Hon'ble Supreme Court had observed that the case of re-allottees in a housing scheme cannot be compared to the case of the original allottee. In the case of delay in handing over of possession it had been held that a subsequent transferee cannot step in the shoes of the original buyer from the date of original allotment. Therefore, the entitlement of S/Shri Hare Ram Ray, Mr C K P Singh and Mr S K Pandey for relief in the instant case needs to be reckoned from the date of re-allotment after transfer from the original allottees, i.e., 23.07.2008, 23.01.2008 and 13.10.2007 respectively.

16. In view of the foregoing discussion and in the facts and circumstances of the case, the complaint has merit and is liable to succeed. Accordingly, the complaint is allowed in part with the following directions:

- i. The opposite party shall refund the entire amount to the complainants from the respective date of deposits with compensation in the form of interest @ 9% per annum within 8 weeks from the date of this order failing which the applicable rate of interest shall be 12%;
- ii. In the case of S/Shri Hare Ram Ray, C K P Singh and S K Pandey, who are the subsequent allottee and this period shall be reckoned from the date of re-allotment of the flats, i.e., 23.07.2008, 23.01.2008 and 13.10.2007 respectively; and
- iii. The opposite party shall also pay litigation cost of Rs.30,000/-

to each of the complainants.

17. All pending, IAs, if any, also stand disposed of by this order.