

JAI PRAKASH ASSOCIATES LIMITED V. GAURI CHICKER

1. JAI PRAKASH ASSOCIATES LIMITED
SECTOR – 128, NOIDA, GAUTAM BUDH NAGAR,
U.P. – 201304

.....Appellant(s)

Versus

1. GAURI CHICKER
R/O: C-15 INDRA VILAAPARTMENTS, APARTMENT NO.
2AB, SARVODAYA NAGAR,
KANPUR,
U.P. – 208005

.....Respondent(s)

Case No: FIRST APPEAL NO. 783 OF 2020

Date of Judgement: 06 Jan 2023

Judges:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

For the Appellant : Mr. Paras Choudhary, Advocate

For the Respondent : Mr. Yashasvi Virendra, Advocate

Facts:

It is a builder-buyer dispute regarding a residential unit booked by complainant Gauri Chicker with builder Jai Prakash Associates Ltd. Complainant paid Rs. 46,79,084/- as booking amount. She filed consumer complaint no. 546/2017 before State Commission UP seeking refund with interest due to delay in possession. State Commission directed builder to refund paid amount of Rs. 46,79,084/- along with interest @10% p.a. It also awarded litigation cost of Rs. 10,000/-. Builder has

filed the present First Appeal challenging State Commission's order.

Arguments by Builder:

Builder admitted liability to refund but challenged only rate of interest awarded at 18% p.a. It offered to refund principal amount with interest @10% p.a. as awarded in other similar matters.

Arguments by Buyer:

Buyer agreed to builder's revised offer subject to compliance within reasonable time.

Court's Observations and Decision:

Appeal disposed on basis of mutual consent and submissions made during hearings. Builder to refund principal deposit of Rs. 46,79,084/- along with interest @10% p.a. Builder also to pay enhanced litigation cost of Rs. 25,000/-. Compliance to be made within 8 weeks else execution by State Commission. Decision not to be treated as precedent since given on consent terms.

Relevant Provisions and Cases:

Provisions:

Section 19 – Appeal against order of State Commission

Cases:

No specific cases referred.

Conclusion:

Builder's appeal allowed in part only to the extent of modifying interest rate from 18% to 10%. Other directions passed by consent without laying down any precedential principle.

Full Text of Judgment:

1. This appeal has been filed under Section 19 of The Consumer Protection Act, 1986 in challenge to the Order dated 08.01.2020 of the State Commission in complaint no. 546 of 2017.

2. Heard the learned counsel for the appellant (the 'builder co.') and the learned counsel for the respondent (the 'complainant'). Perused the record.

3. The award made by the State Commission as contained in the operative portion of its impugned Order of 08.01.2020 is reproduced below:

08.01.2020

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On the basis of the above conclusion, the complaint is partially accepted against the Opposite Parties and the Opposite Parties is ordered to pay the deposited amount of the complainant i.e. Rs. 46,79,084/- and return the complainant with interest at the rate of 10 percent per annum from the date of deposit. If the Opposite Party do not return the deposited amount of Rs. 46,79,084/- with 10% interest then within the period of three months, then the Opposite Party will be bound to return the sum of Rs. 46,79,084/- with 18% p.a.

The Opposite Parties should also provide cost of litigation of Rs. 10,000/- to the Complainant.

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When the appeal was filed before this Commission, some pertinent submissions were made on behalf of the builder co. at the time of admission on 12.02.2021 and a conditional stay order was passed. The Order dated 12.02.2021 of this Commission is reproduced below:

Dated : 12 Feb 2021

Issue notice on IA No.6943 of 2020 seeking condonation of

delay for 02.07.2021.

IA 6942 of 2020 (stay)

Learned Counsel for the Appellant submits that their main challenge in the present Appeal is only to the rate of interest awarded @ 18% p.a. which is towards higher side. It is further submitted that now they are ready to pay, without prejudice to their rights and contentions, the reasonable interest @ 10% p.a. which had been awarded in other matters of Jaiprakash Associates Ltd. In view of this submission, the operation of the impugned order is stayed subject to Appellant's depositing the entire amount of ₹46,79,084/- paid by the Respondent to them towards construction of the flat, along with interest @ 10% p.a. from the date of substantive dates of such deposits and also costs of litigation, with the State Commission within six weeks. This order is without prejudice to the rights and contentions of the parties. In case such deposit is not made within the time granted, this order shall automatically stand vacated and the State Commission shall proceed with the execution petition, if any, pending before it.

4. Taking reference in the afore, learned counsel for the builder co. submits on instructions that the builder co. is willing to refund the deposited amount of Rs. 46,79,084/- with interest at the rate of 10% per annum from the respective dates of deposit till actual realization as well as to pay cost of litigation of Rs. 25,000/- to the complainant. Learned counsel further requests that this case may not be treated as a precedent.

5. Learned counsel for the complainant submits on instructions that the afore terms being offered on behalf of builder co. by its learned counsel today are acceptable to the complainant provided the compliance is made in a time-bound manner.

6. Learned counsel for the builder co. submits on instructions that the compliance in its entirety will be ensured within eight weeks from today.

7. In the wake of the above submissions nothing more survives for adjudication in this appeal. The same is thus disposed of

with the direction that the award made by the State Commission is modified to the extent that the deposited amount of Rs. 46,79,084/- shall be refunded by the builder co. to the complainant with interest at the rate of 10% per annum from the respective dates of deposit till actual realization along with Rs. 25,000/- as cost of litigation. The amount if any deposited by the builder co. with the State Commission in compliance of this Commission's Order dated 12.02.2021 along with interest if any accrued thereon shall be forthwith released by the State Commission to the complainant as per the due procedure. The residual amount of the award, as has been firmed-up herein, shall be made good by the builder co. within eight weeks from today, failing which the State Commission shall forthwith undertake execution, for 'enforcement' and for 'penalty', as per the law. This Order has been made on consent. As such the decision in this case shall not be treated as a precedent.

8. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel as well as to the State Commission immediately. The stenographer is requested to upload this Order on the website of this Commission immediately.

9. 'Dasti', in addition, to facilitate timely compliance.