

JATIN AGGARWAL V. DLF HOMES PANCHKULA PRIVATE LIMITED

1. JATIN AGGARWAL

H NO -931, SECTOR-8, PUNCHKULA

.....Complainant(s)

Versus

1. DLF HOMES PANCHKULA PRIVATE LIMITED

"DLF Homes private limited SCO 190-191-192 Sector 8-C

Chandigarh.

Valley Panchkula

PIN-160009

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 2041 OF 2016

Date of Judgement: 05 Jan 2023

Judges:

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

HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Mr. Jatin Aggarwal, In person

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

Mr. Prabhat Ranjan, Advocate

Ms. Sonia, Ms. Seema, Advocates

Facts:

Complainant Jatin Aggarwal booked an independent floor in DLF Valley project at Panchkula launched by DLF Homes Panchkula Pvt Ltd (opposite party) in 2011. Floor booked by Jatin Aggarwal's predecessor-in-interest Sadhna Rathee on 16.02.2011 by paying booking amount. Allotted Unit no. VF-

A-1/7. Agreement executed on 25.12.2012. Ownership transferred from Sadhna Rathee to Deepak Garg to Jatin Aggarwal in December 2013. Total Rs. 8,831,968 paid towards purchase price till November 2016. Possession was to be given within 24 months of agreement subject to timely payment and force majeure. Jatin Aggarwal sent notice dated 29.08.2016 seeking possession and compensation for delay. DLF demanded further payment vide notice dated 09.11.2016 which Jatin Aggarwal did not pay. Hence the complaint seeking refund with interest or possession with compensation for delay. Prayer subsequently amended to add alternative relief for possession.

Complainant's Arguments:

DLF neither gave possession nor paid compensation for delay beyond committed period of 24 months. Hence deficiency in service for delay and harassment. Construction far from complete even after expiry of committed period. DLF still demanding further payments instead of clearing dues.

Opposite Party's Arguments:

Complainant concealed he purchased unit from open market in December 2013 when construction already delayed. Construction hampered from April 2010 to December 2012 due to court orders in cases filed by third parties. Approvals also delayed. Commenced construction in full swing after getting approvals in August 2014. Complainant and predecessors were defaulters in making timely payments. Cannot claim compensation when delay due to force majeure events. Preliminary objections on jurisdiction, arbitrability and maintainability also raised.

Court's Observations and Decision:

Preliminary objections have no merit. Complaint within pecuniary jurisdiction. No evidence unit purchased for commercial purpose. SC held arbitration clause does not exclude consumer fora jurisdiction. Payment plan was construction linked. Complainant and predecessors made some

payments with delay. But DLF did not cancel agreement or refund payments. Clause 11(b) provides extension of time period for force majeure reasons. Construction hampered from 2010-2012 due to court stay orders. Approvals also delayed. DLF entitled to extension for this period when construction prohibited. As per SC decisions, committed period to be counted from date of complainant's purchase in December 2013. SC held delays entitle flat buyer compensation at 6% interest on amounts paid. Complainant entitled compensation from January 2016 till offer of possession on 31.05.2017. Complaint partly allowed. DLF directed to give fresh demand letter adjusting compensation, 6 weeks time to complainant to make balance payment, execute conveyance deed and give possession on receiving payment.

Sections:

Consumer complaint filed under Consumer Protection Act, 1986.

Cases Referred:

Lilavati Kirtilal Mehta Medical Trust Vs Unique Shanti Developers (SC): Flat buyer is consumer unless bought for commercial purpose. Emaar MGF Land Limited Vs Aftab Singh (SC): Arbitration clause does not exclude consumer for jurisdiction. DLF Homes Panchkula Pvt Ltd vs D.S. Dhanda (SC): Committed period counted from date of complainant's purchase in delayed projects. Laureate Buildwell Pvt Ltd vs Charanjeet Singh (SC): Same principle. Wg Cdr Arifur Rahman Khan Vs DLF Southern Homes Pvt Ltd (SC): 6% p.a. interest compensation for delays.

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Full Text of Judgment:

1. Heard Mr. Jatin Aggarwal, the complainant, in person and Mr. Pravin Bahadur, Advocate, for the opposite party.

2. Jatin Aggarwal has filed above complaint, for directing the opposite party to (i) handover possession of the floor, along with delayed compensation in the form of interest @18% per annum, on the deposit of the complainant, from December, 2014 till the date of handing over possession, or in alternative refund entire amount deposited by the complainant with interest @18% per annum from the date of respective deposit till the date of actual payment, (ii) pay Rs.800000/- as compensation for mental agony and harassment, (iii) pay Rs.100000/-, as litigation cost; and (iv) any other relief which is deemed fit and proper in the facts and circumstances of the case.

3. The complainant stated that DLF Homes Panchkula Private Limited (the opposite party) was a company, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project and selling its unit to the prospective buyers. The opposite party launched a group housing project, in the name of "DLF Valley" at village Bhagwanpur, Kalka, district Panchkula, Gurgaon, in the year 2011 and made wide publicity of its facilities and amenities. Sadhna Rathee (predecessor in interest of the complainant), booked an Independent Floor on 16.02.2011 and deposited booking amount of Rs.600000/-. The opposite party allotted Unit no.-VF-A-1/7-First Floor, saleable area 2560 sq.ft., basic sale price of

Rs.7499519.99 and executed Independent Floor Buyer's Agreement in her favour on 25.12.2012. Sadhna Rathee transferred her right in aforesaid unit to Deepak Garg on 29.06.2013. Deepak Garg transferred his right in aforesaid unit to the complainant in December, 2013. Payment Plan was "construction link payment plan". As per demand, the complainant and his predecessors-in-interest deposited total amount of Rs.8831968/- till 12.11.2016. Clause-11(a) of the agreement provides that the construction will be completed within 24 months from the date of agreement subject to timely payment of the instalments and force majeure reasons. Although due date of possession expired but the opposite party neither offered

possession nor paid delayed compensation. The complainant vide email and letter sent through courier dated 29.08.2016, inquired about possession and demanded delayed compensation. The opposite party issued demand notice dated 09.11.2016, for Rs.993376.94. The construction was not near completion, the opposite party instead of paying delayed compensation, was demanding further amount as such the complaint was filed on 07.12.2016, for refund of the money with interest, alleging deficiency in service. Later on the complainant filed IA/8118/2021, for amending prayer clause, which was allowed on 21.07.2022 and relief for possession was also added.

4. The opposite party filed its written reply on 17.11.2017 and contested the matter. The opposite party did not dispute, booking of the floor, allotment of the floor, deposits made by the complainant and his predecessors. The opposite stated that the complainant has concealed material fact that he was not an allottee of the opposite party rather a transferee from open market in December, 2013. At the time of purchasing the floor, the complainant very well knew that the construction had been delayed. Punjab and Haryana High Court vide order dated 06.04.2010, passed in CWP No. 6230 of 2010 Tara Chand Vs. M/s. DLF Homes Panchkula (P) Ltd., directed the opposite party to maintain status quo and not to create third party interest over the project land. One Ravindra Singh filed CWP No.6155 of 2010, challenging land acquisition, which was dismissed by High Court. Ravindra Singh filed SLP (C) No.21786-21788 of 2010, in which, Supreme Court, vide order dated 19.04.2012, restrained the opposite party from raising any construction, which was dismissed vide order dated 12.12.2012. Layout plan of the project was approved on 12.12.2011 but due to interim orders as stated above, the construction could not proceed. The opposite party submitted revised layout plan on 04.03.2013, which was approved on 06.09.2013 although the opposite party consistently followed up the concerned authorities. The opposite party received approval with respect to service plans on 14.08.2014. Thereafter, the opposite party started construction with full swing and completed it and

applied for issue of "occupation certificate", which was issued on 20.10.2016, then possession was offered vide letter dated 31.05.2017. The complainant, instead of depositing the balance amount of instalment as demanded vide letter dated 09.11.2016, filed this complaint concealing the material facts. The complainant and his predecessors-in-interest were rank defaulter in payment of instalment. Instalments due on (i) 16.04.2011 was paid with delay of 860 days, (ii) 14.03.2012 was paid with delay of 527 days, (iii) 10.05.2013 was paid with delay of 105 days, (iv) 04.06.2013 was paid with delay of 80 days, (v) 05.08.2013 was paid with delay of 57 days, (vi) 21.09.2013 was paid with delay on 24 days and (vii) 04.09.2017 was paid with delay of 73 days. The opposite party is wrongly claiming delayed compensation although delay was caused for force majeure reasons, which is liable to be extended under clause 11(b) of the agreement. Preliminary objections that the complainant was not a consumer, claim is not falling with pecuniary jurisdiction of this Commission and the agreement contained an arbitration clause as the complainant be relegated for arbitration, are also raised. The opposite party has not committed any deficiency in service. The complaint is liable to be dismissed.

5. The complainant filed Rejoinder Reply, Affidavit of Evidence of Jatin Aggarwal. The opposite party filed Affidavit of Evidence of Shiv Kumar. The complainant filed short synopsis of the arguments.

6. We have considered the arguments of the parties and examined the record. The preliminary issues raised by the opposite party have no substance. For excluding a home buyer from the definition of 'consumer' as defined under Consumer Protection Act, 1986, it is required to be proved that service was availed for 'commercial purpose'. Number of flats/houses owned or booked by the buyer is not decisive as held by Supreme Court in Lilavati Kirtilal Mehta Medical Trust Vs. Unique Shanti Developers, (2020) 2 SCC 265. In the present case the opposite party has not adduced any evidence that the floor was booked for commercial purpose. Supreme Court in

Emaar MGF Land Limited Vs. Aftab Singh, (2019) I CPJ 5 (SC), held that arbitration clause does not exclude the jurisdiction of consumer fora. Value of floor and compensation claimed in the complaint exceed Rs. one crore as such the complaint falls within pecuniary jurisdiction of this Commission.

7. Although, the complainant has concealed the fact that he had purchased the floor from open market in the complaint but in written synopsis, he had admitted that he had purchased the floor in question from Deepak Garg, in December, 2013, who had purchased it from original allottee Mrs. Sadhna Rathee. Payment Plan was "construction link payment plan". So far as timely payment of the instalments, is concerned, the opposite party has stated that the complainant and his predecessors-in-interest were rank defaulter in payment of instalment. Instalments due on (i) 16.04.2011 was paid with delay of 860 days, (ii) 14.03.2012 was paid with delay of 527 days, (iii) 10.05.2013 was paid with delay of 105 days, (iv) 04.06.2013 was paid with delay of 80 days, (v) 05.08.2013 was paid with delay of 57 days, (vi) 21.09.2013 was paid with delay on 24 days and (vii) 04.09.2017 was paid with delay of 73 days. The opposite party issued demand notice dated 09.11.2016, for Rs.993376.94, which was not paid. These facts have not been disputed by the complainants. Although from 07.12.2016 till 21.07.2022, the complainant did not demand possession but the opposite party did not cancel the agreement nor returned his money as such, agreement still exist. Now the complainant wants possession of the floor in question as such relief for possession can be granted.

8. So far as delayed compensation is concerned, the agreement does not contain any clause for payment of delayed compensation. Clause-11(b) of the agreement provides for extension of period, for which, the construction was delayed for force majeure reasons. The opposite party stated that the construction could not be started due to interim order dated 06.04.2010, passed in CWP No. 6230 of 2010 Tara Chand Vs. M/s. DLF Homes Panchkula (P) Ltd. of Punjab and Haryana High Court and thereafter due to order of Supreme Court, dated 19.04.2012

passed in SLP (C) No.21786-21788 of 2010, which was dismissed vide order dated 12.12.2012. The opposite party submitted revised layout plan on 04.03.2013, which was approved on 06.09.2013 and service plan was approved on 14.08.2014. The complainant did not dispute these facts. For force majeure reason, the construction could not proceed till 12.12.2012 and the opposite party is entitled for extension of the period for which stay order was operative. The complainant purchased the floor in December, 2013 as such the period of 24 months has to be counted from the date of his transfer deed as held by Supreme Court in DLF Homes Panchkula Private Ltd. Vs. D.S. Dhanda, (2020) 16 SCC 318 and Laureate Buildwell Private Ltd. Vs. Charanjeet Singh, 2021 SCC OnLine SC 479.

9. Supreme Court in Wg. Camdr. Arifur Rahman Khan Vs. DLF Southern Theme Pvt. Ltd. (2020) 16 SCC 512, held that in case of delay in handing over possession, the home buyer is entitled for compensation in the form of interest @6% per annum on his deposit. The complainant would be entitled to delayed compensation from January, 2016 till the offer of possession on 31.05.2017.

ORDER

In view of the aforesaid discussions, the complaint is partly allowed. The opposite party is directed to issue a fresh demand letter in terms of agreement, adjusting delayed compensation in the form of interest @6% per annum on the deposit of the complainant from January, 2016 till 31.05.2017. The opposite party shall charge interest after 01.06.2017 @9% per annum on the amount to be paid by the complainant. The opposite party will give six weeks' time to the complainant to deposit the amount. On deposit of the amount, the opposite party shall execute conveyance deed in favour of the complainant and handover possession of the floor, complete in all respect as per specification without any further delay.