

M/S. FERROUS INFRASTRUCTURE PVT. LTD. V. MEGHANA SINGH

1. M/S. FERROUS INFRASTRUCTURE PVT. LTD.
PLAT NO. 1327,2ND FLOR, NEAR ARDEE CITY RELIGHT,
SECTOR-43, GURGAON, HARYANA

.....Appellant(s)

Versus

1. MEGHANA SINGH
W/O DR. SANJEEV KUMAR,R/O PACIFIC-702, BT-11,
OMAXE HEIGHTS, SECTOR-86, FARIDABAD-121002,
HARYANA

.....Respondent(s)

Case No: FIRST APPEAL NO. 192 OF 2021

Date of Judgement: 04 Jan 2023

Judges:

HON'BLE MR. DINESH SINGH,PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE,MEMBER

For the Appellant : Mr. Praglabh Bhardwaj, Advocate for Ms. Namitha Mathews, Advocate

For the Respondent : Mr. Kuldeep Mansukhani, Advocate

Facts

Matter pertains to a residential unit booking through agreement dated 23.09.2008. Assured possession date was 36 months from start of construction or agreement date. Complainant made payments through construction-linked plan as demanded by builder. Possession not delivered even after over 7 years from assured date. Complainant filed consumer complaint seeking refund with interest for delay. State

commission allowed complaint directing refund of deposited amount with 7% p.a interest.

Court's Elaborate Opinions

Builder co. completely failed to fulfill its responsibilities of project execution and delivery as per agreed timeframe. Abnormal, unreasonable and unjustified delay in offering possession establishes deficiency in service. Occupancy certificate still not obtained even after over 11 years from booking. Blanket force majeure clause cannot justify habitual delays by builder. Consumer has twin rights in such situations – either possession with compensation or refund with compensation. Seeing the gross delay and uncertainty, only possible relief is refund with reasonable compensation. Builder dutybound to refund deposited amount; 7% annual interest justified.

Arguments by Parties

Appellant Builder:

Seeking opportunity to deliver physical possession without occupancy certificate. Force majeure clause applicable for delay; no deficiency in service. Compensation through interest not warranted.

Respondent Complainant:

Supporting state commission order for refund with interest. Unreasonable delay shows deficiency in service. Physical possession without occupancy certificate meaningless.

Sections

Appeal under Section 51(1) against state commission order.

Referred Laws

Consumer Protection Act 1986 / 2019.

The National Commission concurred with state commission's well-reasoned order and dismissed builder's appeal.

Full Text of Judgment:

1. This appeal has been filed under section 51(1) of the Act 2019 in challenge to the Order dated 21.07.2020 of the State Commission in complaint no. 971 of 2018.

2. Learned counsel for the respondent (the 'complainant') is present. Learned proxy counsel appears for the appellant (the 'builder co. '); the learned counsel is not present. Learned proxy counsel submits that he is making his submissions on instructions.

3. We have heard the learned counsel and have perused the record.

4. The appeal has been filed with reported delay of 204 days. There is no application for condonation of delay.

However, in the interest of justice, to provide fair opportunity to the appellant builder co., to decide the matter on merit rather than to dismiss it on the threshold of limitation, the delay in filing the appeal is condoned.

5. The matter relates to a builder-buyer dispute. Briefly, the builder co. entered into an agreement with the complainant on 23.09.2008 in respect of a residential unit. The complainant inter alia took loan from a financial institution. Since it was a construction-linked plan, the payments were released by the financial institution on the basis of demands made by the builder co. from time to time. The assured date for delivery of possession of the subject unit was 36 months from the date of start of construction of the concerned tower or the date of execution of the agreement whichever was later. The same expired on 22.09.2011. Delivery of possession was not made within the assured period, nor was it even made within a reasonable period thence (reasonable period here would connote a period which may appear reasonable per se and which a reasonable man of ordinary prudence would not normally agitate or object to). The State Commission ordered the builder co. to refund the deposited amount with compensation in the form of

simple interest at the rate of 7% per annum from the respective dates of deposit till actual realisation.

6. Learned counsel for the builder co. submits that rather than refund of the deposited amount the State Commission ought to have ordered for delivery of possession of the subject unit. He however admits that even till date the occupancy certificate has not been obtained. Learned counsel further draws attention to the force majeure clause in the agreement and submits that delay in supply of materials and delay in approvals was a

“force majeure condition” and therefore the delay in offering possession beyond the assured date was not deficiency in service. Submission in a nutshell is that the complainant may be directed to take delivery of the subject unit in its present condition on an as-is-where-is basis without occupancy certificate and also that no compensation for delay in delivery of possession is warranted since the delay was due to “force majeure condition”.

7. Learned counsel for the complainant submits that the payments were made way back in 2008-2011. The possession was not offered within the assured period or even within a reasonable period thence. The subject unit still suffers from lack of occupancy certificate. Force majeure cannot be irrationally argued for anything and everything related to the builder co.'s own responsibilities. Submission in brief is that since no meaningful legitimate possession of a fully constructed and developed unit can be made by the builder co. even today, the only logical alternative is the refund of the deposited amount with reasonable compensation.

8. A perusal of the State Commission's impugned Order shows that it is a well-appraised and reasoned order and has aptly dealt with the issues germane to the dispute.

9. In the context of the submissions made by the learned counsel, it may be observed, to place the whole matter in perspective, that prior to, or, at the least, simultaneous to, getting the buyer-consumer to enter into its agreement and accepting the first payment towards the total cost of the

subject unit, the builder co. was required and expected to have the due pragmatic and realistic assessment and preparation of the project planning. It was the prime responsibility of the builder co. to ensure that it was in a position to deliver possession of the subject unit to the buyer-consumer within the agreed and assured period. Planning, execution and completion were the builder co.'s responsibility, and not of the consumer; (normal) impediments or problems that may arise in planning, execution and completion were again its own responsibility, and not of the consumer. Specifically, availability of land, as well as all approvals from the concerned government, development and municipal authorities, as and when due, being fundamental basic requirements of a residential housing project, were decidedly to be taken care of and dealt with by the builder co. Time and cost overruns were essentially within the domain of its own duty and obligation. Non-fulfilment of its overall responsibilities of project planning, execution and completion can not be, and are not, grounds for condoning or overlooking delay in completion and failure to deliver possession within the assured period. All-encompassing blanket plea of force majeure, unforeseeable circumstances, irrespective of its various 'liberal' or 'strict' interpretations, and irrespective of its various interpretations in different sets of facts, cannot be nebulously and irrationally articulated in the agreement, or be successfully contended and argued as omnibus defence for anything and everything related to the builder co.'s failure to fulfil its responsibilities for completion of the project without time or cost overruns. Abnormal, unreasonable and unjustified delay beyond the assured period is writ large in the present case. It is a well settled position that in such situation two parallel rights accrue to the consumer: one : possession of the subject unit, if and when the subject unit is duly constructed and developed, along with just and equitable compensation under the Act 1986 / 2019 for the delay. or two : refund of the amount deposited along with just and equitable compensation.

In the instant case, seeing the abnormal, unreasonable and unjustified delay, and considering that even till date the occupancy certificate has not been obtained, the only possible relief can be the refund of the deposited amount along with reasonable compensation.

10. As such, the State Commission's award cannot be faulted. There can be no two opinions that the builder co. is dutybound to refund the amount deposited by the complainant. Regarding the compensation given by way of interest on the deposited amount, in the overall facts and circumstances of the case and taking into account the patent deficiency on the part of the builder co. by way of the abnormal, unreasonable and unjustified delay, and considering the continuing protracted uncertainty and difficulty faced by the complainant, the rate of interest of 7% per annum adopted by the State Commission appears to be quite reasonable and justified, the compensation granted appears to be commensurate with the loss and injury suffered by the complainant.

11. The appeal, being bereft of worth, is dismissed. The award made by the State Commission is confirmed. The same shall be made good forthwith, failing which the State Commission shall undertake execution, for 'enforcement' and for 'penalty', as per the law.

12. 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 also requested to upload this Order on the website of this Commission immediately.