

MADHU CHHIBBER V. GREENBAY INFRASTRUCTURE PRIVATE LIMITED & 5 ORS.

1. MADHU CHHIBBER

.....Complainant(s)

Versus

1. GREENBAY INFRASTRUCTURE PRIVATE LIMITED & 5 ORS.
7th FLOOR, INSIGNIA BUILDING,PLOT 1D, SECTION 126,
NOIDA EXPRESSWAY,NOIDA-201303 UTTAR PRADESH.

2. CHIEF MANAGING DIRECTOR

GREENBAY INFRASTRUCTURE PRIVATE LIMITED. RZ-D-
5, MAHAVIR ENCALVE, NEW DELHI-110045

3. ORRIS INFRASTRUCTURE PVT.LTD.

ORRIS HQ, M.G. ROAD,GURAON 122002

4. VIJAY GUPTA

CHIEF MANAGING DIRECTOR, ORRIS INFRASTRUCTURE
PVT. LTD. ORRIS GQ, M.G. ROAD, GURAON 122002

5. RAKESH GUPTA

DEPUTY MANAGING DIRECTOR, ORRIS
INFRASTRUCTURE PVT. LTD. ORRIS GQ, M.G. ROAD,
GURAON 122002

6. YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT
AUTHORITY

1st FLOOR, COMMERCIAL COMPLEX, P-2, SECTION-
OMEGA I, UTTAR PRADESH-201308

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 1135 OF 2018

Date of Judgement: 13 Jan 2023

Judges:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER
HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Ms. Kanika Agnihotri, Advocate
Ms. Yashodhara Gupta, Advocate

For the Opp.Party : For Opposite Party-1 &2: Mr. Ankit Singhal, Advocate

Mr. Sushant Kandwal, Advocate

Mr. Uday Pratap Singh, Advocate

For Opposite Party No.6 : Mr. Parangat Pandey, Advocate

Facts:

Complainant booked a plot in 'Greenbay Golf Village' project launched by OPs in 2012. Paid Rs. 1.2 crores between 2012-2015 towards plot allotted. As per Confirmation Letter, possession was to be given within 18 months + 3 months grace period. Due date expired on 16.4.2014. Several assurances given by OPs regarding completion and possession, but not received. Site visit revealed no development done due to land dispute between original land owners and authorities. Complaint filed before consumer forum seeking refund with interest and compensation.

Court's Opinion:

Complainant is a consumer under Consumer Protection Act. Preliminary objections regarding jurisdiction have no merit. Interim orders by Allahabad HC in writ petitions filed by farmers stalled development work and possession cannot be given. As per judgements of SC, inordinate delays entitle buyer to refund with interest. No possibility of handing over possession in near future. Complainant entitled to refund of paid amount with interest in view of contractual terms and SC judgements.

Arguments:

Complainant:

Did not receive possession despite assurances and expiry of due date as per Confirmation Letter. No development done at site due to land disputes. Entitled to refund as per contract and SC judgements.

OPs:

Development stalled due to court orders in farmers' cases which are force majeure events. Complainant knew the facts. Complainant is an investor, not a consumer. Issue complicated needing evidence, so complaint not maintainable.

Sections:

Consumer Protection Act, 1986

Cases cited/referred:

Ganeshlal v Shyam – SC 2014; Dr JJ Merchant v Shrinath Chaturvedi – SC 2002; Fortune Infrastructure v Trevor D'Limba – SC 2018; Pioneer Urban Land v Govind Raghavan – SC 2019

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Full Text of Judgment:

1. Heard Ms. Kanika Agnihotri, Advocate, for the complainant and Mr. Ankit Singhal, Advocate, for opposite parties-1 and 2.
2. Madhu Chhibber has filed above complaint for directing Greenbay Infrastructure Pvt. Ltd. to (i) refund Rs.12001000/- along with interest @15% per annum from the date of deposit till the date of refund, (ii) pay Rs.5000000/- as compensation for concealments and misrepresentation, (iii) pay Rs.2000000/- as compensation for mental agony and harassment, (iv) pay Rs.2000000/- as the cost of litigation; and (v) Any other relief which is deemed fit and proper, in the facts and circumstances.
3. The complainant stated that Greenbay Infrastructure Private Limited and Orris Infrastructure Private Limited (the opposite

parties) were companies, incorporated under the Companies Act, 1956 and engaged in the business of development and construction of residential and commercial buildings and selling its unit to the prospective buyers. Orris Infrastructure Private Limited created Greenbay Infrastructure Private Limited (the developer) as a Special Purpose Vehicle for development of the project "Greenbay Golf Village". In the year 2012, the developer launched a project of township in the name of "Greenbay Golf Village" at plot TS-06, Sector-22-D, Yamuna Expressway, district Gautam Budh Nagar and made wide publicity of its amenities and facilities. The complainant booked a plot, in this project on 28.03.2012 and deposited Rs.500000/- on 28.03.2012, Rs. 1120000/- on 28.03.2012 and Rs.1620000/- on 11.04.2012. The developer issued an Allotment Letter dated 21.04.2012, allotting Plot No. 71, Block-B, super area 500 sq.yrd. and a Confirmation letter on 16.07.2012. As per demand of the developer, the complainant deposited Rs.1620000/-, on 15.05.2012, Rs.1330000/- on 09.03.2013, Rs.1530000/- on 01.10.2013, Rs.1380000/- on 01.06.2014, Rs.1500000/- & Rs.330000/- 06.06.2014 and Rs.1080000/- 04.09.2015. Clause-4.1 of the Confirmation letter provides 18 months period from the date of confirmation for delivery of possession with grace period of 90 days. Due date of possession including grace period expired on 16.04.2014. The complainant inquired from the developer through email dated 06.06.2015 about date of delivery of possession. The developer, vide email dated 15.06.2015, informed that road work was completed and possession would be delivered soon. By a subsequent email dated 18.06.2016, the developer informed that the project is ready and possession would be delivered till June/July, 2016. Even after expiry of one year, the possession was not offered. The complainant vide letter dated 05.06.2017, inquired about reasons for delay. Then the developer informed that they have applied for issue of "completion certificate". The complainant then wrote a letter to opposite party-6 on 03.10.2017 but no reply was given. The developer, vide letter dated 18.10.2017, offered possession

and demanded balance amount. The complainant then went on site and found that there was no development at all. On inquiry, the complainant came to know that an area of 35329.97 sq.mtrs of the project land was under dispute with the farmer, who were original owners, due to which, the developer was not able to proceed with any development work over part of the project land. The complainant filed a complaint before RERA Authority, U.P., for refund of her amount along with other consequential reliefs, in which the notice has been issued to the developers vide order dated 01.11.2017. The developer then issued a letter dated 04.11.2017, informing that letter dated 18.10.2017 was erroneously issued. The complainant then gave a letter dated 12.11.2017 to the opposite party for refund. In spite of service of this letter opposite party did not respond. The complainant filed withdrawal application dated 07.03.2018 before RERA Authority U.P. This complaint was filed on 08.05.2018, alleging deficiency in service on the part of the developer.

4. The opposite parties-1 to 5 contested the complaint and filed its written reply on 08.10.2018, in which, material facts have not been denied. It has been stated that the farmer raised agitation in 2011, against acquisition of the land by State Government. They also filed various writ petitions before Allahabad High Court, challenging the land acquisition, in which interim orders had been passed. Although Yamuna Expressway Industrial Development Authority, allotted the land of Plot No.- TS-6, Secore-22-D, Noida to the developer on 17.02.2011 and executed lease deed dated 28.03.2012, but actual possession over the land could not be handed over due to farmer's agitation and interim orders passed by Allahabad High Court, in various writ petitions filed by the farmers. Due to prevalent force majeure, the development work was being delayed. The farmer's agitations and interim orders passed by Allahabad High Court had been widely reported in the newspapers time to time. The complainant invested money in this project, knowing entire facts. Possession over the plot in dispute cannot be given, during continuance of interim

orders passed by High Court. Preliminary objections that (i) the complainant is not a consumer rather investor and the complaint is not maintainable, (ii) Confirmation agreement contains an arbitration clause as such the complainant be relegated to go before Arbitrator and (iii) in the allegation of fraud has been made, which can only be adjudicated by civil court, are also raised

5. The complainant filed their rejoinder reply on 12.04.2019 and Affidavit of Evidence of Madhu Chhibber. The developer filed Affidavit of Evidence of Naveen Sharma. Both the parties have filed various documentary evidence. Both the parties have filed their written arguments. The opposite parties also filed an amended written synopsis.

6. We have considered the arguments of the counsel for the parties and examined the record. The preliminary objections have no force. The opposite party did not file any evidence to prove that the complainant was purchasing and selling immovable property. The counsel for the opposite party relying upon judgment of Supreme Court in Ganeshlal Vs. Shyam (2014) 14 SCC 773, submitted that as the complainant has purchased the plot as such she cannot be treated as a consumer. In the present case, the complainant purchase residential plot in development project of the opposite parties. It is not a simple sale of immovable property but linked with services of development as promised by the opposite party, which is covered in the definition of "service" as defined under Consumer Protection Act, 1986. So far as arbitration clause in the Confirmation is concerned, Arbitration and Conciliation Act, 1996 does not exclude jurisdiction of consumer foras.

7. A Bench of three Judges of Supreme Court in Dr. J.J. Merchant Vs. Shrinath Chaturvedi, (2002) 6 SCC 635, (paragraph-7) held that the object and purpose of the Act is to render simple, inexpensive and speedy remedy to the consumer with complaint against defective goods and deficient services, it being a benevolent piece of legislation, intended to protect a large body of consumer from exploitation. Consumer Forum is an alternate Forum, established under the

Act, to discharge the function of Civil Court. The argument that the complicated question of fact cannot be decided by the Forum, has been specifically rejected (In paragraph-12). Consumer foras can decide "unfair trade practice", which is pari materia with the definition of fraud. Similar view has been taken in Amar Jwala Paper Mills Vs. State Bank of India, (1998) 8 SCC 387, CCI Chambers Coop. Hsg. Society Ltd. Development Credit Bank Ltd. (2003) 7 SCC 233. This view has been reaffirmed by three Judges Bench of Supreme Court, in IFFCO TOKIYO General Insurance Company Ltd. Vs. Pearl Beverages Ltd., 2021 SCC OnLine SC 309.

8. The complainant booked the plot, in this project on 28.03.2012 and deposited Rs.12010000/- between 28.03.2012 to 04.09.2015. However, due to interim orders passed by Allahabad High Court, in various writ petitions filed by the farmers, no progress in the project has been done. There is no possibility that the developer would be able to hand over possession over the developed plot allotted to the complainant, in near future. Clause-4.1 of the Confirmation letter provides 18 months period from the date of confirmation for handing over possession, which expired on 16.01.2014. Supreme Court in Fortune Infrastructure Vs. Trevor D' Limba, (2018) 5 SCC 442, Pioneer Urban Land & Infrastructure Ltd. Vs. Govind Raghavan, (2019) 5 SCC 725, Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, 2019 (6) SCALE 462, Wg.Cdr. Arifur Rahman Khan Vs. DLF Southern Homes Pvt. Ltd., (2020) 16 SCC 512, held that in case of inordinate delay in offer of possession, the buyer was entitled for refund of money.

O R D E R

In view of aforementioned discussions the complaint is allowed. The opposite party is directed to refund entire amount deposited by the complainant with interest @9% per annum, from the date of respective deposit till the date of refund, within a period of two months from the date of this judgment.