

MANAGER, SAHARA CITY HOMES SALES & MARKETING CORPORATION V. KHALEEQ UZZAMAN KHAN

1. MANAGER, SAHARA CITY HOMES SALES &
MARKETING CORPORATION & ANR.
SAHARA INDIA CENTRE-2, KAPOORTHALA COMPLEX,
ALIGANJ.
LUCKNOW-226024.

U.P.

2. SAHARA INDIA COMMERCIAL CORPORATION
LIMITED.
(INFRASTRUCTURE & HOUSING DIVISION). THROUGH
ITS MANAGING DIRECTOR/MANAGER. SAHARA INDIA
CENTRE-2, KAPOORTHALA COMPLEX, ALIGANJ.
LUCKNOW-226024.

U.P.

.....Appellant(s)

Versus

1. KHALEEQ UZZAMAN KHAN
PERMANANT RESIDENCE:- R/O. 49/1, MAHEWA.
ALLAHABAD.
U.P.

.....Respondent(s)

Case No: FIRST APPEAL NO. 1524 OF 2019

Date of Judgement: 18 Jan 2023

Judges:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

For the Appellant : For the Appellants : Ms. Neha Gupta, Advocate
For the Respondent : For the Respondent : Mr. Sahil Chowdhury,
Advocate

Facts:

This is an appeal filed by the Managers of Sahara City Homes Sales & Marketing Corporation and Sahara India Commercial Corporation Limited (the builder company) against the order dated 29/08/2018 passed by the State Commission, Uttar Pradesh in complaint no. 164 of 2017 filed by Khaleeq Uzzaman Khan (the complainant). The complainant had booked a flat with the builder company and paid Rs. 44,31,900 towards the booking. The State Commission partially allowed the complaint and directed the builder company to refund the amount of Rs. 44,31,900 with simple interest @ 18% p.a. from the respective dates of deposits till realization. It also awarded Rs. 10,000 as litigation cost to the complainant.

Court's Elaborate Opinions:

The Presiding Member notes that this is a builder-buyer dispute and summarizes the impugned order passed by the State Commission (para 3). The builder company's counsel submits that they are willing to refund the deposited amount of Rs. 44,31,900 with interest @ 11% p.a. from the respective dates of deposits along with litigation cost of Rs. 10,000. She also submits that any amount already paid in compliance with the Commission's earlier order may be adjusted. She requests that this case may not be treated as a precedent (para 4). The complainant's counsel submits that the aforesaid terms are acceptable if compliance is made in a time-bound manner (para 5). The builder company undertakes to comply within 8 weeks. In light of the undertakings, nothing survives for adjudication in the appeal (para 6-7). The appeal is disposed of with directions to the builder company to refund Rs. 44,31,900 with interest @ 11% p.a. from respective dates of deposits till realization along with litigation cost of Rs.

10,000 within 8 weeks after adjusting any amount already paid. Residual amount to be paid by builder company, failing which execution and penalty proceedings may be initiated (para 7). The order is made on consent and shall not be treated as a precedent (para 8).

Arguments:

Builder Company:

Willing to refund deposited amount of Rs. 44,31,900 with 11% p.a. interest from respective dates of deposits till realization along with litigation cost of Rs. 10,000 (para 4) Any amount already paid may be adjusted in refund (para 4) Requests order to not be treated as a precedent (para 4, 8)

Complainant:

Accepts aforesaid terms provided compliance is done in a time-bound manner (para 5)

Sections:

No sections have been cited.

Referred Laws:

The appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (para 1). Reference made to execution and penalty proceedings as per law in case of default by builder company (para 7).

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Court

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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 29.08.2018 of the State Commission in complaint no. 164 of 2017.

2. Heard the learned counsel for the appellants (the 'builder co.')

 and for the respondent (the 'complainant'). Perused the record.

3. The matter pertains to a builder-buyer dispute.

The award made by the State Commission vide its impugned Order dated 29.08.2018 is reproduced below for reference:

The complaint is partially allowed. The opposite parties are directed to refund the total deposited amount of Rs. 44,31,900/- to the Complainant along with simple interest @ 18% from the from the date of respective deposits till the date of actual payment. The complainant will be entitled to get litigation cost of Rs. 10,000/- from the opposite parties jointly and severally. All these amounts shall be paid within a period of 60 days from the date of this Judgement and Order. No order to other costs.

4. Learned counsel for the builder co. submits, on instructions, that the builder co. is willing to refund the amount of Rs. 44,31,900/- deposited by the complainant with interest at the rate of 11% per annum from the respective dates of deposit till actual realisation along with Rs.10,000/- as cost of litigation. She also submits that the amount if any already paid to the complainant in compliance of this Commission's interlocutory Order dated 27.01.2022 may be duly adjusted therein. 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 are acceptable to the complainant, provided the compliance in its entirety is made in a time-bound manner.

6. Learned counsel for the builder co. submits, on instructions, that the compliance 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 following directions:

The award made by the State Commission is modified to the extent that the builder co. shall refund the amount of Rs.

44,31,900/- deposited by the complainant with interest at the rate of 11% per annum from the respective dates of deposit till actual realisation along with Rs. 10,000/- as cost of litigation. The amount if any already paid to the complainant in compliance of this Commission's interlocutory Order dated 27.01.2022 shall be duly adjusted therein. The residual amount of the award, as firmed-up herein, shall be made good by the builder co. within eight weeks from today, failing which the State Commission shall undertake execution, for 'enforcement' and for 'penalty', as per the law.

8. This Order has been made on consent. As such the decision in this case shall not be treated as a precedent.

9. 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.

'Dasti', in addition, to both sides.