

OMAXE CHANDIGARH EXTENSION DEVELOPERS PVT. LTD. & ANR. v. JUGAL KISHORE SETH

OMAXE CHANDIGARH EXTENSION DEVELOPERS PVT. LTD. & ANR.

...Appellant

JUGAL KISHORE SETH

...Respondent

Case No: FIRST APPEAL NO. 233 OF 2019

Date of Judgement: 02 November 2023

Judges:

SUBHASH CHANDRA – PRESIDING MEMBER

DR. SADHNA SHANKER – MEMBER

For Appellant: MR SUNIL MUND AND MR VENDANT MUND,
ADVOCATES

For Respondent: MS KASHISH KHURANA,
MR JUGAL KISHOR SETH, ADVOCATES

Facts:

In August 2014, Mr Sandeep Bhalla and Smt Monika Bhalla (original allottees) applied for allotment of flat no. TLC/ Victoria – A/ Fourth 401 in “the Lake” project developed by Omaxe Chandigarh Extension Developers Pvt. Ltd. The total sale consideration was Rs.70,90,556/-. On 20.12.2014, an allotment letter/buyer agreement was forwarded to the allottees. On 20.08.2015, the allottees and respondent Mr Jugal Kishore Seth undertook that the construction period shall be reckoned from the date of endorsement and no compensation for delay would be claimed. The unit was endorsed to the respondent on 20.08.2015. Omaxe had undertaken to complete the project within 42 months plus 6 months grace period. However, no agreement was signed between the parties.

Between May 2016 to March 2018, the respondent made payments totaling to Rs.50,73,563.93 in instalments after reminders and pre-cancellation notices. The respondent admittedly stays abroad and execution of allotment was withheld on his request till 12.04.2018. The respondent approached the State Commission seeking refund with interest, compensation and costs for deficiency in service.

State Commission Order:

The State Commission vide order dated 17.12.2018 partly allowed the complaint with costs and directed Omaxe to:

Refund Rs.50,73,563.93 to respondent with interest @12% p.a. from respective dates of payments. Pay compensation of Rs. 1 lakh for mental agony and price escalation. Pay litigation costs of Rs. 33,000. If respondent has availed any loan, the lending institution will have first charge on refund up to amount due. The amounts in (i) and (iii) to be paid within 2 months, failing which they will carry penal interest @14% p.a. instead of 12%. Interest @12% will apply on amounts in (ii) and (iii) from date of filing complaint till realization.

Arguments by Appellant:

Hon'ble Supreme Court has been directing refund with interest of 9% instead of 12%. Appellants have already deposited Rs. 65,79,700 on 23.09.2019 with the Commission including principal and interest @9%. Hon'ble Supreme Court and this Commission has ordered refund at 9% interest in similar cases. Compensation by way of multiple reliefs for a single default is not justified.

Arguments by Respondent:

Order of State Commission for refund, compensation and costs due to deficiency should be upheld. Amount should be released to respondent at the earliest.

Commission's Order:

Facts:

In August 2014, original allottees applied for flat no. TLC/ Victoria – A/ Fourth 401 in Omaxe's "the Lake" project for Rs. 70,90,556/-. Buyer agreement forwarded on 20.12.2014. Parties agreed to reckon construction period from 20.08.2015 when unit endorsed to respondent.

Omaxe undertook to complete in 42 months + 6 months grace but no agreement signed. Between May 2016-March 2018, respondent paid Rs. 50,73,563.93 in installments after notices. Respondent sought refund before State Commission for deficiency in service.

State Commission Order:

Directed Omaxe to:

Refund amount of Rs. 50,73,563.93 with interest @12% p.a.. Pay compensation of Rs. 1 lakh. Pay litigation costs of Rs. 33,000. Amounts in (i) and (iii) to carry penal interest @14% if not paid within 2 months. Interest @12% on (ii) and (iii) from complaint filing till realization.

Arguments by Appellant:

Hon'ble Supreme Court has ordered refund with 9% interest. Appellants deposited Rs. 65,79,700 on 23.09.2019 including principal and interest @9%. Compensation by way of multiple reliefs for single default not justified.

Arguments by Respondent:

State Commission order should be upheld. Amount should be released at the earliest.

Commission's Order:

Principal amount of Rs. 50,73,563.93 to be refunded with interest @9% p.a. from respective dates of deposit till 23.09.2019. Rs. 65,79,700 already deposited to be adjusted. Compensation of Rs. 1 Lakh set aside. Litigation costs of Rs. 33,000 to be paid. Order to be complied within 4 weeks.

Cases Referred:

The Commission referred to the following judgments of Hon'ble Supreme Court:

Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, CA No. 6044 of 2019 decided on 07.04.2022. Interest payable should be restitutionary and compensatory. 9% interest is fair and just compensation.

DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda, CA Nos. 4910-4941 of 2019 decided on 10.05.2019. Multiple reliefs for a singular default is

not justified. Interest @ 9% is fair.

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Court

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Full Text of Judgment:

1. The present appeal has been filed against the judgment dated 17.12.2018 of the State Consumer Disputes Redressal Commission, UT Chandigarh (in short, 'the State Commission') in Consumer Case no. 225 of 2018.

2. The relevant facts of the case in brief are that in August 2014 Mr Sandeep Bhalla and Smt Monika Bhalla (original allottees) applied for allotment of flat bearing no. TLC/ Victoria- A/ Fourth 401 in "the Lake" in the residential project "Omaxe New Chandigarh" developed on a portion of land situated at New Chandigarh, District SAS Nagar, Punjab for a total sale consideration of Rs.70,90,556/-. On 20.12.2014, an allotment letter/ buyer agreement was forwarded to the original allottees for signature. On 20.08.2015 the original allottees and the respondent herein undertook that the development/ construction period of the unit as per the agreement shall be reckoned with effect from the date of endorsement and no compensation for any delay in the offer of possession would be claimed. The unit was endorsed in favour of the respondent on 20.08.2015 by the appellant. The appellant had undertaken to complete the project within 42 months plus six months grace period. However, no agreement was signed between the parties. The respondent sought refund on the ground of deficiency in service by way of a consumer complaint before the State Commission.

3. Between May 2016 to March 2018 the respondent made payments totalling to Rs.50,73,563.93 in instalments with delays after several reminders and pre-cancellation notices were sent. The respondent admittedly stays abroad and at his request, the execution of allotment was with held till 12.04.2018. The respondent approached the State Commission and prayed for refund of the money paid with interest and compensation on various heads and costs of litigation.

4. Upon contest, the State Commission vide its impugned order dated

17.12.2018 partly accepted the complaint with cost and directed the opposite parties to jointly and severally asunder:

i. To refund the amount of Rs.50,73,563.93 to the complainant along with interest @ 12% per annum from the respective dates of purchase/transfer of the unit onwards;

ii. To pay compensation in the sum of Rs.1.00 lakh for causing mental agony and physical harassment, to the complainant, as also escalation in prices;

iii. To pay cost of litigation, to the tune of Rs.33,000/- to the complainants;

iv. The payment of awarded amounts mentioned at sr nos.(i) and (iii) shall be made within a period of two months from the date of receipt of a certified copy of this order, failing which the amount mentioned at sr no. (i) thereafter shall carry penal interest @ 14% per annum instead of 12% per annum from the date of default and interest @ 12% per annum on the amounts mentioned at Sr no. (ii) and (iii) from the date of filing of this complaint, till realisation.

However, it is made clear that, if the complainant in the aforesaid cases have availed loan facility from any banking or financial institution, for making payment of instalments towards the said unit, it will have the first charge of the amount payable to the extent, the same is due to be paid by them (complainants).

5. We have heard the learned counsel for the appellant as well as the proxy counsel appearing on behalf of the respondent on authority and have carefully perused the record.

6. Learned counsel for the appellant states that the Hon'ble Supreme Court has been directing refund of the amount with 9% interest instead of 12% and the appellants have deposited a sum of Rs.65,79,700/- with this Commission on 23.09.2019 including the deposit received with interest @ 9%. He also stated that the Hon'ble Supreme Court and this Commission in catena of judgments has ordered refund of amounts at the rate of 9% deposited in such case with compensation in the form of interest.

7. The Hon'ble Supreme Court in the case of Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, CA No. 6044 of 2019 decided on

07.04.2022, in DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda, CA Nos. 4910-4941 of 2019 decided on 10.05.2019 has laid down that interest payable should be restitutionary and also compensatory and paid from the date of deposit. It was also held that interest of 9% is fair and just compensation. As regard the award of compensation of Rs.1.00 lakh, the Hon'ble Supreme Court DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda, CA Nos. 4910-4941 of 2019 decided on 10.05.2019 has held that multiple reliefs for a singular default is not justified.

8. Proxy counsel appearing on behalf of the respondent with authority letter has argued that the order of the State Commission be upheld since it had ordered the admitted deficiency of the appellant and had directed refund with compensation and other reliefs. It was argued that the amount be released to the respondent at an early date.

9. In view of the foregoing facts and circumstances of the case we allow the appeal and order as under:

- a. The amount of Rs.50,73,563.93 paid by the respondent towards the consideration of the flat shall be refunded to the respondent with compensation in the form of interest @ 9% per annum from the respective dates of deposit till 23.09.2019 when the decretal amount was deposited in this Commission;
- b. The amount of Rs.65,79,700/- already deposited by the appellant with this Commission shall be adjusted in the final amount to be released;
- c. Amount of Rs.1.00 lakh as compensation awarded by the State Commission is set aside;
- d. Litigation cost of Rs.33,000/- shall be paid to the respondent; and
- e. This order shall be complied with within four weeks.

10. Pending IAs, if any, are also disposed of with this order.