OMKAR YADAV Vs. M/S. SHETH DEVELOPERS PVT. LTD.

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1. OMKAR YADAV

……..Appellants(s)

Versus

1. M/S. SHETH DEVELOPERS PVT. LTD.

……..Respondent(s)

Case No. : EXECUTION APPLICATION NO. 67 OF 2019

Date of Judgement : 06 December 2023

Judges : HON’BLE MR. JUSTICE RAM SURAT RAM MAURYA
HON’BLE BHARATKUMAR PANDYA

For Appellant : MR. JAYESH R. HEMRAJANI, ADVOCATE

For Respondent : MR. RAHUL KRIPALANI, ADVOCATE

MR. ADITYA PRATAP S. CHAUHAN, ADVOCATE

Facts:

- ***Omkar Yadav filed an execution application to execute the decree dated 14.06.2018 passed in CC/1465/2015.***
- ***The decree directed the builder (Sheth Developers Pvt. Ltd.) to:***
    1. ***Complete construction of the flat, provide amenities, obtain occupancy certificate and***

deliver possession by 31.12.2018

2. *Pay compensation @8% p.a. interest from 01.01.2012 till possession delivered*
3. *Pay litigation costs of Rs. 25,000*

- *The builder filed an application seeking extension of time to execute the decree.*
- *By order dated 17.07.2019, the Commission directed the builder to pay delay compensation from 01.01.2012 to 31.07.2019 before 31.07.2019.*
- *Part occupation certificate was obtained on 20.10.2020 and possession was offered on 23.10.2020.*
- *Full occupation certificate was obtained on 17.08.2021.*
- *Delay compensation was paid by builder till 22.10.2020.*
- *The dispute now is regarding delay compensation after 22.10.2020.*

Court's Opinion:

- *Since part occupation certificate was obtained on 22.10.2020 and possession was offered on 23.10.2020, the offer of possession was valid as per the decree.*
- *The buyer is not entitled to further delay compensation after 23.10.2020 when part occupancy certificate was granted and possession offered.*
- *Deduction of TDS on delay compensation by builder is valid as per Supreme Court judgments in Prateek Infra and Nexgen Infracon cases.*
- *Allegation regarding incomplete amenities at time of possession is not proved as part occupation certificate is prima-facie proof of amenities provided.*
- *Costs of Rs. 25,000 imposed by decree dated 14.06.2018 have already been paid.*

Arguments:

Buyer:

- *As per order dated 24.12.2019, delay compensation is*

payable till actual possession is given.

- *Since full occupation certificate was obtained only on 17.08.2021, delay compensation should be paid from 23.10.2020 to 17.08.2021*

Builder:

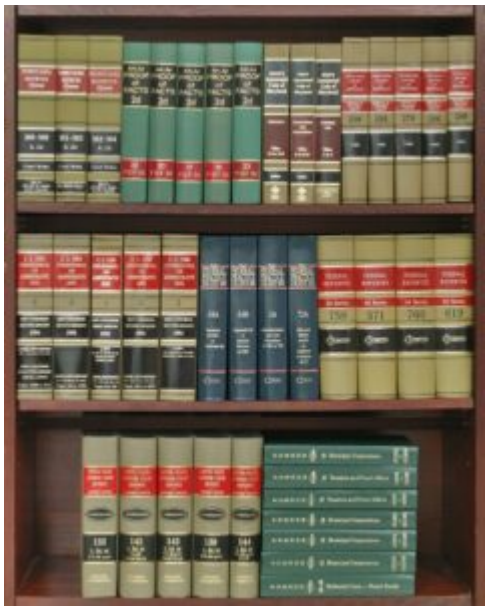
- *Part occupation certificate was obtained on 22.10.2020 and possession offered on 23.10.2020*
- *Not liable to pay any delay compensation after 22.10.2020*

Referred Laws and Sections:

No specific laws or sections have been referred to. The main reference is to the Supreme Court judgments:

- *Prateek Infra Projects India Pvt. Ltd. vs. Nidhi Mittal & Anr. (Civil Appeal No.2504/2020)*
- *M/s Nexgen Infracon Pvt. Ltd. vs. Manish Kumar Sinha & Anr. (Civil Appeal No.62 of 2021)*

Upholding deduction of TDS on delay compensation by builders.



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Full text of Judgement :

1. Heard Mr. Jayesh R. Hemrajani, Advocate, for the decree holder and Mr. Rahul Kriplani, Advocate, for the judgment debtor.
2. Omkar Yadav has filed the above execution application for executing the decree dated 14.06.2018 passed in CC/1465/2015 in which following directions have been issued: –
"(i) The opposite party shall complete the construction of the flat, unless already completed, in all respects, provide all the agreed amenities, obtain the requisite occupancy certificate and then deliver the possession of the flat to the complainant on or before 31.12.2018.
(ii) The opposite party shall pay compensation in the form of simple interest @ 8% per annum to the complainant on the entire amount paid by him with effect from 01.1.2012 till the date on which the possession, in terms of this order, is actually delivered.
(iii) The opposite party shall pay a sum of Rs.25,000/- as the cost of litigation to the complainant."

The opposite party has filed reply in the above execution application. Subsequently, the opposite party filed an application for extension of the period for executing the decree. This Commission, vide order dated 17.07.2019 directed the judgment debtor to pay delay compensation from 01.01.2012 to 31.07.2019 on or before 31.07.2019 and keep on paying delay compensation from 01.08.2019 regularly on or before 10th of each succeeding month till handing over possession. In pursuance of the order of this Commission, the Directors of the opposite parties have submitted their undertaking before this Commission. Thereafter, the opposite party filed IA/13532/2019 and IA/13754/2019 in which it has been clarified that the delay compensation was payable till the date on which possession in terms of the order of this Commission is actually delivered. Later on, the part occupation certificate was obtained on 20.10.2020 and the opposite party by letter

dated 23.10.2020 offered possession to the complainant. The delay compensation was paid by the opposite party upto 22.10.2020. Later on full occupation certificate was obtained on 17.08.2021. Now, the issue between the parties is in respect of delay compensation after 22.10.2020. According to the decree holder this Commission in the order dated 24.12.2019 has already clarified that delay compensation would be payable till the date on which possession in terms of the order of this Commission is actually delivered. Since in the order dated 14.06.2018 the opposite party was directed to complete the construction of the flat unless already completed, in all respects, provide all the agreed amenities, obtain the requisite occupation certificate and then deliver the possession of the flat to the complainant, therefore the complainant claims that since occupation certificate was obtained on 17.08.2021 and possession was delivered on 24.10.2021, therefore the decree holder is entitled for further delay compensation from 23.10.2020 till 17.08.2021. While according to the judgment debtor as part occupancy certificate has already been obtained on 22.10.2020 and possession was offered on 23.10.2020, therefore the opposite party is not liable to pay delay compensation after 22.10.2020. The second issue between the parties is in relation to the deduction of TDS amount.

I have considered the arguments of the counsel for the parties and examined the record. It is not denied that part occupation certificate was obtained on 22.10.2020 which has been filed alongwith IA/5816/2021 and possession was offered vide letter dated 23.10.2020. Since the statutory authority has issued part occupation certificate in respect of the flat in dispute, therefore offer of possession was valid and possession was offered in terms of the final judgment of this Commission dated 14.06.2018 and the decree holder is not entitled for delay compensation after 23.10.2020.

So far as deduction of TDS on delay compensation is concerned,

the opposite party has relied upon the judgment of Supreme Court in Prateek Infra Projects India Pvt. Ltd. vs. Nidhi Mittal & Anr., Civil Appeal No.2504/2020 dated 05.06.2020; M/s Nexgen Infracon Pvt. Ltd. vs. Manish Kumar Sinha & Anr., Civil Appeal No.62 of 2021 dated 11.01.2021 wherein deduction of TDS by the builder has been upheld. Therefore, it cannot be said that deduction of TDS was not in accordance with law.

The decree holder alleges that at the time of offer of possession, amenities were not complete. The issue of part occupation certificate is prima-facie proof of completion of amenities. The decree holder has not filed any application for issue of Commission. As such the allegation in this respect is not proved. The cost of Rs.25000/- as imposed vide order dated 14.06.2018 has already been paid.

ORDER

In view of the aforesaid discussions, the decree stands fully satisfied. The execution application is disposed of.

–END–