

PARSVNATH DEVELOPERS LIMITED

V. SUMAN RANA

1. PARSVNATH DEVELOPERS LIMITED
6 FLOOR, ARUNACHAL BUILDING 19, BARAKHAMBA
ROAD
NEW DELHI

.....Appellant(s)

Versus

1. SUMAN RANA
W/O. MR. SURENDER RANA, H NO 2, TYPE IV, CRPF
COMPLEX, HALLO MAJRA
CHANDIGARH

.....Respondent(s)

Case No: FIRST APPEAL NO. 32 OF 2019

Date of Judgement: 06 Jan 2023

Judges:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

For the Appellant : Mr. Prabhakar Tiwari, Advocate

For the Respondent : Mr. Shikhar Singhal, Advocate with
Mr. Honey Gola, Advocate

Facts:

It is a builder-buyer dispute regarding a residential unit booked by complainant Suman Rana. Builder Parsvnath Developers Limited and complainant entered into an agreement for the unit. Complainant paid Rs. 20,40,095/- as booking amount. Possession was not offered within committed

timeline. Complainant filed consumer complaint seeking refund with interest. State Commission directed builder to refund paid amount of Rs. 20,40,095/- along with interest @ 12% p.a. till realisation. It also awarded compensation of Rs. 50,000/- for harassment and Rs. 21,000/- as litigation cost. Builder has filed the present first appeal challenging State Commission's order.

Arguments by Builder:

Builder initially undertook to refund Rs. 11,72,345/- without prejudice to its rights to challenge balance decretal amount. It later offered to refund entire principal deposit of Rs. 20,40,095/- with interest @ 9.5% p.a. It also agreed to pay compensation of Rs. 50,000/- and litigation cost of Rs. 21,000/- as awarded. Builder requested the order should not be treated as a precedent.

Arguments by Buyer:

Buyer confirmed receipt of Rs. 11,72,345/- and accepted builder's revised offer. Buyer submitted revised offer is agreeable if made within a time bound manner.

Court's Decision/Opinion:

On basis of mutual consent, appeal disposed with modification of State Commission's order. Builder directed to refund entire deposit of Rs. 20,40,095/- along with interest @ 9.5% p.a. within 8 weeks. Builder also to pay compensation of Rs. 50,000/- and litigation cost of Rs. 21,000/-. Amount of Rs. 11,72,345/- already paid to be adjusted. Order passed with consent of parties, not to be treated as precedent.

Relevant Sections:

Section 19 – Appeal against order of State Commission; Section 27 – Appeal against execution of order

Cases Referred:

No other cases have been referred.

Conclusion:

Builder's appeal disposed on mutual consent with modification of interest rate from 12% to 9.5% p.a. Builder directed to comply within 8 weeks else execution to be initiated by State Commission. Order not to be treated as precedent since passed on consent terms.

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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 20.08.2018 of the State Commission in complaint no. 323 of 2016.

2. Heard the learned counsel for the appellant (the 'builder co.') and the learned counsel for the respondent (the 'complainant'). Perused the record.

3. The award made by the State Commission as contained in the operative portion of its impugned Order of 20.08.2018 is reproduced below:

20.08.2018

— — —

— — — In such circumstances, it is evidently clear that complainant had already paid a sum of Rs.20,40,095/- and as such the complainant is entitled to get the refund of the amount in all proposition, the possession of the dwelling unit cannot be delivered even in coming years and moreover a period of more than three years have already been expired, hence the O.Ps. are directed to make a payment of Rs.20,40,095/- alongwith interest @ 12% per annum from the date of respective deposits and till realization. Hence this question is answered in affirmative. In case, there is a breach in making payment within the stipulated period of three months in that

eventuality the complainant would further be entitled to get the interest @ 18% per annum, for the defaulting period. The complainant is also entitled of Rs.50,000/- for compensation of mental agony and physical harassment. In addition, the complainant is also entitled of Rs.21,000/- as litigation charges. It is also made clear that for non-compliance, the provisions enshrined under section 27 of the C.P.Act would also be attractable.

The Order dated 02.08.2019 passed by this Commission at the admission stage is also reproduced below:

02.08.2019

Heard learned counsel for the appellant – builder co. Perused the material on record.

The learned counsel for the appellant – builder co. submits, on instructions, that the builder co. shall refund an amount of Rs. 11,72,345/- to the respondent – complainant within four weeks from today, without prejudice to raise its issues and contentions in its first appeal filed before this Commission. He further submits that the issues and contentions in its first appeal before this Commission shall be limited to only the residual decretal amount as awarded by the State Commission i.e. limited to the decretal amount minus Rs. 11,72,345/-. Issue notice to the respondent – complainant, subject to payment of Rs. 10,000/- to the respondent – complainant directly in her name by way of demand draft to cover travel and allied expenses within a period of four weeks from today. The Registry may ensure that the notice is issued and despatched within a period of ten days from today.

And let the notice be 'dasti' in addition. If the amount of Rs. 11,72,345/- is refunded to the respondent – complainant within four weeks from today, as per the afore submissions, the operation of the impugned Order dated 20.08.2018 in respect of the residual decretal amount shall remain stayed till the disposal of this appeal. It is made clear that if the appellant – builder co. fails to comply with the afore submissions, the State Commission shall proceed for execution

of its Order as per the law.

List on 14.10.2019 for further hearing.

4. Taking reference in the afore, learned counsel for the builder co. submits on instructions that the builder co. is willing to refund the deposited amount of Rs. 20,40,095/- with interest at the rate of 9.5% per annum from the respective dates of deposit till actual realization as well as to pay lumpsum compensation of Rs. 50,000/- and cost of litigation of Rs. 21,000/- to the complainant. He also submits that an amount of Rs.11,72,345/- was paid to the complainant in compliance of this Commission's Order dated 02.08.2019 and requests that the same may be duly adjusted therein. Learned counsel further requests that this case may not be treated to be a precedent.

5. Learned counsel for the complainant confirms on instructions the receipt of Rs. 11,72,345/- by the complainant. He further submits on instructions that the afore terms being offered on behalf of builder co. by its learned counsel today are acceptable to the complainant provided the compliance 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 direction that the award made by the State Commission is modified to the extent that the deposited amount of Rs. 20,40,095/- shall be refunded by the builder co. to the complainant with interest at the rate of 9.5% per annum from the respective dates of deposit till actual realization along with Rs.50,000/- as lumpsum compensation and Rs. 21,000/- as cost of litigation. The amount of Rs. 11,72,345/- paid by the builder co. to the complainant in compliance of this Commission's Order dated 02.08.2019 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

forthwith undertake execution, for
'enforcement' and for 'penalty', as per the law.

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

8. 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.

9. 'Dasti', in addition, to facilitate timely compliance.