

POONAM SOOD V. BESTECH INDIA PRIVATE LIMITED

1. POONAM SOOD

198, DOUBLE STOREY, NEW RAJENDER NAGAR, NEW DELHI-110060.

.....Complainant(s)

Versus

1. BESTECH INDIA PRIVATE LIMITED

PLOT NO.124, SEC-44, GURGAON, HARYANA-122002.

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 1940 OF 2016

Date of Judgement: 09 Jan 2023

Judges:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER

HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Mr. Saurabh Anand P., Advocate

Mr. Utsav Jain, Advocate

Mr. Shikha Setia, Advocate

For the Opp.Party : Mr. Manish Sharma, Advocate

Ms. Jigyasa Sharma, Advocate

Facts:

Complainant Poonam Sood booked an apartment in OP Bestech India Pvt Ltd's 'Park View Grand Spa' project in Gurugram after paying booking amount of Rs. 10 lakhs on 27.06.2012. She paid further Rs. 60 lakhs on 21.07.2012. OP issued allotment letter for Unit No. 1501, Tower-H admeasuring 2660 sq ft in the project. Payment plan required Rs. 67,67,838 to be paid at booking and first instalment by 31.08.2013 or on casting of

7th floor roof slab. OP sent demand notice on 01.10.2013 for Rs. 46,22,661 as the amount payable on casting of 7th floor roof slab. Complainant failed to pay this due to financial constraints. Further demands were raised by OP which were also not paid by complainant. On 15.05.2014, complainant emailed OP seeking cancellation and refund after forfeiting earnest money. However, OP continued to send payment reminders. Finally, OP cancelled allotment on 18.05.2015 and forfeited entire Rs. 70 lakhs paid by complainant without any refund. Complaint filed seeking refund with interest, costs etc.

Court's Elaborate Opinion:

As agreement was not executed, the allotment letter terms apply. Clause 9 provides for cancellation on payment default after 75 days with forfeiture of earnest money. First instalment became due on 31.08.2013 or on 7th floor slab casting. OP sent demands on slab casting dates which complainant defaulted owing to financial issues. As per application form, registration amount of Rs. 10 lakhs was named as liquidated damages liable to be forfeited under Clause 9 on cancellation. SC judgment in Kailash Nath Associates case says only reasonable pre-estimated liquidated damages can be forfeited on breach of contract, not the entire deposit. In the absence of buyer's agreement, forfeiture of registration amount constitutes reasonable liquidated damages.

Arguments by Complainant:

Seeking refund of entire Rs. 70 lakhs deposited with 18% interest since no loss was caused to OP. Forfeiture of amount without execution of buyer's agreement is illegal based on SC and NCDRC judgments. At best only earnest money can be forfeited, not the entire deposit.

Arguments by Opposite Party:

Complainant defaulted despite several payment reminders.

Allotment was rightly cancelled forfeiting her deposit as per terms. Unit was subsequently sold in 2019 at a loss of Rs. 56 lakhs compared to original allotment proving financial loss due to complainant's default. Statutory taxes paid by company also justify forfeiture of deposit.

Sections:

No sections have been mentioned.

Cases Referred/Cited:

Kailash Nath Associates vs DDA – JT 2015 (1) SC 164; NCDRC case – DLF Ltd vs Bhagwanti Narula I (2015) CPJ 319 (NC); HUDA vs Kewal Krishan Goel (1996) 4 SCC 249

Referred Laws:

Companies Act 1956 for registration of OP company.

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Court

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Full Text of Judgment:

1. Heard counsel for the parties.
2. Mrs. Poonam Sood, has filed above complaint for directing the opposite party to (i) refund of entire money of Rs.70 lakhs with interest @18% p.a. compounded quarterly from 22 July 2012 till the date of actual payment; (ii) grant compensation for harassment; (iii) grant cost of the litigation and (iv) any other relief which is deemed fit and proper in the facts and circumstances of the case.
3. The complainant stated that Bestech India Private Limited (the opposite party) was a company, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project. The opposite party launched a group housing project in the name of "Park View Grand Spa", at Sector-81, Gurgaon in the year 2012 and made wide publicity of its

facilities and amenities. On coming to know about the project, the complainant booked an apartment and deposited the booking amount of Rs.1000000/- on

27.06.2012. Thereafter, the complainant deposited the amount of Rs.6000000/- on 21.07.2012. The opposite party issued allotment letter dated 21.07.2012 allotting Unit No.1501, admeasuring 2660 sq.ft., Tower-H in the said project. The payment plan has been supplied along with allotment letter, in which, Rs.6767838/- had to be paid at the time of booking. Then first instalment is payable by 31.08.2013 or on casting of 7th floor roof slab.

The complainant received a demand notice dated 01.10.2013 demanding Rs.4622661/- i.e. the instalment payable on casting 7th floor roof slab, but the complainant failed to deposit the amount as demanded in the said letter. The opposite party raised demand of Rs.1576981/- on 07.02.2014, i.e. next instalment payable on casting of 12th floor roof slab. The complainant vide an e-mail dated 15.05.2014 sought for cancellation of her allotment and refund of the amount after forfeiting earnest money. Subsequently, the complainant wrote a letter dated 19.05.2014 with same request. The opposite party, however, issued reminders for payment of the instalments along with interest for delay. The complainant received a final demand letter 04.02.2015 demanding Rs.9298345/- and Rs.1753268/-. But she could not deposit the aforesaid amounts, therefore, her allotment was cancelled on 18.05.2015 but no amount was refunded. The complainant wrote letter dated 26.02.2016 for refund of the money. The opposite party, vide letter dated 03.03.2016, informed that entire money deposited by her had been forfeited. Then this complaint has been filed on 25.11.2016.

4. The opposite party has filed its written reply. In which the fact relating to booking of the apartment and deposit of Rs.7000000/- by the complainant have not been disputed. The opposite party stated that in spite of demand letters written to the complainant, she failed to deposit the amounts of instalments. Buyer's Agreement was also sent to the

complainant through Vikrant Gera but she neither signed it nor returned the signed copy of it to the opposite party. Therefore, allotment of the complainant was cancelled on 18.05.2015 and the amount deposited by her was forfeited.

5. The complainant filed rejoinder reply on 14.07.2017, Affidavit of Evidence of Poonam Sood. The opposite party filed Affidavit of Evidence of Ms. Shiveta Raina. Both the parties have filed their written synopsis.

6. The counsel for the complainant relied upon judgment of Supreme Court in M/s. Kailash Nath Associates Vs. Delhi Development Authority & Anr. JT 2015 (1) SC 164, this Commission in DLF Limited Vs. Bhagwanti Narula, I (2015) CPJ 319 (NC), and Girish K. Vohra Vs. Hongkong and Shanghai Banking Corporation Ltd., I (2015) CPJ 323 (NC) and Delhi High Court in O.M.P. (Comm) No.121 of 2020 Mr. Rajesh Gupta Vs. Sh. Ram Avtar (decided on 19.05.2022) and submitted as no loss has been caused to the opposite parties, it was not entitled to forfeit any amount. The counsel for the opposite party relied upon judgment of Supreme Court in H.U.D.A. Vs. Kewal Krishan Goel, (1996) 4 SCC 249, and submitted that 10% of basic sale price is liable to be forfeited.

7. We have considered the arguments of counsel for the parties and examined the record. Admittedly, in the present case the agreement has not been executed, as such, binding terms between the parties is the allotment letter. Clause 9 of the allotment letter, provides that the timely payment of the instalments is essence of the contract and it gives liberty to the opposite party to cancel the allotment if the complainant fails to pay any of the instalment or interest within 75 days from due date. As per payment plan, the first instalment was due on 31.08.2013 or on casting of 7th floor roof slab. The opposite party issued the demand letters dated 01.10.2013 on casting of 7th floor roof slab and 07.02.2014 on casting of 12th floor roof slab. The complainant vide an e-mail dated 15.05.2014 sought for cancellation of her allotment and refund of the amount after forfeiting earnest money. As the complainant could not make payment in spite of final demand

letter dated 04.02.2015, the opposite party cancelled the allotment on 18.05.2015 and forfeited the entire money.

8. Supreme Court in M/s. Kailash Nath Associates's case (supra) held that where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the Court. In the present case, the basic sale price of the apartment as mentioned in the payment plan was Rs.16593080/-. In application form, registration of money of Rs.1000000/- has been mentioned. Clause-9 provides for forfeiture of earnest money/ registration money. Agreement has not been executed between the parties as such forfeiture of earnest money is not required. Registration money of Rs.1000000/- was liquidated damages which has been mentioned in the application form, is liable to be forfeited.

9. The counsel for the complainant relies upon the judgment of Delhi High Court, in Mr.Rajesh Gupta (supra) and submitted that in the absence of damage being proved no money is liable to be forfeited. Supplying a copy of the sale deed dated 07.12.2019 to the counsel for the complainant, the counsel for the opposite party pointed out that the disputed unit was sold on 07.12.2019 for Rs.11069300/-, therefore, there was actual loss, which justify forfeiture of full amount of Rs.70/- lacs but we found that cancellation is dated 18.05.2015 and on that day loss has not been proved. The counsel for the opposite party stated that statutory tax will also liable to be paid by the opposite party is also liable to be forfeited. The taxes are attached to the property. The property remained with the opposite party. We are bound by the judgment of Supreme Court in preference of High Court.

ORDER

In view aforesaid discussions, the complaint is partly allowed. The opposite party is directed to refund the entire

amount deposited by the complainant along with interest @9% per annum from the date of respective deposit till the date of payment after forfeiture of Rs.1000000/- as registration money within a period of two months from the date of this judgment.