

Refund of payment with interest and compensation for delay in possession of housing unit by builder: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

SUNEAL KUMAR SINGHAL & ANR.

...Appellant

M/S. SUPERTECH REALTORS PVT. LTD.

...Respondent

Case No: CONSUMER CASE NO. 1166 OF 2019

Date of Judgement: 01 January 2024

Judges:

SUBHASH CHANDRA
PRESIDING MEMBER

For Appellant: MR ADITYA PAROLIA, MS SUMBUL ISMAIL AND MS ISHITA SINGH
ADVOCATES

For Respondent: None

Facts:

Complainants booked a housing unit in project 'Super Nova' by opposite party (OP) and made payments till April 2015 totaling Rs. 1,26,30,370/-. As per allotment letter, possession was to be given by May 2015 with a grace period of 6 months i.e. November 2015. Complainants allege the project did not have promised amenities like

5-star hotel, clubhouse etc. Layout plan was changed and area of unit increased unilaterally by OP. Despite issuing legal notice in November 2017 seeking cancellation and refund, OP failed to refund payment. Hence, complaint was filed seeking refund with interest, compensation for harassment and litigation costs.

Arguments by Complainant:

There is inordinate delay in offering possession. Complainants are justified in seeking compensation for losses due to delay as per terms of allotment letter. Reliance placed on Supreme Court judgment in Kolkata West International City Pvt. Ltd. v Devasis Rudra that 7 years delay is unreasonable. Buyer can't be forced to wait indefinitely. Reliance on NCDRC order in Ankur Goswami v Supertech Ltd that OP should have cancelled allotment for default in payment instead of taking the plea of delay by complainant.

Arguments by Opposite Party:

Complainants were defaulters in making timely payments as per schedule. Possession was not given as balance payment of Rs. 1,09,55,459/- was due from complainants as per pre-possession statement. Delay is attributable to defaults by allottees in making payments. OP was always ready to offer possession subject to payments.

Court's Opinion and Decision:

It is evident OP failed to hand over possession by November 2015 as per terms of allotment letter. Valid reasons not given by OP for unilateral extension of possession date. OP did not cancel allotment despite alleged payment defaults by complainants. Can't take the plea of default at this stage. Deficiency in service for delay in offering possession is clear. Complainant's plea for refund, interest and compensation is valid. OP directed to refund entire deposited amount with 9% simple interest from respective dates of deposit till date of order. If order not complied in 2 months, interest rate will be 12%. OP to also pay litigation costs of Rs. 50,000/- to complainants.

Sections and Provisions:

Complaint filed under Section 21 read with Section 12(1)(a) of Consumer Protection Act, 1986. Judgment refers to relevant provisions

for payment of interest and compensation for delay by builder as per Consumer Protection law.

Cases Relied Upon:

Supreme Court Judgment in Kolkata West International City Pvt. Ltd. v Devasis Rudra (2019)

NCDRC order in Ankur Goswami v Supertech Ltd (2016)

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Court

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Full Text of Judgment:

1.This complaint under section 21 read with section 12 (1) (a) of the Consumer Protection Act,1986 (in short, the 'Act') has been filed against the opposite party alleging deficiency in service on the part of opposite party and that services were negligent and unsatisfactory in respect to the unit booked by the complainants in the project 'Super Nova' at Plot no. 3, Sector-94, Noida-201301 promoted and executed by the opposite party. The complainants were allotted with unit no. R203NEAST2301 on 23rd Floor of Tower Nova East with super area of 2,040 sq. ft. approximately.

2.The complainants state that they have are 'consumer's under the Act who booked the unit and made advance payment of Rs.5,00,000/- on 08.12.2011 as per the payment plan and on 27.02.2012, an allotment letter was issued by the opposite party in favor of the complainant (hereinafter referred as "Agreement"). The brochure for the project promised that project would have luxury five star hotel, serviced suites, high end luxurious apartments, exclusive clubhouse, 1 lac sq. mtr., on site shopping mall etc. However, later through an advertisement and as per the photos of the project, the five star hotel was removed completely. It was promised that the project will be delivered to the complainants by May 2015 with a grace period of 6 months, i.e., by November 2015. From 08.12.2011 till 14.04.2015, the complainant had paid an amount of Rs.1,26,30,370/-. The opposite parties changed the original layout plan and unilaterally increased the area of the unit from 2040 sq. ft. to 2105 sq. ft. Due of delay in

handing over the possession, a legal notice was issued to the opposite party on 16.11.2017 emphasizing all factors in addition to undue delay in delivery of possession and stating that they were not interested in the said project, seeking cancellation of the unit and the refund of the money.

3. The complainants are before this Commission with the following prayer :

(i) direct the opposite party for an immediate 100% refund of the total amount of Rs. 1,26,30,370/- (Rupees One Crore Twenty Six Lakhs Thirty Thousand Three Hundred and Seventy only) paid by the Complainants along with a penal interest of 18% per annum from the date of the receipt of the payments made to the opposite party;

(ii) direct the opposite party to pay compensation of Rs. 10,00,000/- (Rupees Ten Lakh only) to the complainants for mental agony, harassment, discomfort and undue hardships caused to the complainants as a result of the above acts and omissions on the part of the opposite party;

(iii) direct the opposite party to pay a sum of Rs. 1,00,000/- (Rupees One Lakh only) to the complainants as a whole, towards litigation costs;

(iv) any other and further relief in favor of the complainants as the Hon'ble Commission deem fit and proper in the fact and circumstances of the case.

4. The complaint was resisted by way of written statement by the opposite party. The opposite party contends that the complaint is not maintainable as the same has been filed with ulterior motives and malafide intentions to extract money from the opposite party. Learned counsel for the opposite party submits that all the terms and conditions were explained to the complainants and thereafter, detailed forms were filled by them on 31.10.2012 and an allotment letter dated 27.02.2012 was issued by the opposite parties in favour of the complainants in respect of Flat/Unit No. R203NEast2301/Flat#2301, on the 23rd Floor, Tower "Nova East". Learned counsel for the opposite party also submits that the complainants were defaulters in making payments of instalments and had failed to make payments as per the

payment plan and thereafter, with malafide intentions sent a legal notice dated 16.11.2017 raising several allegations, which was duly replied vide reply dated 28.01.2017.

5.Learned counsel for the opposite party also submits that complainant vide letter dated 17.07.2018, complainants were intimated about the pre-possession stage of the flat and was requested to complete the pre-possession formalities. Thereafter, complainants were served with a pre-possession outstanding statement clearly stating that an outstanding amount of Rs.1,09,55,459/- was due. Therefore, the delay occurred due to complainants and others who defaulted in making the payment as per payment plan.

6.Parties led their evidence by way of affidavit. I have heard the learned counsel for the complainant. Vide order dated 12.04.2023 last opportunity was granted to the opposite party to file its short synopsis. The opposite party has not filed the same nor none has appeared on behalf of the respondent on 27th July 2023, when the matter was heard and hence, they were proceeded ex parte. I have also perused the material on the record carefully.

7.Learned counsel for the opposite party submits that as per the allotment letter, in case of any delay in handing over the possession beyond 6 months from the stipulated date, penalty of Rs. 5/- per sq. ft. of super area of the unit will be paid by the builder to the allottee, if the allottee has strictly honoured the payment schedule.

8.On behalf of the complainants, it was argued that there was inordinate delay in the handing over of the flats. The claim of compensation is justified by the complainants in view of the loss incurred by them on account of delay in possession. Reliance was placed on the judgment of the Hon'ble Supreme Court in Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, Civil Appeal Nos. 3182 of 2019 and 6303 of 2019 [decided on 25.03.2019] wherein it held that: it would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion

certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund.

9. Reliance was also placed on the judgment of the Hon'ble Commission in Ankur Goswami Vs. Supertech Ltd. In C.C No. 936 of 2016 dated 13.07.2012, wherein this Commission observed that:

the learned counsel appearing for the OP states that in fact there was delay even in payment of other installments. If that was so, nothing prevents the OP from adjusting the interest for the delayed period out of the amount paid to it by the complainant. What is more important in this regard is that in the event of default on the part of the complainant in making timely payment of the installments, the OP was entitled to cancel the allotment itself and forfeit part of the money paid by the complainant as per the terms of the allotment.

10. From the records, it is evident that the allotment letter stipulated that the construction would be completed by May, 2015 with a grace period of 6 months. Thus, the offer of possession should have been made in November 2015 as per the schedule. The opposite party contends that the delay is attributable to defaults in payments by allottees. It contends that they were ready to offer the possession and the balance payment which was a condition precedent in handing over of possession was due and complainants were also served with pre-possession outstanding statement dated 17.08.2018 reflecting the due amount of Rs. 1,09,55,459/-.

11. The opposite party did not cancel the allotment for the reasons of default. It is now not open to them to take the plea that the complainants were defaulters. It is evident that the opposite party has failed to comply with its obligation to hand over possession of the flats in question on or before November 2015, allowing for a grace period of 6 months. No evidence to justify the unilateral extension of the date of delivery has been brought on record. The offer of

possession of the flats was never made. Deficiency of service in delay in handing over the flats booked by complainants against consideration is thus writ large.

12. The contentions of the complainant seeking refund with compensation in the form of interest and cost of litigation are therefore valid and liable to succeed. I, therefore, find merit in the complaint and allow the same with the following directions:

(i) opposite party shall refund the entire amount deposited by the complainant with simple interest @ 9% per annum on the deposited amount from the respective dates of deposit till the date of this order;

(ii) this order shall be complied within two months failing which the amount shall be paid at the rate of 12% shall be paid; and

(iii) opposite party shall also pay litigation costs of Rs 50,000/- to the complainant;

13. Pending IAs, if any, also stand disposed of by this order.