ROHIT THAKUR & ANR. V. DLF UNIVERSAL LIMITED & 2 ORS.

Rohit Thakur & Ors. Vs. DLF Universal Ltd. & 2 Ors.

1. ROHIT THAKUR & ANR.
SON OF MR. K.S. THAKUR RESIDENT OF HOUSE NO.
1368-B, SECTOR 31-B
CHANDIGARH
PUNJAB

……..Complainant(s)

Versus

1. DLF UNIVERSAL LIMITED & 2 ORS.
THROUGH ITS MANAGING DIRECTOR. REGISTERED
OFFICE DLF, SHOPPING MALL 3RD FLOOR, ARJUN
MARG, DLF CITY PHASE-I,
GURGAON
HARYANA
2. DLF UNIVERSAL LIMITED ALSO AT:, CHANDIGARH
TECHNOLOGY PARK,
PLOT NO. 2 OTWERD, GROUND FLOOR
CHANDIGARH
3. DLF UNIVERSAL LIMITED ALSO AT: DLF HYDE PARK
ESTAE
OPP KUDRAT AUTOMOBILES, MULANPUR
GARIBDASS
PUNJAB

……..Opp.Party(s)

Case No. : CONSUMER CASE NO. 46 OF 2018

Date of Judgement : 04 December 2023

Judges : MR. SUBHASH CHANDRA

For Complainant : MR ROHIT THAKUR – IN PERSON

For Opposite Party : MR PRAVIN BAHADUR, MR PRABHAT RANJAN, MR DROUHN GARG, MR ASHRY BHATIAAND MR ANKIT, ADVOCATES

Facts

- ***Complainants booked a residential plot admeasuring 281 sq yds in DLF's "Hyde Park Estate" project in Mullanpur, Punjab***
- ***Plot no. HPE-R3-B612 was allotted on 04.03.2013 for Rs 95,36,954.41 (after discount)***
- ***Complainants paid Rs 89,17,563 in 4 installments between Feb 2013 – Oct 2013***
- ***As per Plot Buyer's Agreement, possession was to be handed over by 26.02.2015***
- ***On 10.09.2014, DLF changed allotment to plot no. R-3-A308 without intimation***
- ***Complainants did not agree as HT line was passing overhead the new plot***
- ***DLF offered another plot with 57.45 sq yds extra area with additional cost of Rs 25,47,275.55***
- ***Complainants requested refund on 20.06.2017 as possession was not offered even after 2 years from committed date***
- ***As no refund was made even after request, complainants approached NCDRC seeking refund with interest, compensation and costs***

Court's Elaborate Opinions

- ***Sale of developed plot constitutes 'service' under Consumer Protection Act***

- *Complainants are ‘consumers’ as no evidence shown they are in real estate business*
- *Remedies under Consumer Protection Act are in addition to other remedies*
- *Failure to give possession is a continuing cause of action*
- *Allottee entitled to refund and interest in case of delay in possession*
- *Changes in layout plan have to be due to directions of competent authority to be binding on allottee*
- *Developer can’t take shelter under force majeure clause unless event was unforeseen*
- *Interest rate of 9% p.a. is fair and just compensation*

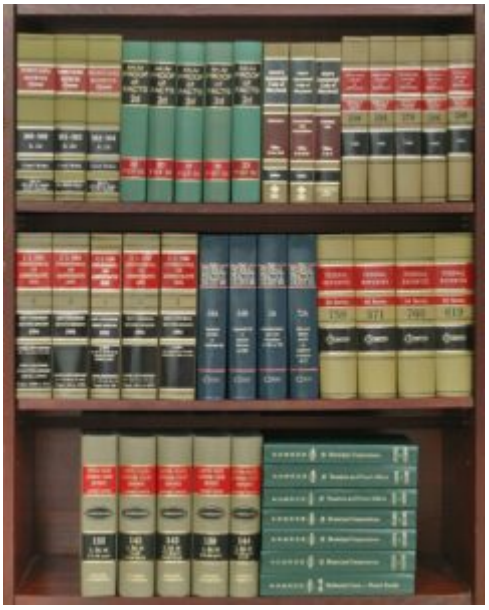
Referred Laws and Sections

- *Section 2(o) of Consumer Protection Act, 1986 – definition of ‘service’*
- *Civil Appeal Nos. 4913 of 2015 and 2972 of 2022 – compensation @7.5% is adequate*
- *Civil Appeal No. 4855 of 2022 – interest payable should be restitutionary and compensatory*

Conclusion/Order

- *Complaint allowed, deficiency in service found*
- *Opposite party directed to refund Rs 89,17,563 with 9% p.a. interest from deposit dates*
- *To pay within 8 weeks, else 12% interest applicable*
- *Also directed to pay litigation cost of Rs 50,000*

The summary covers the key facts, court’s opinions on various aspects, relevant legal provisions referred, and the final order passed in the case. Let me know if you need any clarification or have additional requirements for the summary.



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Full text of Judgement :

1. This consumer complaint under section 21 of the Consumer Protection Act, 1986 (in short, the 'Act') alleges deficiency in service and unfair trade practice in not offering possession of a plot booked by the respondents by the opposite party and seeking refund of the money deposited towards the consideration with compensation and other costs.

2. The facts, according to the complainant, are that he had applied for a residential plot in the opposite party's project "DLF Hyde Park Estate" at Mullanpur, Garibdass, District SAS Nagar, Mohali, Punjab and was allotted a plot admeasuring 281 sq yds (235 sq m) @ Rs 35,200/- per sq yd for a sale consideration of Rs 99,01,499/- excluding EDC and maintenance and security. After discount, the consideration was fixed at Rs 95,36,954.41. Plot no. HPE-R3-B612 was allotted on 04.03.2013 and a sum of Rs 89,17,563/- was paid in 4 instalments between 20.02.2013 and 31.10.2013. As per Plot Buyer's Agreement (PBA) executed on 23.09.2013, possession was to be handed over within 24 months as per clause 33, i.e., by

26.02.2015. The opposite party failed to hand over possession by this date. On 10.09.2014 the opposite party changed the allotment of the plot to R-3-A308 without intimation of change by the opposite party as required under clause 32 which was not agreed to by the complainant. Opposite party thereafter offered another plot measuring 57.45 sq yds more than the original allotment which the complainant agreed to accept subject to not being charged any Preferential Location Cost (PLC) since the change was necessitated by the opposite party and was not at his instance. Consequently, plot no. R2-H216 measuring 350 sq yds (292.64 sq m) was offered with an additional cost of Rs 25,47,275.55/- which was also not acceptable to the complainant. On 20.06.2017 the complainant requested for refund of the money deposited as no possession had been offered even after 2 years from the promised date of possession. As no response has been received and the refund not been done, the complainants are before this Commission praying for refund of Rs 89,17,563/- with interest @ 18% p.a. along with compensation of Rs 25,00,000/- on account of harassment and stress and Rs 2,50,000/- towards litigation expenses.

3. Upon notice, the complaint was resisted by way of a reply by the opposite party denying the averments and stating that the complaint was not maintainable since the project was under successful implementation and that basic infrastructure of roads, sewerage,
drinking water and electricity had been provided and a Partial Occupation Certificate had been received on 10.09.2014 indicating development of a minimum of 25 acres with mandatory clearances in place. Preliminary objections were taken that (i) sale of plot of land
did not fall within the purview of the Act as held by Hon’ble Supreme Court in Ganesh Lal Vs. Shyam in C.A. No. 331/2007 dated 26.09.2013, 2014 (3) CTC 526; (ii) complainants had suppressed material facts that possession was offered on 29.06.2017 after completing

development of the project and that they were defaulters in abiding by the terms and conditions of the PBA; (iii) this Commission lacks jurisdiction to adjudicate in the complaint as the parties are bound by the PBA which cannot be altered at this stage; (iv) the complainants were not 'consumers' under the Act as the plot was booked for investment purpose since they have a permanent residence in Chandigarh; (v) there was no commitment to offer possession within 24 months but was only to be 'endeavoured' to be handed over as per clause 33 subject to force majeure conditions in clauses 36 and 37; (vi) time was not of the essence and actually stood enlarged since the complainant failed to invoke clause 38 of the PBA; (vii) the complainant failed to avail the remedy of seeking refund under clause 33 by terminating the Agreement; (viii) the complainant as a party-in-breach cannot insist that The non-defaulting party perform its obligations under the PBA; (ix) timely payment of instalments was the essence of the PBA which the complainant failed to adhere to despite reminders on 3 occasions by 2, 3 and 243 days and therefore breached the PBA; (x) the PBA needs to be implemented in full and not selectively and parties are bound by its terms as held by the Supreme Court in Bharti Knitting Co. Vs. DHL Worldwide Courier, (1996) 4 SCC 704 and Secretary, Bhubaneshwar Development Authority Vs. Susanta Kumar Mishra, (2009) 4 SCC 684; (xi) there was no cause of action and as per clause 71 of the PBA disputes were to be settled through arbitration or through a Civil Court; (xii) the complaint was stated to be barred by limitation as it was filed on 08.01.2018 whereas the PBA was signed in 2013 and hence was filed much after the 2 years prescribed.

4. On merits, it was admitted that a plot had been allotted to the complainants but contended that complainants had defaulted in payments. It was submitted that there was a change in the layout plan and that alternative plots were offered to the complainants on the
same terms and conditions as was originally confirmed. It is

submitted that the delay was for reasons beyond the control of the opposite party and that the complainants had been compensated for the delay by Rs 3,04,440/- as per final Statement of Account dated 29.06.2017. It is stated that there was a regular discussion between the parties with regard to the allotment of alternate plot to the complainants and that after the receipt of the occupation certificate due to change in the layout plan, the allotted plot did not exist and could not be offered. The discussions were on the size of the plot and price including PLC and due to differences the issue could not be resolved despite different offers by the opposite party. The complaint is stated to be an abuse of the process of law to extract money from the opposite party and to wriggle out of contractual obligations which should be dismissed.

5. Parties led their evidence on affidavit and filed rejoinder and written submissions. I have heard the complainant in person and the learned counsel for the opposite party and given thoughtful consideration to the material on record.

6. On behalf of the complainant it was argued that the area, size and location of the alternate plot offered by the opposite party was not acceptable to them as either a larger plot with a higher cost or a plot with additional cost on account of PLC was offered whereas they
were able to afford a plot of the original dimension without additional costs for PLC etc. It was argued that delay of even 2 and 3 days in making instalment payments attracted penal interest of 15% and hence they were claiming refund of their money for the delay in offer of
possession beyond the stipulated date of 26.02.2015 which constituted deficiency in service with compensation at the same rate of interest in terms of the Supreme Court’s judgment in Ashoka Investment Vs. United Towers India (Pvt.) Ltd. in CA No. 4913 of 2015 decided on
11.10.2022 and this Commission’s order in Nitin Juneja Vs. Ireo Pvt. Ltd. & 2 Ors. in CC No. 417 of 2017 dated 22.11.2021

which awarded compensation at the rate allowed by Haryana RERA (10.25%) and was affirmed in CA Diary No. 21634 of 2020 on 11.12.2020.

7. Per contra, the learned counsel for the opposite party during oral submissions limited his arguments to the fact that the allotment of plot to the complainants was in a mega housing project involving nearly 200 acres of land and the Plot Buyer's Agreement had clearly stated
that the layout plan as approved by the authorities was subject to change and that in such an eventuality, the plan of the Project would be subject to change and be superseded at the discretion of the opposite party. It was argued that as per clause 4 of the Plot Buyer's Agreement, due to change in layout, a plot could become preferentially located and in such a situation the allottee was liable to pay PLC. However, in case of alterations involving increase in area by more than 20% of plot size, approval in writing of the allottee would be required within 30 days and in the event of non-consent, the plot would be cancelled and refund of deposit with 6% interest would be paid. The allotment of plot no R3-B612 measuring 281.29 sq yds was provisional and was changed to R3-A308 at the same price without PLC on 10.09.2014 which was turned down by the complainants on 27.09.2014 as a High Tension line was passing overhead. Subsequently, another plot was refused on 16.09.2016 as it entailed PLC. Another offer of plot R2-H216 was not acceptable to the complainant despite the larger area of 68.71 sq yds and no PLC which was asked for at the original cost for R3-B612 since the change was not asked for by him but was being thrust on the complainants. Finally, the complainants filed the instant complaint seeking refund with compensation.

8. Opposite party relies upon judgments of the Hon'ble Supreme Court in Puri Construction Pvt. Ltd. Vs. Prerna Banerjee & Anr., Civil Appeal No. 2972 of 2022 dated 06.05.2022 and M/s Chintels India Pvt. Ltd. Vs. Vikas Jain, Civil Appeal No. 4855

of 2022 dated 05.08.2022 to argue that the Apex Court has considered compensation of 7.5% as adequate to meet the ends of justice in case refund is considered.

9. The preliminary objections of the opposite party have been considered. The contention that the complainant is not a 'consumer' is a statement that has not been supported by any evidence to establish that the complainants are engaged in any real estate business. A bald
statement that has not been supported by any evidence, the onus of which is on the opposite party to show that the complainant was in the business of buying and selling flats, in terms of this Commission's orders in Kavita Ahuja Vs. Shipra Estates, I (2016) CPJ 31 and Sanjay
Rastogi Vs. BPTP Limited & Anr., CC No. 3580 of 2017 dated 18.06.2020, cannot be sustained. The contention that the complaint does not lie since it pertains to the sale of a plot is not valid as the sale consideration was for a 'developed' plot and has been acknowledged as such by the opposite party which has stated that occupation certificate has been received and basic infrastructure facilities have been provided. It is, therefore, clear that the PBA constitutes an agreement for a 'service' which is squarely covered under section 2 (o) of the Act. The argument that the complainant was a 'defaulter' in making payments cannot be considered in the light of the judgment in Ankur Goswami vs Supertech Ltd., and Anr., 2017 SCC Online NCDRC 1240 wherein it was held that "having not cancelled the allotment on account of the delay in making payment, the opposite party cannot now deny refund of the amount paid to it by the complainant on account of this delay". In any case, the opposite party has charged interest @ 15% for the delay and regularized the delay. It is therefore now not open for it to contest thus.

10. As regards the issue of jurisdiction, the Hon'ble Supreme Court has held in its judgment in Emaar MGF Land Ltd. Vs. Aftab Singh, (2019) 12 SCC 751 that the remedy under the

Consumer Protection Act, 1986 is not restrained by the existence of an arbitration clause and that the remedy under the Act is in addition to other provisions under the law. It has also reiterated this view in M/s Imperia Structures Ltd. Vs. Anil Patni & Anr., (2020) 10 SCC 783 decided on 02.11.2010 that “remedies under the Consumer Protection Act were in addition to the remedies available under special statutes (and) the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force”. Hence, this argument cannot be sustained.

11. As for the cause of action, the Hon’ble Supreme Court laid down in Meerut Development Authority Vs. Mukesh Kumar Gupta, IV (2012) CPJ 12 on 09.05.2012 failure to deliver possession constitutes a recurrent and continuing cause of action. In the instant case, the opposite party has failed to offer possession of the plot even after the expiry of the committed date of possession, i.e., 26.02.2015 despite receiving nearly 90% of the consideration, and was instead offering various alternatives to the plot it changed after allotment, and hence the cause of action is a continuing one. Therefore this contention of the opposite party is not valid.

12. The opposite party’s contention that the complainant is not entitled to claim interest for the delay in possession also cannot be considered in view of the Hon’ble Supreme Court laying down in Pioneer Urban land and Infrastructure Ltd. Vs. Govindan Raghavan,
(2019) 5 SCC 725 in Civil Appeal no. 12238 of 2018 decided on 02.04.2019 that an allottee as a consumer is entitled to seek refund of the money paid by him to the opposite party/builder in case of inordinate delay on the part of the opposite party to hand over possession. The Hon’ble Supreme Court has also held in Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, Civil Appeal No. 3182 of 2019 decided on 25.03.2019 that “It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait

indefinitely for possession". Considering the fact that possession which was promised in February 2015 has not been offered by 2018 when the complaint was filed and that the amount paid is substantial, seeking compensation for delay is not unwarranted.

13. The opposite party has contended that the project being a mega project, the Plot Buyer's Agreement had stated that changes in the layout were likely. The relevant clause reproduced in its short synopsis of arguments and Clause 32 read as follows:
The Company (herein defined) has already been granted approval by the Punjab Government, Department of Housing andUrban Development, for setting up of Mega Housing Project in an area of 200 acres of thereabouts falling in villages Salamatpur, Devinagar, Bharonjian and Ratwara in local area of Mullanpur and have absolute right to market, sell, allot plots, receive monies, give receipts, execute conveyance, other documents, etc and as such, the Company is competent to enter into this Agreement.

The Company has specifically made it clear that the layout plan of the said Project, as annexed hereto is Annexure-1A, has been approved by the concerned authority(ies). However, even though the plans have been approved, the company may change the layout plan/building plan as may be considered necessary due to any direction/condition imposed by any competent authority at any stage and it shall
be binding on the Allottee (hereinafter defined). The Allottee hereby agrees that it shall not be necessary on the part of the Company to seek consent of the Allottees in this regard i.e. for the purpose of making any change in the layout/building plan and/or in order to comply with the directions/conditions imposed by any competent authority.
In that event, the layout plan/building plan of the said Project as may be amended and approved from time to time, shall supersede the layout plan as given in Annexure-1A hereto

and/or previously approved layout plan/building plan, as the case may be.

32. Alteration/Modification
The company has informed the Allottee(s) the said project is planned to be developed in accordance with the layout plan sanctioned by the competent authority and as may be changed from time to time by the competent authority/and/or by the Company. Any changes/modifications/amendments as may be made by the competent authority in the layout plan for the said project in future shall automatically supersede the present approved layout plan attached as Annexure-1A and be binding on the Allottee(s).

(Emphasis added)

From a plain reading of the above, changes as a consequence of directions by any competent authority, would necessitate changes in the layout plans which would be binding upon the complainant/allottee. No such directions have been brought on record by the opposite party to justify the changes which required the offer of an alternate plot to the complainant and which it was incumbent upon him to accept. It is evident that the changes were effected by the opposite party despite the approval of the layout plan in Annexure 1A. Such changes cannot qualify as a force majeure event. As per Manoj Kawatra & Ors. Vs Pioneer Urban Land and Infrastructure Ltd., in CC no.1442 of 2018 decided on 01.11.2021, this Commission held that a developer cannot take shelter under the force majeure clause unless
it is able to show that the event was unforeseen and unexpected. No such evidence has been brought on record by the opposite party. Accordingly, the argument that the delay was due to force majeure events that justify the delay in handing over possession does not sustain.

14. From an analysis of the foregoing, it is manifest that there has been a delay in the handing over of the plot to the

complainant. The arguments of the opposite party make it clear that the delay was on account of the change in the allotment by the opposite party to a
plot which was not acceptable to the complainants on the basis of size, cost or additional charges such as PLC. As the change of the allotment of the plot has not been justified on account of any direction of the competent authority and any evidence brought on record in
support, the reason for the delay has to be attributed to the opposite party. It is therefore liable to compensate the complainants.

15. The claim of the complainant of compensation in the form of interest @ 18% p.a. has been considered. In Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, CA No. 6044 of 2019 decided on 07.04.2022 the Hon'ble Supreme Court 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. In DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda, CA Nos. 4910-4941 of 2019 decided on 10.05.2019 the Hon'ble Supreme Court held that the interest payable would be from the date of respective deposit. Respectfully following these judgments, compensatory interest of 9% from the respective dates of deposits till realization is considered appropriate in the instant case.

16. For the foregoing reasons and in the facts and circumstances of the case, the complaint is liable to succeed. It is accordingly partly allowed with the following directions:
(i) opposite party is directed to refund the entire amount of Rs.89,17,563/- with compensation in the form of interest @ 9% p.a. from the respective dates of deposit;

(ii) this order shall be complied with within 8 weeks failing which the applicable rate of interest will be 12% p.a.;

(iii) opposite party shall also pay litigation cost of Rs

50,000/- to the complainants.

Pending IAs, if any, stand disposed of along with this order.

–END–