

SANJIV GOYAL V. PARSVNATH DEVELOPERS LIMITED & 2 ORS

1. SANJIV GOYAL

.....Complainant(s)

Versus

1. PARSVNATH DEVELOPERS LIMITED & 2 ORS,
Through its Managing Director, 6th Floor, Arunachal Building,
19, Barakhamba Road,

NEW DELHI-

2. PARSVNATH DEVELOPERS LTD.

Through its Managing Director, SC0-1 First Floor, Madhya
Marg, Sector-26
CHANDIGARH,

3. PARSVNATH DEVELOPERS LTD.

Through its Managing Director, Parsvnath royal, sector 20,
behind Society No. GH-105 to GH-111, Panchkula,
HARYANA

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 2571 OF 2017

Date of Judgement: 04 October 2023

Judges:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

FOR THE COMPLAINANT : MS ANCHITA NAYYAR, PROXY COUNSEL (WITH AUTHORITY LETTER)

FOR THE OPP. PARTY : MR PRABHAKAR TIWARI, ADVOCATE

Facts:

Complainant booked a flat in project of opposite party (builder) in Panchkula, Haryana. Flat Buyer's Agreement (FBA) signed on 09.07.2011 between original allottee and builder. Possession to be handed over within 36 months + 6 months grace period as per FBA i.e. by 09.01.2015. Complainant paid Rs 49,62,699.26 to builder in instalments. Builder failed to handover possession even after 8 years of deadline. No occupancy certificate provided by builder

Court's Opinions:

Builder's contention that complainant has no cause of action is rejected in light of Supreme Court ruling that allottee can seek refund in case of inordinate delay. Claim that dispute lies before civil court only is rejected based on Supreme Court judgments that remedy under Consumer Protection Act is in addition to other remedies. Contention that delay was due to force majeure event like recession is not accepted due to lack of evidence. Clause for compensation in FBA applies only if buyer accepts possession after delay, not for refund situation. Failure to provide occupancy certificate despite accepting payments constitutes deficiency in service and unfair trade practice. Complainant stepping into shoes of original allottee is recognized by builder receiving payments from him. In light of judgments, refund can be claimed in case of inordinate delay of 8 years along with interest

Arguments by Complainant:

Builder failed to handover possession within stipulated 36 months + 6 months grace period. It kept complainant in dark about construction status through false assurances. Seeks refund of amount paid with interest @18% along with damages for deficiency in service

Arguments by Opposite Party/Builder:

Dispute is civil in nature and Commission lacks jurisdiction. Complainant purchased flat from open market, not allotted by builder. Timeline for possession in FBA was indicative. Delay was due to global recession which was force majeure event.

Complainant was himself a defaulter hence not entitled to relief. Claim for refund and interest not valid

Referred Laws and Sections:

Section 21 of Consumer Protection Act – jurisdiction; Rulings in Emaar MGF Land case and Imperia Structures case – CPA remedies are additional; Rulings in Pioneer Urban case and Kolkata West International case – refund can be claimed in case of inordinate delay

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Court

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Full Text of Judgment:

1. This consumer complaint under section 21 of the Consumer Protection Act, 1986 (in short, the 'Act') is filed against the opposite party alleging deficiency in not handing over possession of the flat booked by the complainant within the promised time and seeking refund of the amount deposited with interest as compensation and other costs.

2. The complainant states that he obtained a flat in "Parsvanath Royale", a project promoted and developed by the opposite party in Sector 20, Panchkula, Haryana on transfer from the original allottee, M/s Vardhaman Associates Pvt. Ltd., Ground Floor 20, Indra Prakash Building, 21, Barakhamba Road, New Delhi which had been allotted Flat no. T 5 – G03, 10th Floor, Tower 5 admeasuring approx. 1780 sq ft. A sum of Rs 9,32,831.25 was paid by the original allottee and a Flat Buyer's Agreement (FBA) had been signed on 09.07.2011 for a sale consideration of Rs 62,18,875/- stipulating the basic rate of the flat @ Rs 3493.75 per sq ft plus other charges for EDC, infrastructure development, etc. Under clause 10(a) of the FBA, subject to force majeure events, the period of completion of the project was stated to be 36 months with another 6 months as grace period from the date of signing of the FBA, i.e. 09.01.2015 failing which compensation @ Rs 5/- per sq ft per month would be paid by the opposite party. A sum

of Rs 49,62,699.26 was paid as on date in instalments. However, possession had not been offered till date by the Opposite Party despite the complainants pursuing the matter on several occasions through visits to the office of the opposite party. No details of approval by the Haryana Urban Development Authority (HUDA) was also provided by the opposite party to the complainant. A complainant was filed before the State Consumer Dispute Redressal Commission, Haryana in Consumer Complaint No. 197 of 2016 which was withdrawn in view of the shift in pecuniary jurisdiction of cases exceeding Rs 1 crore to the National Commission. In view of the fact that the project had not been completed on time, the complainant is before this Commission alleging deficiency in service with the prayer to direct the opposite party to:

- (a) to refund the amount of Rs 49,62,699.26 deposited with the opposite parties with upto date interest @ 18% from the receipt of the deposit;
- (b) pay Rs 10,00,000/- with regard to damages of compensation;
- (c) pay Rs 1,00,000/- towards the payment of cost of litigation;
- (d) any other relief this Hon'ble Commission deems fit.

3. The opposite parties resisted the complaint and filed its written submissions to the complaint denying the averments of the complainant. Without prejudice, preliminary objections were taken that there was no cause of action in favour of the complainant since there was no substantial proof provided to allege deficiency of service and that this Commission lacked jurisdiction as the matter was civil in nature which was to be adjudicated only in a civil court; the liability of the parties was limited with regard to the compensation as per clause 10(c) of the FBA; the date of final construction of the flat of which possession is to be handed over was not fixed and clause 10(a) of the FBA clearly stipulates that time is not of the essence of the contract and the time mentioned was only the 'likely' time; despite the best intentions of the

opposite party to execute the project after the requisite approvals, global recession in 2009 impacted the real estate sector adversely; the delay was therefore due to factors beyond its control; the FBA provides for compensation @ Rs 5/- per sq ft per of super area per month for delay.

4. On merits, it is denied that there was a FBA executed between the original allottee (M/s Vardhaman Associates) and the opposite party. It is denied that the flat was allotted in favour of the complainant by the opposite party. It is submitted that the complainant had purchased the flat from the open market and not from the opposite party and that the original allottee transferred all his rights to the complainant. The opposite party contends that all demands were raised as per the payment plan opted for by the complainant and that the complainant made numerous defaults in making timely payments of instalments which resulted in several reminders and demand letters being sent by the opposite party from time to time. It is denied that the possession of the flat was put off on some pretext or the other or that the opposite party failed to develop the project. It is denied that the full payment had been made by the complainant and it is stated that the project was aimed at completion as per schedule

projected. The global recession was a major reason for the delay as nearly 70 units were still unsold and Rs 9 crores was the outstanding payments to be made by customers. Despite this, the opposite party was working towards completing the project. The opposite party denies keeping the complainant in the dark and submits, instead, that it kept the complainant always informed. It is also denied that the complainant pursued the matter or visited the site several times. It is contended that the complainant is motivated by an ulterior motive to make wrongful gains from the opposite party. Violation of the FBA is denied or that the construction had stopped or that the complainant had a cause of action. The claim made is stated to be non maintainable and the complaint before this Commission only filed in order to avoid payment of

court fee and the rigours of a civil suit outside the summary jurisdiction of this Commission. The prayer is stated to be prima facie not valid and the complaint liable for dismissal.

5. Parties led their evidence and filed their short synopsis of arguments. I have heard the learned counsel for both the sides and perused the evidence on record carefully.

6. The counsel for the complainant argued that the opposite party was to hand over the flat within 36 months with 6 months grace from the date of execution of the Agreement i.e. by 09.01.2015 as per clause 10(a) of the FBA signed on 09.07.2011 which it had failed to do despite accepting a substantial amount of Rs 49,62,699.26; that the opposite party kept the complainants in the dark about the status of work progress and gave false assurances while collecting deposits as per the Construction Linked Payment Plan giving the impression that construction was as per schedule whereas there was no progress on site and resultantly the opposite party was guilty of deficient services and unfair trade practice. No occupation certificate or completion certificate had been produced by the opposite party till date and no offer of possession had been made. Therefore, deficiency in service was writ large and hence it is prayed that the deposited amount be refunded with interest and other damages and costs. The counsel for the complainant argued that the present case was squarely covered by judgments of this Commission in Taranjit Kaur & Anr. Vs. Parsvnath Developers Ltd. in Consumer Complaint No. 770 of 2017 dated 06.03.2020 and Aashish Oberai Vs. EMAAR MGF Land Ltd., Consumer Case No. 70 of 2015 dated 14.09.2016, (2017) 1 CPJ 17 (NC) which had upheld the prayer for refund of the deposited amount with interest @ 10% p.a. and 9% respectively from the respective dates of deposit till the date of realization.

7. On behalf of the opposite party it was argued that the period of 42 months for construction mentioned in the FBA was only indicative. It was admitted that there had been a delay in the completion of the project although this was ascribed to force majeure events. It was also argued that the reasons for

the delay were beyond the control of the opposite party as it was due to events which were beyond the control of the opposite party and could not be ascribed to it resulting in delay. The complainant was a consistent defaulter who was not entitled to relief. Learned counsel for the opposite party submitted during arguments that the project had also been registered under RERA and was likely to be executed within the stipulated time frame. Hence the complainant was prayed to be dismissed as unjustifiable.

8. The preliminary issues raised by the opposite party have been considered. The opposite party's contention that the complainant had no cause of action needs to be examined in view of the fact that admittedly there is neither an occupancy certificate in place nor has an offer of possession been made. This contention does not sustain in view of the Hon'ble Supreme Court's judgment 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". In the present case, the delay is of nearly 8 years since January 2015 when possession was to be handed over. The Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Ltd. Vs. Geetu Gidwani Verma & Anr., Civil Appeal No. 12238 of 2018 with No. 1677 of 2019 dated 02.04.2019 has also laid down that a buyer cannot be compelled to take possession of a flat when there is delay in delivery of possession by the builder and the buyer is entitled to refund along with compensation/interest for such delay. The contention of the opposite party that the complainant is not entitled to claim interest for the delay in possession

therefore also does not sustain The argument that the complaint does not lie before this Commission but before a civil court is not sustainable in the light of the Hon'ble Supreme Court's 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 and reiterated 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"., As for the applicability of the force majeure condition, on the ground of lack of payments by allottees due to global recession, cannot be sustained in view of no evidence having been produced and only on the basis of a bald statement. The argument that the FBA did not provide for any fixed date of handing over possession and that time was not of the essence cannot be considered to have merit since the FBA not only provided a date, with a grace period of 6 months but also provided for compensation for delay @ Rs 5/- per sq ft of super area per month. The plea that it was only an indicative date can not therefore be accepted.

9. The argument of the opposite party that in view of the clause for the payment of compensation @ Rs 5/- per sq ft of super area per month the complainant is not entitled to interest on the deposited amount cannot be accepted since such a clause would apply in a case where the construction of the flat is delayed and the buyer accepts possession for which the respective parties will pay holding charges and compensation for the delay in possession. It does not apply to a situation where the buyer has no option but to seek refund due to the project remaining incomplete and where the builder itself seeks to recover interest for default at an exorbitant rate which constitutes an unfair trade practice, as held by this Commission in Swarn Talwer & Ors. Vs. Unitech Limited,

Consumer Complaint No. 349 of 2014 dated 14.08.2015.

10. From the material on record and the arguments advanced by both the learned counsel for the parties, it is apparent that the complainant is liable to claim relief with effect from the FBA dated 09.07.2011 signed by the original allottee with the opposite party. Though there is no FBA signed between the complainant and the opposite party brought on record, the fact that the opposite party accepted payments from the complainant is an admission of it recognizing that the complainant had stepped into the shoes of the original allottee. It is manifest from the record and admission of the opposite party that it has failed to obtain a completion/occupancy certificate from the concerned authorities for the apartments it was receiving the instalments for from the original allottee/complainant or to deliver possession of the same by the promised date. The payment plan was construction linked and the complainant continued to demand and receive instalments despite the construction milestones not being achieved as is evident from the delay admitted. This certainly amounts to deficiency in service as well as an unfair trade practice on its part qua the allottee/complainant. The argument that the complainant was a consistent defaulter does not sustain in the light of the fact that the opposite party did not choose to terminate the contract for this breach of contractual condition. It therefore cannot take this plea to deny the complainant his right to seek refund of the money deposited. The Hon'ble Apex Court has laid down in Govindan Raghavan (supra) 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 and in Kolkata West International City Pvt. Ltd. (supra) that delay of nearly 8 years cannot be considered to be 'reasonable delay'. The payment of interest as compensation has been held by the Hon'ble Supreme Court in Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, Civil Appeal No. 6044 of 2019 decided on 07.04.2022 to be both restitutionary and compensatory and to

be payable from the dates of deposit. A rate of interest of 9% simple interest per annum has been considered to be suitable in a catena of judgments by the Hon'ble Supreme Court and this Commission.

10. For the aforementioned reasons, I do not find any merit in the arguments of the opposite party. In view of the facts and circumstances of this case, the complaint is found to have merits and is liable to succeed. It is accordingly allowed with the following directions:

(i) opposite party is directed to refund the entire amount of Rs 49,62,699.26 /- deposited with it by the complainant to the complainant with interest @ 9% p.a. from the respective dates of deposit till the date of realization;

(ii) this order shall be complied within 8 weeks of this order failing which the rate of interest shall be 12% per annum.

(iii) opposite party shall also pay Rs 50,000/- to the complainant as cost of litigation.

All pending IAs stand disposed of with this order.