SEEMA NARAYEN & ANR. V. SHIPRA ESTATE & JAI KRISHAN & ANR.

1. SEEMA NARAYEN & ANR.
R/o. X-19, (GF), Hauz Khas,
New Delhi
2. Priya Narayen
R/o. X-19, (GF), Hauz Khas,
New Delhi

……..Complainant(s)

Versus

1. SHIPRA ESTATE & JAI KRISHAN & ANR.
D-32, Laxmi Nagar, Vikas Marg,
Delhi – 110 092.
2. Ghaziabad Development Authority
Vikas Path,
Ghaziabad – 201 001.

……..Opp.Party(s)

Case No: CONSUMER CASE NO. 478 OF 2017

Date of Judgement: 11 Jan 2023

Judges:

HON’BLE MR. C. VISWANATH,PRESIDING MEMBER

For the Complainant : Mr. Sukumar Pattjoshi, Sr. Advocate with Mr. Arvind Kumar Tiwary, Advocate

For the Opp.Party : For the Opp. Party No.1 : Mr. Chaitanya, Advocate

Mr. Shubhanshu Gupta, Advocate
Ms. Deepshikha Singh, Advocate
For the Opp. Party No.2 : Mr. Abhishek Yadav, Advocate

Facts:

Complainants booked flats with OP1 Shipra Estate in 2006 in their housing project. Flats allotted to them in October 2006 for Rs 42.9 lakhs. Complainants made full payments. As per allotment letter, construction was to be completed in 22 months. But there were delays. OP1 gave assurances of possession by certain dates but failed to deliver possession. Complainants filed complaint alleging deficiency in service.

Arguments:

Complainants:
Despite making payments in full in 2006 itself, have not received possession even after 11 years. Seeking interest for delay period, refund with interest or possession with interest and compensation.

OP1:
Clause 9 mentions completion within 22 months as 'likely' not certain. Informed and compensated delays. Delay due to market conditions, buyers not making payments. Offered possession since 2015. Complainants did not take any steps to take possession. Complaints not maintainable.

OP2 Ghaziabad Development Authority:
No consumer relationship. Complaints not maintainable. No allegation of deficiency in service against them.

Court's Observations and Decision:

Complaints maintainable based on recent judgement on interest amount determining jurisdiction. Facts of delay in possession, part compensation are admitted by OP1. SC judgements say buyers cannot be made to wait indefinitely for possession. OP1

failed to prove contingencies causing delay. Deficiency in service established. Following SC judgement, 6% simple interest directed as compensation for delay. Interest to be paid from due date of possession till actual possession date.

Sections:
Consumer Protection Act 1986

Cases Referred:
Renu Singh vs Experion Developers; Fortune Infrastructure v. Trevor D'Lima; Wg Cdr Arifur Rahman Khan v. DLF Southern Homes

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Full Text of Judgment:

1. As the facts and the dispute involved in the aforesaid two Consumer Complaints are same, both Consumer Complaints are being disposed of by common order, treating CC/477/2017 as lead case.
2. Complainant is an individual who had booked a flat in 2006 in the project of Opposite Party No.1. Opposite Party No.1 is a Private Limited Company engaged in the business of real estate development and entered into a joint venture with Opposite Party No.2/Ghaziabad Development Authority.
3. Case of the Complainant is that on 11.08.2006, in response to an advertisement issued by Opposite Party No.1, the Complainant applied for allotment of a residential flat in the project of Opposite Party No.1, namely, "Shipra Krishna", 15, Ahinsa Khand, Indirapuram, Ghaziabad (U.P.). Opposite Party No.1 allotted flat No.Maulsari-8-4 at 8th Floor in the said project, vide allotment letter dated 11.10.2006 for a consideration of Rs.42,90,000/-. Alongwith the allotment letter, Opposite Party No.1 also issued the payment schedule and the terms & conditions of the allotment. As per payment plan, the Complainant made entire payment to Opposite Party No.1. As per clause 9 of the allotment letter, Opposite Party

No.1 was supposed to complete the construction within 22 months from the date of commencement of construction. As per clause 5 of the allotment letter, Opposite Party No.1 was required to execute the flat buyers agreement and maintenance agreement with the Complainant, which they failed to do within the stipulated time. The Complainant visited the office of Opposite Party No.1 but could get only false promise. Opposite Party No.1 had never communicated the date of commencement of construction to the Complainant. Opposite Party No.1, vide letter dated 22.10.2009, assured that the flat would be ready by 30.11.2010 and for the delayed period they would pay compensation in the form of interest @ 7% p.a. Opposite Party No.1 also paid some compensation for the delayed period, vide letter dated 25.11.2011. Opposite Party No.1, vide letter dated 14.06.2013, intimated that the flat would be ready for possession by December, 2013 and also offered compensation @ 14% p.a. for the delay beyond December, 2013. Thereafter, Opposite Party No.1 never intimated about the date of possession and also failed to pay compensation for delayed period. Complainant sent notice dated 28.12.2016 seeking compensation for the delayed period and also sanctioned plan and completion certificate of the project. Opposite Party No.1, vide letter dated 05.01.2017 admitted that the Complainant was entitled for compensation for the delayed period. Alleging deficiency in service on the part of the Opposite Parties, the Complainant filed the Consumer Complaint with the following prayer: –

"a). Direct the OPs to immediately enter into a Flat buyer agreement with the complainant, and
b). Direct the OP No.1 to immediately offer the possession of the flat, and
c) Direct the OP No.1 to pay interest @ 18% on Rs.42,90,000/- paid by the Complainant from the date of possession (i.e. 22 months from 11.10.2006 the date of booking) till the date of actual possession, or
d) Direct refund of Rs.42,90,000/- with interest @ 18% per

annum from the date of payment till date.
f) Direct the OPs to pay Rs.10,00,000/- to the Complainant for mental agony and harassment suffered by the Complainant due to deficiency in service on the part of the Opposite Party No.1;
g) The Opposite Party may also be directed to pay Rs.5,00,000/- as litigation expenses;
h) Any other relief or alternate relief and order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case, may also be awarded/passed in favour of the Complainant and against Opposite Party No.1 in the interest of justice."

4. The Complaint was resisted by the Opposite Parties by filing the written statement on the ground that this Commission did not have the pecuniary jurisdiction to entertain the Complaint as the consideration value of the flat in question was Rs.42,90,000/-.
5. On merits, the Opposite Parties stated that in the allotment letter certain period was not given for completion of the project. Clause 9 of the allotment letter clearly noted that construction of the building was likely (not certainly) to be completed within 22 months from the date of commencement of construction. The Complainants were fully aware of the reasons for delay in completion of the project and as per clause 11 of the allotment letter, the Complainants had impliedly agreed to condone the delay by accepting the compensation. Another reason for delay was the adverse condition of the market scenario in 2008 from which the real estate market has still not recovered. Many of the allotees did not make payment in time, due to which the entire building process was thrown off the track. Opposite Party No.1, vide letter dated 21.06.2007, sent the statement of account and asked the Complainant to clear the dues and take possession of the apartment. The Complainant did not make payment of the dues and chose to file Consumer Complaint before this Commission.
6. The Complainant filed the rejoinder to the written

statement reiterating the allegations made in the Complaint. It was stated that the Opposite Parties had not submitted the completion certificate. The Complainants are ready and willing to make payment of the balance amount and take possession, provided Opposite Parties obtain the occupancy certificate.

7. Heard the learned Counsel for the Parties and carefully perused the record. Learned Counsel for the Complainants submitted that the flats in question were allotted to the Complainants in October, 2006 and the Complainants paid the entire consideration in 2006 itself. Opposite PartyNo.1 was required to deliver possession within 22 months. Despite receiving the entire sale consideration, Opposite Party No.1 had not offered possession within the stipulated period. Complainants were given possession of their respective flats in March, 2021. Opposite Party No.1 had also failed to produce the completion certificate and the occupancy certificate.

8. Learned Counsel for Opposite Party No.1 submitted that the instant Consumer Complaints are not maintainable before this Commission as the consideration amount involved in the matter is much less than the pecuniary jurisdiction of this Commission.

9. On merits, learned Counsel for the Opposite Party No.1 submitted that in the allotment letter exact period of completion of project was not given. In clause 9 of the allotment letter, Opposite Parties have used the word “likely to be completed.” The Complainants were communicated the reasons for delay from time to time. Opposite Party No.1 had also paid some compensation to the Complainants for the delay. Opposite Party No.1 has been offering possession of the respective apartments since May, 2015. The Complainants had not taken any step for taking possession nor clear the dues. Main reason for delay in completion of the project was non-receipt of the amount due from the allottees which ran more than Rs.32 crores. Further reason for delay was the adverse scenario in 2008. Delay in delivery of possession is, therefore, not attributable to Opposite Party No.1.

10. Learned Counsel for Opposite Party No.2 submitted that

there was no relation of “Consumer” and “service provider” between the Complainant and Opposite Party No.2. The allotment letter was issued by Opposite Party No.1 and the payment was also made to Opposite Party No.1. In the Consumer Complaints, the Complainants had also not made any allegation against Opposite Party No.2. The Complaints qua Opposite Party No.2 are not maintainable and liable to be dismissed as not maintainable.

11. On merits, learned Counsel for Opposite Party No.2 submitted that if there was any delay in delivery of possession, it was between the Complainant and Opposite Party No.1 and Opposite Party No.2 had nothing to do with any deficiency in service.

12. Admitted facts are that the Complainants were allotted flats in question in January, 2006. They Complainants also paid the entire consideration by the end of 2006. As per clause 9 of the allotment letter, construction was likely to be made within 22 months. Opposite Party No.1 admitted the delay and also paid some compensation to the Complainants.

13. Regarding maintainability of the Consumer Complaints on the ground of pecuniary jurisdiction, Larger Bench of this Commission in re: CC/1703/2018 Renu Singh vs. Experion Developers Pvt. Ltd. and other connected matters answered on 26.10.2021 held that “for the purposes of determination of pecuniary jurisdiction, the rate of interest or period of interest as claim in the complaint alone has to be examined.” If the consideration amount plus interest amount sought by the Complainant are clubbed, the total amount falls within the pecuniary jurisdiction of this Commission. Both Consumer Complaints are, therefore, fall within the pecuniary jurisdiction of this Commission and hence are maintainable.

14. It is relevant to mention that during the pendency of the Consumer Complaints, the Complainants have taken possession of their respective flats in March, 2021, as recorded in the order dated 20.10.2022. The only dispute relates to delay in delivery of possession. In Fortune Infrastructure & Anr. v. Trevor D’Lima & Ors., Civil Appeal No. 3533-3534 of 2017,

decided on 12.3.2018, Hon'ble Supreme Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him/her. The Opposite Party failed to prove that there was any unforeseen and unexpected event which prevented the completion of the Project within the stipulated time period. The Opposite Party is guilty of deficiency in service in not delivering the possession within the stipulated time. The Complainants are entitled for interest for the delayed period. Since deficiency in service is established on the part of the Respondent/Opposite Party, Complainants are entitled for compensation for the delay in delivery of possession of flat. Hon'ble Supreme Court in Wg. Cdr. Arifur Rehman Khan and Aleya Sultana & Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as Begur OMR Homes Pvt. Ltd.) & Ors., Civil Appeal No.6239 of 2019 observed as follows: –

"Save and except for eleven appellants who entered into specific settlements with the developer and three appellants who have sold their right, title and interest under the ABA, the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate of 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty- six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of the occupation certificate;"

15. In view of the foregoing discussion and judgment of Hon'ble Supreme Court, I am of the opinion that the Complainants are entitled for compensation for delayed handing over of possession and for the failure of Opposite Party No.1 to fulfil the representations made to the Complainants. Accordingly, Opposite Party shall, as a measure of compensation, pay 6% simple interest per annum on the deposit made by the Complainants from the due date of possession till the date of actual possession, after adjustment of the amount

already paid to the Complainants. Opposite Party No.1 is directed to comply with the order within eight weeks from today, failing which it shall pay interest at the rate of 9% per annum. Consumer Complaints are disposed of in above terms with no order as to costs.