SONALI CHANDIRAMANI & ANR. Vs. MARVEL OMEGA BUILDERS PRIVATE LIMITED

SONALI CHANDIRAMANI & ANR. Vs. MARVEL OMEGA BUILDERS PRIVATE LIMITED

CONSUMER CASE NO. 1023 OF 2019

1. SONALI CHANDIRAMANI & ANR.

……..Complainant(s)

Versus

1. MARVEL OMEGA BUILDERS PRIVATE LIMITED
THROUGH ITS MANAGING DIRECTOR ARTHVISHWA”

4TH FLOOR, LANE, NO.5,KOREGAON PARK, PUNE-411001

……..Opp. Party(s)

CONSUMER CASE NO. 1024 OF 2019

1. ROMI CHANDIRAMANI & 2 ORS.

……..Complainant(s)

Versus

1. MARVEL OMEGA BUILDERS PRIVATE LIMITED

……..Opp. Party(s)

Date of Judgement : 06 December 2023

Judges : JUSTICE RAM SURAT RAM MAURYA,
HON'BLE BHARATKUMAR PANDYA,

For Complainant : MS. KAWALJIT KOCHAR, ADVOCATE

MR. DEEPANSHU, ADVOCATE

For Opposite Party : MR. VIJAY KUMAR, ADVOCATE

Facts:

- ***Sonali and Chandru Chandiramani (complainants) booked a flat C-301 in Marvel Selva Ridge Estate project developed by Marvel Omega Builders Pvt Ltd (opposite party)***
- ***Agreement executed on 07.03.2013 for sale of flat for Rs. 2.07 crores. Possession to be given by 31.12.2014***
- ***Complainants paid over 90% amount by May 2014***
- ***Opposite party failed to give possession by due date of 31.12.2014***
- ***Complainants inspected flat in March 2018 when informed it was ready, but found deficiencies like poor quality furniture, broken tiles, etc.***
- ***Complainants informed defects to opposite party in August 2018 but no action taken***
- ***Opposite party demanding further payments of Rs. 24 lakhs and Rs. 6.05 lakhs before possession***
- ***Complainants sent legal notice in February 2019, filed complaint in June 2019***

Arguments by Complainants:

- ***Opposite party failed to handover possession within timelines of agreement***
- ***Several deficiencies found in flat inspection***
- ***Harassment faced due to delay and unfair demands by opposite party***
- ***Seeking possession, compensation for delays, rectification of deficiencies***

Arguments by Opposite Party:

- *Delay due to non-payment of full dues by complainants*
- *Complainants not consumers under Consumer Protection Act*
- *Complaint time-barred as possession was to be given by 2014*
- *Complaint made with intention to harass and extract money*

Court's Opinion:

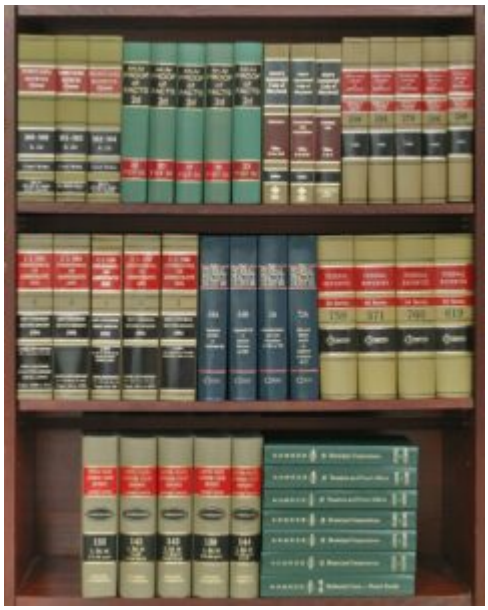
- *Responsibility of delay lies with opposite party as per agreement clauses*
- *Directed complainants to deposit disputed amount with Commission to get possession*
- *Complainants deposited amount but possession still not given*
- *Directed payment of compensation @6% interest p.a. for delay from 2015 till possession*
- *Account settlement between parties within 1 month*
- *Possession and conveyance deed to complainants without further delay*
- *Delay compensation to be adjusted and interest @9% on any remaining payable amount*

Sections Referred:

- *Section 2(1)(d) of Consumer Protection Act, 1986*
- *Section 13(1) of Consumer Protection Act*

Laws Referred:

- *Judgements in Wg.Cdr. Arifur Rahman Khan Vs. DLF Southern Homes Pvt. Ltd. and DLF Home Developers Pvt. Ltd. Vs. Capital Greens Flat Buyers Association related to delay compensation in property disputes.*



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Full text of Judgement :

1. Heard Ms. Kawaljit Kochar, Advocate, for the complainants and Mr. Vijay Kumar, Advocate, for the opposite party.
2. Sonali Chandiramani and Chandru Chandiramani have filed above complaint, for directing the opposite party to (i) handover possession of flat C-301, Wing 'C' in the residential project, namely, Marvel Selva Ridge Estate, Pune in terms of the agreement; (ii) pay compensation of Rs.24658782/- with interest @ 18% per annum from the due date of possession till realization, the for harassment, mental agony and other losses sustained by the complainants; (iii) pay additional expenditure that the complainants may have to bear due to proposed hike in the stamp duty for registration of sub lease and execute the lease deed in favour of the complainants; (iv) handover over possession of the apartment unit C-301 alongwith covered parking spaces CB03 and SC34; (v) handover possession of flat C-301 pending adjudication of the complaint and payment of Rs.3005000/- as claimed by the opposite party may be kept in abeyance (vi) any other order as deemed fit and appropriate in the facts and circumstances of the case.
3. The complainants stated that they are allottees of a

residential flat No.C-301, Wing ‘C’ in a group housing project, namely, Marvel Selva Ridge Estate, Pune which was to be developed by the opposite party. The opposite party is a private limited company incorporated under the Companies Act, 1956, having its registered office at “Arthviswa”, 4th Floor, Lane No.5, Koregaon Park, Pune-411001. The opposite party approached the complainant for purchase of the flat. In the brochure luxury specifications were mentioned like earmarked space for entrance, forest reserve, driveways, gates, continuous circular vehicular movement within the complex, playgrounds, swimming pool, gym, club building, dedicated covered parking spaces and EV charging points etc. Allured by the promises of the opposite party, the complainants booked the above flat in the project. On 07.03.2013, an agreement was also executed between the parties. As per agreement, the cost of the flat was fixed at Rs.20740625/- which was to be made as per “construction linked plan.” Possession of the flat was to be handed over by 31st December, 2014. The complainants paid more than 90% of the consideration upto May, 2014. The opposite party failed to handover the possession within the stipulated period. The complainants visited the office of the opposite party several times (12.02.2015, 05.03.2015, 20.04.2015, 03.03.2016, 30.01.2017 and 17.09.2017) and also wrote emails for handing over possession. Every time the opposite
party assured that the flat would be ready within a month or two. The opposite party, vide email dated 14.03.2018 informed the complainant that the flat is ready for handing over the possession. The complainants inspected the flat and found various deficiencies therein like poor quality of furniture, defective water pipes, broken tiles, corroded railings, ill fittings and fixtures etc. The complainants brought the said deficiencies to the notice of the opposite party, vide email dated 22.08.2018 but nothing was done by the opposite party up to December, 2018. The opposite party is demanding Rs.24 lacs before handing over possession of the flat, which is not in a habitable condition due to above deficiencies. The opposite

party is also demanding Rs.605000/- before possession. The opposite party has charged interest @ 18% for delay in making the payment by the complainants and other home buyers. The complainants sent a legal notice dated 18.02.2019 to the opposite party for deficiency in service and unfair trade practice. Then also the opposite party did not rectify the defects.

Therefore, the complainants filed the above complaint on 10.06.2019.

4. The opposite party filed its written reply on 17.01.2020, wherein allotment of flat, execution of agreement for sale dated 07.03.2013 in favour of the complainants and deposit made by them, have not been disputed. The opposite party stated that possession was to be handed over upto 31.12.2014, subject to full payment by the complainants. The complainants failed to comply with the terms of the agreement by not making full payment to the opposite party. Therefore, delay in handing over possession cannot be attributed to the opposite party. The payment made by the complainants includes the charges as per government norms. Therefore, the allegation of the complainants that they have paid more than 90% of the total consideration is wrong. As per statement of account, an amount of Rs.3137065/- is still payable by the complainants with interest @ 18% p.a. The complainants cannot take benefit of their own wrong. The opposite party has completed all requisite requirements as per agreement and obtained the completion certificate on 03.09.2016. The complaint has been filed with ulterior motive with the intention to harass the opposite party by getting illegitimate compensation. The allegations of deficiency in service and unfair trade practice are false and the complaint is liable to be dismissed.

5. The opposite party also raised the preliminary objection that the complaint has been filed without any cause of action. Possession of the flat was to handed over upto 31.12.2014. The complaint filed in 2019 is time barred. The complainants are not consumers under Section 2 (1) (d) of the Consumer

Protection Act, 1986 as they have not made full payment to the opposite party. The complaint involves complicated facts which cannot be decided by this Commission in summary jurisdiction.
6. The complainants filed Rejoinder Reply, Affidavit of Evidence of Mrs. Sonali Chandiramani and documentary evidence. In Affidavit of Evidence, it is stated that as directed by this Commission vide order dated 26.07.2019, the complainants have deposited an amount of Rs.2345456/- with this Commission, as final instalment for possession of the flat. However, the opposite party has not given rebate of Rs.129585/- as agreed, nor has rectified the deficiencies pointed out by the complainants. The opposite party filed the Affidavit of Evidence of Vishwajeet Subhash Jhavar, Director of the opposite party. Both the parties have filed their short synopsis of arguments.
7. We have considered the arguments of the counsel for the parties and examined the record. As per clause 5 (b) of the agreement, possession of the flat was to be handed over by 31.12.2014 but the possession has not been handed over. On 26.07.2019, this Commission
passed the following order: –

"The complaint is admitted, subject to just exceptions. Issue notice in terms of Section 13(1) of the Consumer Protection Act alongwith a copy of the complaint to the OP, for 06.12.2019, directing it to give its version of the case within a period of 30 days from the date of receipt of the notice. In the meanwhile, the complainants are permitted to take possession of the allotted flat on payment of the admitted balance amount, if any, to the opposite party and deposit of the entire amount disputed by them with this Commission without prejudice to the
respective rights and contentions of the parties in this complaint. The said amount, if deposited, shall not be released to the complainant without prior permission of this Commission and shall be kept in an automatically renewable FDR of a nationalized bank and final order with respect to

disbursal of the said amount and interest which accrues on it will be passed at the time of final disposal of the complaint."

In compliance of the order dated 26.07.2019, the complainants have deposited an amount of Rs.2345456/- with this Commission but till date opposite party has not handed over the possession. As such, the opposite party is liable to pay delay compensation from 01.01.2015 till the date of possession to be handed over to the complainants. The opposite party is entitled to claim interest on the balance amount after adjusting delay compensation. Supreme Court in Wg.Cdr. Arifur Rahman Khan Vs. DLF Southern Homes Pvt. Ltd., (2020) 16 SCC 512 and DLF Home Developers Pvt. Ltd. Vs. Capital Greens Flat Buyers Association, (2021) 5 SCC 537, held that interest @6% p.a. on the deposit of home buyers for the delayed period is appropriate delayed compensation.

ORDER

In view of above discussions, the complaint is partly allowed. The opposite party is directed to give delay compensation in the form of interest @6% per annum on the deposit of the complainants from 01.01.2015 till the date of handing over of possession. After adjusting
delay compensation, if any amount remained to be paid by the complainants, the opposite party will charge interest @9% per annum on it. As the complainant has deposited an amount of Rs.2345456/- with this Commission in compliance of the order of this Commission dated
26.07.2019 and the opposite party has not issued final statement of account, the opposite party shall not charge any interest after 26.07.2019. After settlement of account within a period of one month, the opposite party will hand over the possession of the flat and execute conveyance deed in favour of the complainants without any further delay. Registry is directed to release the amount of Rs.2345456/- lying in deposit with this Commission with accrued interest, if any, to

the opposite party. If in accounting, it is found to be excess amount, then the opposite party shall pay such excess amount to the complainants.

—END—