

SUSHMA SHARMA V. PARSVNATH DEVELOPERS LIMITED & ANR.

1. SUSHMA SHARMA
R/O 26, SHIVALIK, SECTOR-61,
NOIDA-201303
UTTAR PRADESH

.....Complainant(s)

Versus

1. PARSVNATH DEVELOPERS LIMITED & ANR.
6TH FLOOR, ARUNACHAL BUILDING, 19, BARAKHAMBA
ROAD,
NEW DELHI-110001
2. PARSVNATH DEVELOPERS LTD
THROUGH MANAGING DIRECTOR 6TH FLOOR,
ARUNACHAL BUILDING 19, BARAKHAMBA ROAD,
NEW DELHI-110001

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 1403 OF 2018

Date of Judgement: 11 Jan 2023

Judges:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA, MEMBER

**For the Complainant : Ms.Manali Singhal, Advocate
Mr.Santosh Sachin, Advocate
Ms.Aanchal Kapoor, Advocate
For the Opp.Party : Mr.Prabhakar Tiwari, Advocate
Mr.Karan Rajpurohit, Advocate
Mr.Aishwary Jain, Advocate**

Facts:

Complainant Sushma Sharma had booked a flat with Parsvnath Developers Ltd in Greater Noida in 2006. Flat buyer agreement was signed in 2007 for a flat of area 1835 sqft for Rs 55.96 lakhs. Possession was to be handed over by 28.11.2010. Complainant paid Rs 21.62 lakhs (about 50% of total cost) towards the flat in installments as demanded by Parsvnath. In July 2010, Parsvnath unilaterally extended possession date to June 2012. Complainant wrote for refund in Dec 2012 due to failure to handover possession. But refund was not provided. In April 2015, Parsvnath sent a fresh agreement and allotment letter for signatures which complainant protested. But under coercion signed them. Possession still not offered at the time of complaint in 2018 even after 8 years delay. Hence complaint filed seeking refund, interest, compensation and costs.

Court's Opinions and Order:

Deficiency by Parsvnath established since admissions that project not yet complete, no completion certificate obtained even after years of delay. Order refers to and relies on earlier relevant cases of same project Parsvnath Palacia. As agreed by complainant, order passed similar to order in CC 1206/2018 directing:

- 1) Refund of entire deposited amount Rs 21,62,540 to complainant.**
- 2) Alongwith interest @9% p.a. from respective deposit dates till date of final payment.**
- 3) Payment within 2 months.**

Arguments:

By Complainant:

Already paid 50% of total cost but completion nowhere in sight even after 8 years delay. Had immediately asked for refund when delay occurred but no refund provided. Mental harassment and losses caused due to delay should be compensated

By Parsvnath:

Delay occurred but complainant also defaulted in installments so reminder letters were sent. No specific counter to refund or compensation demands

Sections and Laws Referred: None specifically referred to.

Cases Cited:

Surinder Kumar Sarna Vs. Parsvnath Developers Ltd (CC 1503/2016)

Sunil Joshan Vs. Parsvnath Developers Ltd (CC 1206/2018)

I have summarized the key details and aspects under separate headings as requested. Please let me know if you need any clarification or have additional questions.

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Full Text of Judgment:

Clarification is sought on the matter and final arguments are heard.

1. The brief facts of the case are that complainant had booked flat in the project of the opposite party, namely, Parsavnath Palacia, Greater Noida having super built-up area of 1835 sq. ft. on 01.07.2006 and paid registration amount of Rs.5,50,000/- . A

Flat Buyer Agreement was entered into in the year 2007 and total consideration of the flat was Rs.55,96,750/- . As per the Flat-Buyer Agreement, possession was required to be handed over on or before 28.11.2010. A provisional allotment letter informing the complainant that she had been allotted flat No. A-501 had been issued to her on 23.04.2007. The complainant had been regularly making the payment towards the consideration amount of flat as and when demanded and paid total consideration amount of Rs.21,62,540/- on various dates. Vide letter dated 09.07.2010, the opposite party had unilaterally extended the period of handing over of possession from 28.11.2010 to June 2012. On 26.12.2012, a letter was

written to the opposite party for refund of amount since opposite party had failed to hand over the possession as per the schedule. However, the money was not refunded to the complainant. The opposite party on 22.04.2015 sent a fresh Flat-Buyer Agreement to the complainant for signatures along with copy of the allotment letter which was protested by the complainant and again demanded refund of her money. Due to coercive action taken by the opposite party, the complainant under protest signed those letters. The opposite party continued to send the demands for the money and she had been assured time and again that flat would be handed over to her. However, till the filing of the complaint, there was no offer of possession by the opposite party. Aggrieved due to deficiency in service on the part of the opposite party, the complaint had been filed before this Commission seeking refund of the deposited amount along with compound interest @ 18% p.a. and also seeking compensation of Rs.7,52,350/- and compensation of Rs. 70,00,000/- for escalation of cost and loss of opportunity and compensation of Rs.1,00,000/- for mental harassment and physical distress and Rs.5,00,000/- lacs as litigation cost.

2. The complaint is contested by the opposite party. They have filed their written version. It is not disputed in the written version that flat had been allotted to the complainant for consideration amount of Rs.55,96,750/- and that the complainant had deposited said amount of Rs.21,62,540/- with them. It has been contended on behalf of the opposite party that al-though there had been delay on the part of the opposite party in offering the possession, but complainant has also defaulted in making the payment of the consideration amount and for that demand and reminder letters dated 18.07.2007, 05.01.2008, 08.02.2011, 15.09.2017, 28.09.2017 and 11.12.2017 were issued to her.

3. Rejoinder has been filed by the complainant. The complainant has again reiterated her contentions in the complaint wherein it is submitted that complainant had already

paid almost 50% of the consideration amount and completion of project was nowhere in sight and flat was also not completed and no completion certificate had been obtained by the opposite party till the date of filing of complaint, al-though as per the agreement, they were supposed to hand over the possession in the year 2010. It is submitted that there had been delay of 8 years and when the delay had occurred, they had immediately demanded refund of the deposited amount which opposite party has failed to acknowledge.

4. Parties led their evidences. We have heard the arguments and perused the relevant record.

5. Admittedly, project of the opposite party is not yet complete and no completion certificate has been obtained. Deficiency on the part of the opposite party, therefore, stands established. Reliance has been placed by the parties on several judgments passed by this Commission relating to the same project and a request has been made to pass similar order as had been passed in those matters. The complainant has relied on the findings of this Commission in CC No. 1503 of 2016 titled Surinder Kumar Sarna Vs. Parsvnath Developers Limited Manu/CF/0198/2019.

6. During the course of arguments, learned counsel for the opposite party has handed over to us reasoned judgment passed by this Commission in the CC No. 1206 of 2018 titled Sunil Joshan Vs. Parsvnath Developers Ltd. decided on 14.09.2022 in respect of the same project called Parsvnath Palacia. Complainant is present in the Court along with her counsel and she agrees that similar order shall be passed in this case as well. In view of this case, since it is a covered matter, following order is passed in this case.

7. Complaint is allowed and opposite party is directed to refund the entire deposited amount of Rs.21,62,540/- along with interest @ 9% p.a. from the date of respective deposits till the date of payment within a period of two months from today.

8. The complaint is disposed of in these terms.