

VIKAS MALHOTRA V. RAMPRASTHA ESTATES PVT. LTD.

Vikas Malhotra Vs. Ramprastha Estates Pvt. Ltd.

1. VIKAS MALHOTRA
B-96 Defense Colony,
NEW DELHI – 110 024.

.....Complainant

Versus

1. RAMPRASTHA ESTATES PVT. LTD.
C-10, C-Block Market, Vasant Vihar,
NEW DELHI – 110 057.

.....Opp. Party

Case No. : CONSUMER CASE NO. 1083 OF 2017

Date of Judgement : 04 December 2023

Judges : MR. SUBHASH CHANDRA

For Complainant : MR PRABHAT RANJAN, MR ASHRAY BHATIA,

**MR ANKIT SEMAITI AND MR DROUHN
GARG, ADVOCATES**

**For Opposite Party : MR SHIVENDRA DIWEVDI, MR ANKUR SETIA,
ADVOCATES**

Facts

- Complainant Vikas Malhotra booked a 300 sq yd plot in Ramprastha City project of OP Ramprastha Estates Pvt.***

Ltd. on 24.11.2011 for Rs 75 lakhs

- *Rs 72 lakhs was paid against receipt no. 644 on 20.07.2012 (Rs 3 lakhs refunded from original amount)*
- *Despite several efforts, no plot was allotted even after 4 years and no communication received*
- *Complainant sought refund of amount paid with 18% interest compounded quarterly vide letter dated 22.03.2017*
- *No Plot Buyers Agreement executed, no date of possession given even after 6 years*

Court's Elaborate Opinions

- *OP's attempt to blame delay on authorities cannot be accepted in view of Supreme Court judgment in Lucknow Development Authority v. M.K. Gupta that confirms real estate development is a 'service'*
- *Fortune Infrastructure judgment says person cannot be made to wait indefinitely for possession*
- *Bangalore Development Authority judgment says allottee entitled to refund plus interest for delay in possession*
- *No evidence that OP informed complainant of issues with sectoral plans or offered options*
- *No Plot Buyers Agreement proposed even after over 5 years – unfair trade practice and abuse of dominant position*
- *Delay of over 6 years, even after revised sectoral plans in 2017, cannot be considered reasonable*
- *OP cannot latch its deficiency onto Town Planning dept.*
- *Argument of force majeure not valid since no agreement spelling out such conditions*
- *Complainant cannot be asked to wait indefinitely in light of Supreme Court judgments*
- *Interest at 9% p.a. would be fair compensation as per Experion Developers case*

Sections and Laws Referred

- **Sec 21(a)(i) and Sec 22 of Consumer Protection Act 1986**
- **Supreme Court Judgments:**
 - **Lucknow Development Authority v. M.K. Gupta**
 - **Fortune Infrastructure v. Trevor D'Lima**
 - **Bangalore Development Authority v. Syndicate Bank**
 - **Pioneer Urban Land v. Geetu Gidwani Verma**
 - **Pioneer Urban Land v. Govindan Raghavan**
 - **Kolkata West International City v. Devasis Rudra**
 - **Experion Developers v. Sushma Ashok Shiroor**

So in summary, the delay of over 6 years in offering possession or timeline was held as deficiency in service amounting to unfair trade practice, entitling the complainant to refund plus 9% interest p.a. as compensation, relying on various Supreme Court judgments.



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: <https://dremlaw.in/wp-content/uploads/2023/12/task-7-nitishu.pdf>

Full text of Judgement :

1. This consumer complaint under section 21(a)(i) of the Consumer Protection Act, 1986 (in short, the 'Act') read with section 22 alleges unfair trade practice and deficiency in service in delay in handing over possession of a plot booked

in a project promoted and executed by the opposite party within the promised time and seeking refund of the amount deposited with compensation and other costs.

2. The facts, according to the complainant, are that on 24.11.2011 he booked a plot admeasuring 300 sq yds in 'Ramprastha City', Sector 37D, Gurgaon by depositing Rs.72,00,000/- against receipt no 644 on 20.07.2012 (when Rs 3,00,000/- was refunded from the Rs 75,00,000/- deposited on 24.11.2011). After several efforts with the opposite party went in vain, the complainant informed the opposite party on 18.12.2015 that the plot had not been allotted nor any communication received even after passage of 4 years. Another reminder was sent on 22.03.2017 when refund with 18% interest compounded quarterly was sought. The complainant states that neither a Plot Buyers Agreement had been executed till date nor any date of handing over communicated by the opposite party till date. The complainant is before this Commission with the prayer to direct the opposite party to:

(i) refund Rs 72,00,000/- along with interest per annum from 24.11.2011 till realization;

(ii) pay interest @ 18% on Rs 3,00,000/- from 24.11.2011 till 20.07.2012;

(iii) pay Rs 10,00,000/- towards compensation for harassment and anguish caused;

(iv) pay Rs 10,00,000/- towards punitive and exemplary damages;

(v) pay Rs 10,00,000/- towards cost of litigation; and

(vi) any other order deemed fit.

3. Upon notice, the complaint was resisted by the opposite party by way of a reply. Averments of the complainant were denied while admitting the booking of the plot by him. It was stated that a Letter of Intent (LoI) dated 24.05.2011 and

Licence No. 128 dated 28.12.2012 was granted to it for development of a residential plotted colony in Sector 37D, Gurgaon. The layout plan was submitted by it on 28.09.2012; however, due to changes in the Sectoral Plan of Sectors 37 C & D, it was constrained to make changes. On 07.04.2014 it again applied for a new layout plan. Despite reminders dated 07.12.2015, 08.06.2016 and 23.12.2016, no approval was received from the concerned authorities. It is contended that the delay is ascribable to acts of omission and commission of Government Authorities such as the Department of Town & Country Planning for which he should not be penalised.

4. Parties led their evidence and filed rejoinder, affidavit, and evidence as well as short synopsis of arguments. I have heard the learned counsel for the parties and carefully considered the material on record.

5. On behalf of the complainant it was argued that the attempt of the opposite party to ascribe the delay to the concerned authorities cannot be accepted in view of the judgement of the Hon'ble Supreme Court in Lucknow Development Authority Vs. M. K. Gupta, (1994) 1

SCC 243 that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a "service" under section 2(o) of the Act. Therefore, it is argued that the inordinate delay in handing over possession of the plot clearly amounts to deficiency since there was no execution of any agreement, no provision of information, non-allotment of a plot number and withholding of money deposited since 2011. Reliance is also placed on judgement of Hon'ble Supreme Court in (i) Fortune Infrastructure & Anr. Vs. Trevor D'Lima & Ors., (2018) 5 SCC 442 that a person cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid with compensation and (ii) Bangalore Development Authority vs. Syndicate Bank, (2007) 6 SCC 711 that held that when possession of the

allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable interest thereon from the date of payment till the date of refund reiterated in Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, CA No. 12238 of 2018 decided on 02.04.2019.

6. Learned counsel for the opposite party argued that while on merits, it is admitted that there was delay in handing over of the possession of the flat, there was no deficiency in service or unfair trade practice on its part since there was no negligence and the delay was on the part of the Town and Country Planning Department of the Government of Haryana in delaying the approved Sectoral Plan for Sectors 37 C & D to 2023. In the absence of an approved sectoral plan, the opposite party could not conceive the project. It reiterated that despite its efforts the plans were not approved and that its representation dated 23.12.2016 was rejected on 05.09.2017 and review application turned down on 13.01.2021. It was only on 01.09.2017 that the revised Sectoral Plan was approved, superseding the previous plan dated 19.12.2012. Thereafter, the Department of Town & Country Planning, Government of Haryana issued orders treating the period from the date of issue of licence till 01.09.2017 to be treated as 'Zero Period' as far as the obligation of the opposite party "qua dues and other concomitant approvals and charges appurtenant to this License". It was, therefore, averred that there was no delay on part of the opposite party and hence no liability for deficiency in service or unfair trade practice.

7. From the foregoing it is an admitted fact that the complainant booked a plot in opposite party's project, "Ramprastha City" on 24.11.2011. It is also evident that the opposite party was aware as early as 07.04.2014, when it applied for change of its layout plans, that the project as promoted was likely to undergo changes in view of the necessity to modify the Sectoral Plans. It made several

efforts to have revised plans approved in order to proceed but was able to get appropriate orders on 01.09.2017. Its efforts thereafter seem to have been

directed at getting an order for a "Zero Period" for the license which it succeeded in obtaining on 01.04.2021. There is no evidence brought on record to establish the efforts the opposite party made to keep the complainant in the knowledge of the developments with regard to the Sectoral Plans or the likely scenario or developments. No evidence has been brought on the record to indicate that the complainant was either offered the option to continue with the scheme or to opt out which the opposite party should have done considering it had accepted full sale consideration in 2011. No evidence is brought on record to indicate the steps taken till 23.12.2016 to expedite the matter. No Plot Buyers Agreement was proposed in the matter even after over 5 years of the receipt of funds. The action of the opposite party to keep the complainant completely in the dark without any alternative options after receiving the entire sale consideration is clearly an unfair trade practice. Irrespective of the issues with the Sectoral Plans and the Licence, it was incumbent upon the opposite party to share details and likely timelines with the opposite party whose funds it had accepted. Without entering into an agreement that would have defined the rights and obligations of both parties which would have enabled a decision to either continue or exit the scheme, the opposite party kept the funds collected without any progress on the project. The action of the opposite party in not entering into an agreement precluded this opportunity for the complainant. This is manifestly an abuse of dominant position and an unfair trade practice.

8. The inaction of the opposite party to even propose a Plot Buyers Agreement failed to set out a possible timeline for the complainant as a consumer. However, considering the complaint was filed in 18.04.2017 the delay of 6 years cannot be considered reasonable by any yardstick. Even as on date, after the revision of the Sectoral Plans for sectors 37 C and D as

on 01.09.2017, as stated by the opposite party, there is no layout plan approval. The delay in handing over of possession, even if reckoned from this date, is nearly 6 years. The delay in possession is, in any case, evident although ascribed to the actions of Town & Country Planning Department.

9. The averment of the opposite party that the delay was due to factors beyond its control cannot be sustained in view of the fact that the scheme should have been redesigned in the light of the approvals available and a revised costing and payment plan proposed to the prospective allottees, including the complainant. The opposite party has not brought any document on record to suggest that such an approach was followed. It cannot, therefore, be allowed to latch its deficiency on to the Town & Country Planning Department. The argument that the delay was covered by any force majeure condition cannot be considered also because there was no agreement in place under which such conditions could be formally decided.

10. In the instant case, there is neither an offer of possession nor a likely date by when possession can be offered. The contentions of the opposite party are tantamount to requiring the complainant to wait indefinitely for possession of the plot booked in 2011. This is both unreasonable as well as not sustainable legally. The Hon'ble Supreme Court has laid down 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 and in Pioneer Urban land and Infrastructure Ltd., vs Govindan Raghavan in Civil Appeal no. 12238 of 2018 decided on 02.04.2019 (2019) 5 SCC 725 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 obliged to refund along with compensation or interest for such delay. It has also held in Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, Civil Appeal No. 3182 of 2019 decided on

25.03.2019 regarding the right of the consumer to seek refund in view of the inordinate delay on the part of the opposite party. In Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, C.A. No. 6044 of 2019 decided on 07.04.2022 the Hon'ble Supreme Court has held the compensation by way of interest has to be both compensatory as well as restitutionary and held that interest @ 9% would be fair and just. Compensation on the same lines will be appropriate in this matter also.

11. For the aforesaid reasons, in the facts and circumstances of this case, there is merit in the complaint and the same is liable to succeed. Accordingly, this complaint is allowed in part and disposed of with the following directions:

(i) opposite party no. 1 shall repay the complainant the sum of Rs 72,00,000/- with interest @ 9% p.a. compensation for the delay in allotment of a plot from 24.11.2011, the date of deposit, till the date of payment;

(ii) opposite party shall also pay interest on Rs 3,00,000/- it had received from the complainant on 24.11.2011 and repaid on 20.07.2012 @ 9% p.a. for the period 24.11.2011 to 20.07.2012;

(iii) this order shall be complied within 2 months from the date of this order failing which the rate of interest will be 12% p.a.;

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

All pending IAs shall stand disposed of with this order.

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