

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1930 OF 2018

(Against the Order dated 20/02/2018 in Complaint No. 155/2017 of the State Commission Punjab)

1. M/S. SINGLA BUILDERS AND PROMOTERS LIMITED
THROUGH ITS DIRECTOR, SCO NO 146-147-148, SECTOR
43B,
CHANDIGARH

.....Appellant(s)

Versus

1. PAWAN KUMAR
S/O. SHRI HANS RAJ, H NO 1219, SECOND FLOOR,
SECTOR 43
CHANDIGARH

.....Respondent(s)

BEFORE:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER

For the Appellant : Mr.Chetan Sharma, Advocate

For the Respondent : Mr.Anjum Kumar, Advocate

Dated : 03 Jan 2023

ORDER

The present Appeal has been filed against the order of the State Commission dated 20.02.2018 in Complaint No. 155 of 2017 of State Commission Punjab, Chandigarh, whereby State Commission had directed the Appellant to hand over the possession of the subject property after the respondent / complainant depositing the balance payable amount along with other directions regarding delay in delivery of the possession.

2. The impugned order has been challenged by the Appellant solely on the ground that relief granted by the State Commission was not

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asked for by the respondent since in the complaint, complainant has asked for refund of the deposited money on account of delay in handing over of the possession and even in his affidavit, he had prayed for the refund of the deposited money along with interest. It is submitted that Appellant had already deposited the principal amount with the State Commission on 18.12.2018 pursuant to the order of this Commission dated 01.11.2018, whereby operation of the impugned order had been stayed. It is submitted that Appellant is ready to refund the entire amount along with interest @ 9% p.a. from the due date of delivery of possession till payment. It is submitted that impugned order suffers with perversity and illegality and, therefore liable to be set aside.

3. Counsel appearing on behalf of the complainant submits that al-though in the complaint, complainant had asked for refund of its entire amount due to delay in delivery of possession and also in the affidavit he had asked for the refund yet at the time of final arguments, it had shown his inclination to take the possession of the subject flat and based on that, the impugned order had been passed. It is further submitted that Appellant in its written version had challenged the refund of the money deposited and had made offer of possession.

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4. I have heard the arguments of the learned counsel for the parties and have gone through the record and also gone through the contents of the written version filed by the Appellant before the State Commission.

5. From the perusal of the contents of the written version, it is apparent that there is no offer of possession made on behalf of the Appellant. I have also gone through the prayer clause of the complainant, which is reproduced as under:

“It is, therefore, respectfully prayed that the complaint of the complainant may kindly be allowed and the opposite party be directed to refund the paid amount paid to the opposite party i.e. Rs.22,98,100/- (twenty two lacs ninety eight and one hundred only) and monthly assured return as opposite party failed to make the possession w.e.f. 01.04.2013 @ Rs.3/- per square feet which is Rs.2,60,640- till March 2017 along with interest @ 18% PA and other compensation claimed in the present complaint

AND

Any other orders or directions to which this Hon’ble Commission may deem fit and proper may also be passed in favour of complainant, in the interest of justice.”

6. From perusal of this prayer clause of the complainant, it is apparent that complainant has filed the complaint for refund of its deposited money on account of delay in handing over of the flat no. 172/2 called SBP Homes having area of 1810 sq. ft for which an

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agreement to sell dated 02.06.2011 was executed between the parties. It is also apparent that till the date of filing of complaint 17.03.2017 and filing of the written version, there was no offer of possession and no completion certificate had been filed on behalf of the Appellant. In the affidavit filed by the complainant, he has again asked for the refund of its deposited money which is Rs.22,98,100/-. My attention is not drawn to any written application or affidavit of the complainant filed before the State Commission whereby the complainant had asked for possession of the house. In view of this, the order of the State Commission suffers with illegality and infirmity because it is based only on oral arguments of the learned counsels of the parties and oral submissions are not supported by any affidavit or any instructions from the complainant. The impugned order does not state that counsel for the complainant had made the said statement regarding possession on the instructions of the complainant that the complainant was ready to take the possession. At this stage, while I am dictating the order, counsel for the complainant agrees that there has no written request made by the complainant before the State Commission to show his intention to take the possession of the subject flat. It is also submitted by learned counsel that he has now learnt that subject flat has been sold and in this

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situation, it is prayed that impugned order be appropriately modified. It is also submitted that he has talked to the complainant on telephone and his client has given his consent that he is ready to take the refund along with interest @ 9% w.e.f. the due date of delivery till payment is made. In view of this submission of the learned counsel and in view of the above discussion, the impugned order is set aside.

7. The Appellant is directed to refund the entire amount of Rs.22,98,100/- to the respondent / complainant along with interest @ 9% p.a. from the due date of delivery i.e. 31.03.2013 till the date of payment.

8. With these directions, the present Appeal stands disposed of.

.....J
DEEPA SHARMA
PRESIDING MEMBER