

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**EXECUTION APPLICATION NO. 67 OF 2019  
IN  
CC/1465/2015**

1. OMKAR YADAV .....Appellants(s)

Versus

1. M/S. SHETH DEVELOPERS PVT. LTD. ....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING  
MEMBER**

**HON'BLE BHARATKUMAR PANDYA, MEMBER**

FOR THE APPELLANT : MR. JAYESH R. HEMRAJANI, ADVOCATE

FOR THE RESPONDENT : MR. RAHUL KRIPALANI, ADVOCATE

MR. ADITYA PRATAP S. CHAUHAN, ADVOCATE

**Dated : 06 December 2023**

**ORDER**

1. Heard Mr. Jayesh R. Hemrajani, Advocate, for the decree holder and Mr. Rahul Kriplani, Advocate, for the judgment debtor.

2. Omkar Yadav has filed the above execution application for executing the decree dated 14.06.2018 passed in CC/1465/2015 in which following directions have been issued: -

*“(i) The opposite party shall complete the construction of the flat, unless already completed, in all respects, provide all the agreed amenities, obtain the requisite occupancy certificate and then deliver the possession of the flat to the complainant on or before 31.12.2018.*

*“(ii) The opposite party shall pay compensation in the form of simple interest @ 8% per annum to the complainant on the entire amount paid by him with effect from 01.1.2012 till the date on which the possession, in terms of this order, is actually delivered.*

*“(iii) The opposite party shall pay a sum of Rs.25,000/- as the cost of litigation to the complainant.”*

The opposite party has filed reply in the above execution application. Subsequently, the opposite party filed an application for extension of the period for executing the decree. This Commission, vide order dated 17.07.2019 directed the judgment debtor to pay delay compensation from 01.01.2012 to 31.07.2019 on or before 31.07.2019 and keep on paying delay compensation from 01.08.2019 regularly on or before 10<sup>th</sup> of each succeeding month

till handing over possession. In pursuance of the order of this Commission, the Directors of the opposite parties have submitted their undertaking before this Commission. Thereafter, the opposite party filed IA/13532/2019 and IA/13754/2019 in which it has been clarified that the delay compensation was payable till the date on which possession in terms of the order of this Commission is actually delivered. Later on, the part occupation certificate was obtained on 20.10.2020 and the opposite party by letter dated 23.10.2020 offered possession to the complainant. The delay compensation was paid by the opposite party upto 22.10.2020. Later on full occupation certificate was obtained on 17.08.2021. Now, the issue between the parties is in respect of delay compensation after 22.10.2020. According to the decree holder this Commission in the order dated 24.12.2019 has already clarified that delay compensation would be payable till the date on which possession in terms of the order of this Commission is actually delivered. Since in the order dated 14.06.2018 the opposite party was directed to complete the construction of the flat unless already completed, in all respects, provide all the agreed amenities, obtain the requisite occupation certificate and then deliver the possession of the flat to the complainant, therefore the complainant claims that since occupation certificate was obtained on 17.08.2021 and possession was delivered on 24.10.2021, therefore the decree holder is entitled for further delay compensation from 23.10.2020 till 17.08.2021. While according to the judgment debtor as part occupancy certificate has already been obtained on 22.10.2020 and possession was offered on 23.10.2020, therefore the opposite party is not liable to pay delay compensation after 22.10.2020. The second issue between the parties is in relation to the deduction of TDS amount.

I have considered the arguments of the counsel for the parties and examined the record. It is not denied that part occupation certificate was obtained on 22.10.2020 which has been filed alongwith IA/5816/2021 and possession was offered vide letter dated 23.10.2020. Since the statutory authority has issued part occupation certificate in respect of the flat in dispute, therefore offer of possession was valid and possession was offered in terms of the final judgment of this Commission dated 14.06.2018 and the decree holder is not entitled for delay compensation after 23.10.2020.

So far as deduction of TDS on delay compensation is concerned, the opposite party has relied upon the judgment of Supreme Court in **Prateek Infra Projects India Pvt. Ltd. vs. Nidhi Mittal & Anr., Civil Appeal No.2504/2020 dated 05.06.2020; M/s Nexgen Infracon Pvt. Ltd. vs. Manish Kumar Sinha & Anr., Civil Appeal No.62 of 2021 dated 11.01.2021** wherein deduction of TDS by the builder has been upheld. Therefore, it cannot be said that deduction of TDS was not in accordance with law.

The decree holder alleges that at the time of offer of possession, amenities were not complete. The issue of part occupation certificate is prima-facie proof of completion of amenities. The decree holder has not filed any application for issue of Commission. As such the allegation in this respect is not proved. The cost of Rs.25000/- as imposed vide order dated 14.06.2018 has already been paid.

## O R D E R

In view of the aforesaid discussions, the decree stands fully satisfied. The execution application is disposed of.

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**RAM SURAT RAM MAURYA**  
**PRESIDING MEMBER**

.....  
**BHARATKUMAR PANDYA**  
**MEMBER**