NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 1881 OF 2018

1. RAJESH GUPTA & ANR. .....Complainant(s)

Versus

1. M/S. SHIPRA ESTATE LTD. .....Opp.Party(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE COMPLAINANT : MR. SHANTO MUKERJEE, ADVOCATE

FOR THE OPP. PARTY : MR. CHAITANYA, ADVOCATE
MR. SHUBHANSHU GUPTA, ADVOCATE

Dated : 01 January 2024

ORDER

1. This complaint under section 21 (a) (i) of the Consumer Protection Act, 1986 (in short, 'the Act') alleges deficiency in service and unfair trade practice on the part of the opposite party in rendering service to the complainants.

2. The facts according to the complainants, are that they had booked a residential unit/flat GUL-301, Krishna-Shrishti, Plot No. 15, Ahinsa Khand, Indirapuram, Ghaziabad for a total sale consideration of Rs.61,27,500/- and the same was allotted vide letter dated 05.10.2006. The promised date of possession was December, 2008. However, opposite party did not hand over possession on the promised date and vide letter dated 24.08.2009 apologized and promised to pay compensation of delay possession @5/- per sq. ft. per month for the period from January, 2009 to July, 2009. As construction of the flat could not be completed, compensation of Rs.1,35,815/- for the period of September to November, 2009 was also paid by the opposite party. Another cheque of Rs.1,07,231/- was again paid for settling compensation till March, 2011. After waiting for a considerable period of time, repeated efforts and follow up, complainants finally got possession of the flat on 04.04.2016. After taking over possession, Legal Notice dated 16.10.2017 was sent by the complainants to the opposite party for compensation for the period from April, 2011 to April, 2016. No compensation for the above period was given. Being aggrieved, complainant is before this Commission with the prayer to:

(i) award a sum of Rs.48,69,796/- as compensation from April, 2011 to April, 2016 with interest @ 14% for the further 1 year's delay in payment;

(ii) pay appropriate punitive damages on account of mental agony, harassment and trauma underwent by the complainants;

(iii) pay Rs.55,000/- towards the cost of the case;

(iv) any other order as deemed fit and proper by this Commission.

3. The complaint was resisted by way of reply by the opposite party denying the averments of the complaint. As per opposite party the value of the flat in question in Rs.60,27,500/- which is below the prescribed pecuniary jurisdiction of this Commission. Hence the complaint is liable to be dismissed on this ground alone. It is averred by the opposite party that possession of the flat was handed over on 15.04.2016 and the complaint has been filed after almost two years in 2018. In these circumstances, the claim ought to be rejected and complaint be dismissed.

4. It is also averred by the opposite party that possession of the flat in question has already been taken by the complainants and opposite party has duly compensated the complainants as per the agreed terms for the delay in offer of possession. As such relief claimed for payment of amounts towards further compensation cannot be entertained. They had already increased the delay compensation from Rs.5 per sq. ft. per month to 7% p.a. paid quarterly on the amount paid by the complainants. Thus, the complainants are duly compensated for the delay period and the compensation was finally settled to the satisfaction of the complainant and therefore, the claim for further compensation is unacceptable.

5. Parties led their evidence and filed written arguments. I have heard the learned counsel for the parties and have carefully considered the material on record.

6. On behalf of the complainant, it was argued that the opposite party failed to deliver the possession of the flat in December, 2018, as had been assured. Opposite party promised to pay compensation for the delay and vide letter 24.08.2009 compensation @ Rs.5 per sq. ft. per month was paid to the complainant. Further compensation after expiry of the extended period is admitted to have been received by the complainant. Opposite party further assured that the construction of the flat will be completed by 30.12.2009 and sent a letter dated 24.09.2011 whereby they promised to complete the construction within 45 days from the date of completion of registration process. Complainants got assured with this promised. However, nothing fructified and the project was still incomplete. Opposite party did not hand over possession of the flat even after several emails and repeated calls till 04.04.2016 i.e., after 8 years. The opposite party also did not pay compensation for the period from April, 2011 to April, 2016. Compelled by the situation created by the opposite party, complainants filed the present consumer complaint.

7. On the other hand, learned counsel for the opposite parties contended that the complaint was filed by the complainants beyond the limitation period i.e. much after two years of the cause of action. Thus the complaint is barred by limitation and is not maintainable under the Act. It is also contended that the complaint was grossly overvalued with the object of bringing it within the jurisdiction of this Commission. The interest claimed by the complainants cannot be termed as ‘compensation’ and if that interest

component is excluded, the pecuniary value of the complaint is not beyond Rs.1,00,00,000/-. No deficiency of service on the part of the opposite party is contended. Hence, the present complaint needs outright dismissal.

8. From the foregoing, it is manifest that there was an inordinate delay in the handing over of the flat. The complainants are entitled to compensation for the delay in light of a catena of judgments of the Hon'ble Supreme Court and this Commission, notably ***Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra,*** **Civil Appeal No. 3182 of 2019** decided on 25.03.2019, and in ***Pioneer Urban Land and Infrastructure Ltd., vs Govindan Raghavan*** (2019) 5 SCC *725 in Civil Appeal no. 12238 of 2018 decided on 02.04.2019. However, it is also evident that the opposite party had paid compensation for the delay initially at the rate of Rs.5/- per sq ft per month for the period January 2009 to July 2009 and thereafter, @ 7% per annum on the amount deposited for the period September to November 2009. Possession was offered on December 2008 and handed over on 04.04.2016. In various judgments of the Hon'ble Supreme Court that have been followed by this Commission, compensation for delayed possession is paid till the valid offer of possession. It is not the complainants' case that possession offered was not valid. It is an admitted fact that possession was handed over and taken over on 04.04.2016. The issue of compensation beyond the date of offer of possession is therefore, not a justifiable prayer. However, in view of the fact that compensation has been paid till April 2011 to April 2016 @ Rs.5/- per sq ft per month, this amount needs to be accordingly deducted from the amount payable.*

9*. For the above stated reasons, and in the facts and circumstances of the case, this Consumer Complaint is allowed partly. The opposite party is directed to pay the complainant, compensation for the delay in handing over the possession of the flat @ 6% per annum on the amount disputed as on December 2008 (promised date of possession) till 04.04.2016 the date of offer of possession after adjusting the compensation already paid to the complainant. There shall be no order as to costs. Pending IAs, if any, stand disposed of with this order.*

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SUBHASH CHANDRA
PRESIDING MEMBER