

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 438 OF 2020

(Against the Order dated 06/01/2020 in Complaint No. 127/2019 of the State Commission Chandigarh)

1. EMAAR MGF LAND LTD.

THROUGH ITS AUTHORIZED SIGNATORY, 306-307-308,
3RD FLOOR, SQUARE ONE, C-2, DISTRICT CENTRE,
SAKET.

NEW DELHI-110017

2. EMAAR MGF LAND LIMITED.

THROUGH ITS AUTHORIZED SIGNATORY. OFFICE NO. 40,
CENTRAL PLAZA, SECTOR-105.

MOHALI-160062

.....Appellant(s)

Versus

1. CHITERLEKHA JINDAL & 3 ORS.

W/O. SHRI. G.L. JINDAL, R/O. H.NO. 3141, SECTOR-20D.
CHANDIGARH-160017

2. MR. RAJIV JINDAL.

S/O. SHRI. G.L. JINDAL, R/O. H.NO. 3141, SECTOR-20D.
CHANDIGARH-160017

3. MR. PRASHANT GUPTA, ERSTWHILE CEO, EMAAR
MGF LAND LIMITED.

R/O. G-1, FINE HOME APARTMENTS, MAYUR VIHAR,
PHASE-1.

NEW DELHI-110092

4. HADI MOHD. TAHER BADRI, DIRECTOR, EMAAR MGF
LAND LIMITED.

...
NEW DELHI.Respondent(s)

BEFORE:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

For the Appellant : For the Appellants : Mr. Arjun Jain, Advocate

For the Respondent : For the Respondents No.1 & No.2 : Mr. Ramnik Gupta, Advocate
For the Respondents No.3 & No.4 : Proforma parties

Dated : 18 Jan 2023

ORDER

1. This appeal has been filed under Section 19 of The Consumer Protection Act, 1986 in challenge to the Order dated 06.01.2020 of the State Commission in complaint no. 127 of 2019.

2. We have heard the learned counsel for the appellants (the 'builder co.')

and the learned counsel for the respondents (the 'complainants'). We have also perused the material on record, including *inter alia* the State

Commission's impugned Order dated 06.01.2020 and the memorandum of appeal.

3. The appeal has been filed with self-admitted delay of 113 days.

However, in the interest of justice, *inter alia* considering the reasons mentioned in the application for condonation of delay, in order to provide fair opportunity to the builder co., to decide the matter on merit rather than to dismiss it on the threshold of limitation, the delay in filing the appeal is condoned.

4. The matter relates to a builder-buyer dispute.

Briefly, the builder co. entered into an agreement with the complainants on 19.06.2007 in respect of a residential plot. The complainants paid an amount of Rs. 38,21,650/- to the builder co. in the period from 23.09.2006 to 28.02.2014. The assured date for delivery of possession of the subject plot was two years from the date of execution of the agreement but not later than three years, that is to say, the agreement also provided for a grace period of one year beyond the said two year period. Counting from the date of the agreement, the assured two year period for completion of the project and delivery of possession of the plot elapsed on 18.06.2009 and the subsequent grace period of one year elapsed on 18.06.2010. The project was not completed and delivery of possession of the unit was not made within the assured period of two years, or even in the subsequent one year grace period, or even still within a reasonable period beyond (reasonable period here would connote a period which appears reasonable *per se* and which a reasonable man of ordinary prudence would not normally agitate). The complainants went before the State Commission on 16.05.2019 i.e. 9 years 10 months 28 days after the expiry of the assured period of two years and 8 years 10 months 28 days after the expiry of the grace period of one year. *Inter alia* considering the abnormal unreasonable delay in completing the project and making delivery of possession, the State Commission ordered the builder co. to refund the amount of Rs. 38,21,650/- deposited by the complainants with interest at the rate of 10% per annum from the respective dates of deposit within 30 days from the date of receipt of a certified copy of its Order failing which the said amount of Rs. 38,21,650/- shall carry additional penal interest at the rate of 3% per annum from the date of its Order. It also awarded lumpsum Rs. 50,000/- for causing mental agony and physical harassment, deficiency in service and unfair trade practice, and also towards cost of litigation, payable within 30 days from the date of receipt of a certified copy of its Order failing which the said amount of Rs. 50,000/- shall carry interest at the rate of 12% per annum from the date of its Order.

The award made by the State Commission as contained in para 17 of its impugned Order of 06.01.2020 is reproduced below for reference:

17. For the reasons recorded above, this complaint is partly accepted with costs and the opposite parties, jointly and severally, are directed as under:-

i) To refund the amount of Rs.38,21,650/- to the complainants, alongwith interest @10% p.a. (as prayed), from the respective dates of deposit onwards, within a period of 30 days, from the date of receipt of a certified copy of this order, failing which, thereafter, the said amount of Rs.38,21,650/- shall carry 3% penal interest i.e. 13% p.a. (10% p.a. plus (+) 3% p.a.), from the date of passing of this order, till realization.

ii) To pay compensation for causing mental agony and physical harassment to the complainants; deficiency in providing service and adoption of unfair trade practice and also cost of litigation, in lumpsum, to the tune of Rs.50,000/-, to the complainants, within a period of 30 days, from the date of receipt of a certified copy of this order, failing which, the said amount of Rs.50,000/-, shall carry interest @12% p.a. from the date of passing of this order, till realization.

5. A perusal of the State Commission's Order of 06.01.2020 shows that it is a well-appraised and reasoned order that has extensively dealt with the issues germane to the dispute.

6. We may observe, to place the whole matter in perspective, that prior to, or, at the least, simultaneous to, getting the buyer-consumer to enter into its agreement and accepting the first payment towards the total cost of

the subject unit, the builder co. was required and expected to have the due pragmatic and realistic assessment and preparation of the project planning. It was the prime responsibility of the builder co. to ensure that it was in a position to deliver the possession of the subject unit to the buyer-consumer within the agreed and assured period. Planning, execution and completion were the builder co.'s responsibility, and not of the consumer; (normal) impediments or problems that may arise in planning, execution and completion were again its own responsibility, and not of the consumer. Specifically, availability of land, as well as all approvals from the concerned government, development and municipal authorities, as and when due, being fundamental basic requirements of a residential housing project, were decidedly to be taken care of and dealt with by the builder co. Time and cost overruns were essentially within the domain of its own duty and obligation. Non-fulfilment of its overall responsibilities of project planning, execution and completion can not be and are not grounds for condoning or overlooking delay in completion and failure to offer possession within the agreed and assured period. All-encompassing blanket plea of *force majeure*, unforeseeable circumstances, irrespective of its various 'liberal' or 'strict' interpretations, and irrespective of its various interpretations in different sets of facts, cannot be nebulously and irrationally articulated in the agreement, or be successfully contended and argued as omnibus defence for anything and everything related to the builder co.'s failure to fulfil its responsibilities for completion of the project without occasioning time or cost overruns.

7. In the present case, the assured period for completion of the project was two years from the date of the agreement along with a grace period of one year. The assured period expired on 18.06.2009. The subsequent one year grace period expired on 18.06.2010. The complaint was filed much afterwards on 16.05.2019. The State Commission decided the case on 06.01.2020. Even till then the completion certificate had not been obtained. It goes without saying that in the absence of the completion certificate it was most obviously not feasible to offer legitimately meaningful possession. On the face of it itself, abnormal unreasonable delay is patently manifest.

8. It may be observed that the grace period provided for in the agreement, by its very nature, is in itself an extended period for completion. That is to say, it itself provides to take care of some delay in completion. The material significance of the grace period needs to be understood in perspective. It by itself provides for a certain period of delay beyond the assured period and it is *ab initio* in-built into the agreement with the 'consumer'. As such any period beyond the grace period has to be fully justifiable and tenable with cogent and convincing reasons, which is not at all the case here.

9. It is a well settled position that in case of abnormal, unreasonable and unjustified delay beyond the assured period two parallel rights accrue to the consumer:

one :possession of the subject unit, if and when the subject unit is duly constructed and developed, along with just and equitable compensation under the Act 1986 / 2019 for the delay.

or

two :refund of the amount deposited along with just and equitable compensation.

In the instant case the complainants have opted for refund of their deposited amount.

10. Learned counsel for the builder co. argues that the rate of interest of 10% per annum on the deposited amount is on the higher side. He submits that he has instructions to offer a rate of interest of 9% per annum only. He also submits that the added penal interest of 3% per annum for not making timely payment is not acceptable to the builder co. Similarly the interest of 12% per annum on the lumpsum amount of Rs. 50,000/- in case of delay in payment is also not acceptable. Submission is that the builder co. is agreeable to refund the deposited amount with interest at the rate of 9% per annum as well as to pay the lumpsum amount of Rs. 50,000/- without interest, anything more is not acceptable to it.

11. Learned counsel for the complainants submits that the rate of interest of 10% per annum awarded on the deposited amount is in every manner fair and equitable. He dwells over the protracted troubles and travails from 2006 onwards, when the complainants first made their deposits, till today, i.e. for about 17 years now. He submits that the penal interest of 3% per annum from the date of the State Commission's Order was to act as a

deterrent against not making timely payment and is quite reasonable *per se* and further that since the builder co. did not make timely payment the penal interest is fully justified. He makes similar submission in respect of the interest of 12% per annum from the date of the State Commission's Order in the contingency of delay in making payment of the lumpsum amount of Rs. 50,000/-. Submission is that the award in its entirety has been logically and rationally moulded by the State Commission and requires no interference.

12. Regarding the compensation, we may first observe that in various situations where the consumer is not given a fair deal and where he is made to suffer by the service provider by being deficient in service or by resorting to some unfair trade practice, the eventuality of such plight has been adequately taken care of by the legislation and in order to redress his grievance statutory provisions have been enacted. Sections 14 of the Act 1986 contemplates to provide compensation for the loss or injury that may be suffered by such consumer and grant even punitive damages in appropriate cases where it is deemed fit. The legislature in its wisdom has not laid down any specific method fixed in nature or any specific manner in which the loss or injury suffered by a given consumer may be quantified. It also does not provide any rigid or fixed methodology by resorting to which the grievance of a consumer and damages therefor may be quantified and compensated. It is not even otherwise feasible to find or provide any cut-and-dried formula of universal application or to lay down any straight-jacket guidelines with absolute objectivity in order to estimate the loss or injury suffered by a consumer or the amount of compensation which may be mathematically equal to the loss or injury suffered with objective exactitude. The facts of each case vary and so shall vary the myriad factual and legal nuances of each transaction that may take place between consumer and the service provider. There may be cases where the circumstances of a consumer, the extent of his travails, the degree of his predicament or the enormity of his loss or injury may be such that the same may persuade the concerned authority, judicial or *quasi*-judicial as it may be, to stringently discountenance the deficiency or unfairness & deceptiveness of the service provider and put him to strict terms and lean ungrudgingly towards the suffering consumer in order to provide him compensatory anodyne of justice. Similarly, on the other hand, there may be cases where the service provider may successfully demonstrate the circumstances which may go to mitigate its guilt or to extenuate the degree of its liability. It may in such cases successfully display its *bonafides*, its diligence, its sincerity in providing service and the fairness of its trade practice. The service provider may in such cases show circumstances and prove that the loss suffered by the consumer is not the consequence of its doing or that the degree or the extent of its liability is not so enormous as may call for escalated degree of damages or compensation. As the facts of each case may naturally vary infinitely, it is eventually for the concerned judicial or *quasi*-judicial forum to make a dispassionate assessment of the whole situation and to approach each case with a non-partisan attitude without prejudice or predilection so that it may strike the chord of balance and may do conscionable justice within the perimeters of law. At times, lumpsum amount of compensation for the loss or injury suffered by the consumer is provided and a specific quantified amount is ordered to be paid. But quite often instead of specifying lumpsum quantified amount, the compensation is provided by way of directing to pay interest at a particular rate on the amount which in a given case might have been unduly, inequitably or illegitimately retained by the service provider. It is for the reason of variance of circumstances of each case that the amount of compensation to be fixed by the forums may keep varying from case to case. It is the same reason how and why different forums may provide for compensatory interest at different rates as a method to adequately or befittingly quantify the amount of commensurate compensation. No rule-of-thumb is possible to be adopted for all times or for all cases. The different forums while discharging their judicial or *quasi*-judicial functions can neither afford to be oversensitive while assessing the grievance of the consumer nor can they be found reluctant in providing just and appropriate compensation commensurate with the loss or injury suffered or in awarding condign damages wherever called for. They cannot allow themselves to either become instruments of converting the solemn provisions of the Act into means of exploitation of service providers in the name of consumer justice or to ever disregard the plight of the aggrieved consumer with apathy or indifference. The forums have to be unfailingly judicious, and try to meet the scales of equity in each case having regard to its particular facts & circumstances and specificities.

13. Reverting to the facts of the case at hand, it is noted that the complainants had deposited total Rs.38,21,650/- with the builder co. between 23.09.2006 to 28.02.2014. The assured period of delivery of possession of the subject unit elapsed in June 2009. The builder co. did not deliver possession of the subject unit within the assured period, or even within the grace period of one year thence, or even still within a reasonable

period thereafter. Even till the date on which the State Commission passed its Order i.e. 06.01.2020 the completion certificate had not been obtained, without which legitimate meaningful possession could not have been offered. Abnormally unreasonable and inordinate delay is self-evident. The afore contextual backdrop encapsulates the jeopardy to which the complainant has been put to, the uncertainty and difficulty he has faced, the mental agony and physical harassment he has suffered, the pecuniary loss to which he has been subjected to, and the cumulative injury which he has endured as a result of all this. Pertinently, in the arguments on its behalf today, the ‘deficiency in service’ and ‘unfair trade practice’ *per se*, as have been categorically determined by the State Commission, are not being contested and the arguments are essentially aimed at getting the rate of the compensatory interest reduced.

14. It goes without saying that the compensation has to be just and equitable, commensurate with the loss and injury suffered. In the particular facts and circumstances of the present case it is felt that rate of interest of 10% per annum on the deposited amount, as awarded by the State Commission, is in every way just and equitable, commensurate with the loss and injury suffered by the complainants. Providing for 3% penal interest from the date of its Order also appears reasonable and has self-evidently factored-in the expedient need to ensure timely compliance. The objective it aims to subserve is obviously to at least now put an end to the long drawn troubles and travails of the complainants, to put a period to their sufferings. A *bonafide* builder co. could as well have refunded atleast the principal amount deposited by the complainants while retaining its right to agitate its issues and contentions regarding compensatory interest in a higher forum, or it could have made payment with interest at the rate of 9% per annum to which it is today agreeable and only challenged the rate over and above 9% and the penal interest of 3% per annum. And there should not have been much quarrel to pay the lumpsum amount of Rs. 50,000/- without interest in a time-bound manner. But it rather further delayed the matter by filing an appeal in which there is hardly anything to argue on the substance *per se*. As such, in the present case, in its specific facts and circumstances, we do not find any good reason to take a different view on the compensation than what has been taken by the State Commission.

15. The appeal, being bereft of worth, is dismissed.

The award made by the State Commission is confirmed.

The amount if any deposited by the builder co. before the State Commission shall be forthwith released by the State Commission to the complainants as per the due procedure.

The balance awarded amount as any shall be made good by the builder co. within six weeks from today, failing which the State Commission shall undertake execution, for ‘*enforcement*’ and for ‘*penalty*’, as per the law.

16. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel as well as to the State Commission immediately. The stenographer is also requested to upload this Order on the website of this Commission immediately.

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DINESH SINGH
PRESIDING MEMBER
.....J
KARUNA NAND BAJPAYEE
MEMBER