

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 242 OF 2020

(Against the Order dated 08/01/2019 in Complaint No. 325/2017 of the State Commission Uttar Pradesh)

1. KDP BUILDWELL PVT. LTD.

THROUGH ITS DIRECTOR - G47, GROUND FLOOR,
SECTOR 6

NOIDA

.....Appellant(s)

Versus

1. DEEPAK KUMAR TOMAR

99A, VISHNU ENCLAVE DELHI HAPUR ROAD

GHAIABDAD

UP

.....Respondent(s)

BEFORE:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

For the Appellant : Ms. Astha Tyagi, Advocate with

Ms. Diksha Narula, Advocate

For the Respondent : Mr. Yash Tandon, Advocate

Dated : 06 Jan 2023

ORDER

1. This appeal has been preferred in challenge to the Order dated 08.01.2019 of the State Commission in complaint no. 325 of 2017. The appeal has been erroneously filed under section 21(b) of The Consumer Protection Act, 1986; it is however being taken up under section 19 of the Act which deals with 'Appeals' to this Commission against an order made by the State Commission in exercise of its powers under section 17(a)(i).
2. Heard the learned counsel for the appellant (the 'builder co.')
- and the learned counsel for the respondent (the 'complainant'). Also perused the record including *inter alia* the State Commission's impugned Order dated 08.01.2019 and the memorandum of appeal.
3. The matter relates to a builder-buyer dispute. Briefly, the builder co. entered into an agreement with the complainant on 28.08.2013 in respect of a residential unit. The assured date for delivery of possession of the subject unit was 36 months from the date of execution of the agreement. The same elapsed on 27.08.2016. Delivery of possession was not made within the assured period, nor was it even made within a reasonable period thence (reasonable period here would connote a period which may appear reasonable *per se* and which a reasonable man of ordinary prudence would not normally agitate or object to). The State Commission ordered the builder co. to refund the deposited amount with compensation in the form of simple interest at the rate of 18% per annum from the respective dates of deposit till actual realisation. It also awarded Rs. 10,000/- as cost of litigation.
4. The builder co. preferred the present appeal before this Commission. On 18.02.2020, at the stage of admission, this Commission passed the following Order:

1. Heard learned counsel for the appellant.

Perused the material on record.

2. The award made by the State Commission vide its impugned Order dated 08.01.2019 reads as below:

ORDER

The complaint is partially accepted and opposition is ordered that, he should return the complainant's deposit amount of Rs.20,33,805/- to the complainant at the rate of 18 percent per annum from the date of deposit to the date of payment.

Rs.10,000/- should also be paid to the opposition to complainant for case expenses.

3. It is admitted that [a] the agreed and assured date of completion has elapsed and [b] the completion-cumoccupancy certificate of the subject unit has as yet not been duly obtained.

4. During the course of the arguments, learned counsel for the appellant submits, on instructions, that the appellant is ready and willing to refund the principal amount of Rs. 20,33,805/- to the respondent complainant within 8 weeks from today. Learned counsel further submits that the instant first appeal may hereinafter be confined and restricted to the questions of rate of interest and cost of litigation only.

5. The above submissions, made on instructions, during arguments, are recorded.

6. The appellant is directed to refund the entire principal amount of Rs. 20,33,805/- to the respondent complainant within 8 weeks from today, as submitted and assured.

7. This instant first appeal shall hereinafter be confined and restricted to the questions of rate of interest and cost of litigation only.

8. Issue notice to the respondent complainant, subject to payment of Rs. 20,000/- to the respondent complainant within 6 weeks from today to defray travel and allied expenses.

9. The Registry may ensure that the notice is issued and despatched within 10 days.

10. Let the notice also be 'dasti' in addition.

11. The appellant is directed to ensure the due 'dasti' service of the notice on the respondent, without fail, before the next date of hearing.

12. Contingent to the entire principal amount of Rs. 20,33,805/- being paid to the complainant within the submitted and assured period of 8 weeks from today, the operation of the impugned Order dated 08.01.2019 of the State Commission insofar as it relates to payment of interest and cost of litigation shall remain stayed till the disposal of this first appeal.

13. It is made clear that if the entire principal amount of Rs. 20,33,805/- is not paid to the complainant within the submitted and assured period of 8 weeks from today, the State Commission shall undertake execution of its Order in its entirety as per the law.

14. List on 09.09.2020.

15. 'Dasti', in addition, to facilitate timely compliance.

5. Learned counsel for the builder co. submits that the above-quoted Order dated 18.02.2020 has not been put to review or challenge. In reference to para 4 thereof, learned counsel submits that the amount of Rs. 20,33,805/- deposited by the complainant has not been refunded to him. Learned counsel re-confirms that the builder co. is confining and restricting its present appeal to the questions of rate of interest and cost of litigation only.

6. In so far as the cost of litigation is concerned, on the face of it itself the amount of Rs. 10,000/- awarded by the State Commission appears to be entirely reasonable and most obviously does not call for any dilution.

7. Regarding the rate of interest, the State Commission has awarded the compensation by way of simple interest at the rate of 18% per annum on the deposited amount from the respective dates of deposit till actual realisation.

Learned counsel for the builder co. submits that the rate of interest of 18% per annum is unreasonably high. In her opinion a rate of 9% per annum will be fair and reasonable. Submission is that the builder co. is willing and ready to pay compensatory interest only at the rate of 9% per annum.

Learned counsel for the complainant, on the other hand, submits that the complainant has been put to continuous troubles and travails. He but further submits that in order to put a period to the *lis*, rather than interest at the rate of 18% per annum as awarded by the State Commission, the complainant will be satisfied if he is provided the compensatory interest at the rate of 12% per annum. Submission is that rate less than 12% per annum will not be in any eventuality either fair or reasonable.

8. It may be observed 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 which the grievance of a consumer may be compensated and the damages for the same may be quantified. 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.

9. While reverting to the facts of the case at hand, it is noted that the complainant had deposited total Rs.20,33,805/- with the builder co. between August and October 2013. The assured period of delivery of possession of the subject unit elapsed in August 2016. The builder co. did not deliver possession of the subject unit within the assured period, or even within a reasonable period thence. At the time of admission of the present appeal a submission was made on 18.02.2020 on its behalf that it will refund the deposited amount within eight weeks, but the assurance proved to be just a ruse and was not fulfilled. Pertinently in its present appeal the deficiency *per se* committed by it is not being contested and its challenge is being limited to the rate of the compensatory interest and the cost of litigation only. 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.

10. It goes without saying that the compensation has to be just and equitable, commensurate with the loss and injury suffered. In the particular facts & circumstances and specificities of the present case it is felt that rate of interest of 12% per annum, as conceded to by the learned counsel for the complainant, will in every way be just and equitable, commensurate with the loss and injury suffered by the complainant, anything less will be somewhat less than justice.

11. Sequel to the above, the award made by the State Commission is modified to the extent that the builder co. through its managing director shall forthwith refund an amount of Rs. Rs.20,33,805/- to the complainant with interest at the rate of 12% per annum from the respective dates of deposit till actual realisation along with cost of litigation of Rs. 10,000/-, failing which the State Commission shall undertake execution, for '*enforcement*' and for '*penalty*', as per the law.

12. 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 requested to upload this Order on the website of this Commission immediately.

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DINESH SINGH
PRESIDING MEMBER