

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 233 OF 2021

(Against the Order dated 10/02/2021 in Complaint No. 69/2018 of the State Commission
Chandigarh)

1. M/S. OMAXE CHANDIGARH EXTENSION
DEVELOPERS PRIVATE LIMITED & ANR.

OMAXE NEW CHANDIGARH DEVELOPERS 'P'LTD. 10,
L.S.C., KALKAJI NEW DELHI-110019

2. ROHTASH GOYAL

CHIEF MANAGING DIRECTOR, M/S OMAXE
CHANDIGARH EXTENSION DEVELOPERS 'P' LTD., 10,
L.S.C. KALKAJI, NEW DELHI-110019

.....Appellant(s)

Versus

1. LAKHBIR SINGH

S/O SUKHDEV SINGH, R/O VILLAGE DULCHIKE,
DISTRICT FEROZEPUR, PUNJAB

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

HON'BLE DR. SADHNA SHANKER, MEMBER

FOR THE APPELLANT :	MR. SUNIL MUND, ADVOCATE WITH MR. VEDANT KUMAR MUND, ADVOCATE
FOR THE RESPONDENT :	MR. UPDEEP SINGH, ADVOCATE WITH MR. SANDEEP BHARDWAJ, ADVOCATE RESPONDENT IN PERSON.

Dated : 19 August 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (for short "the Act") by Omaxe Chandigarh Extension Developers Pvt. Ltd. & its Chief Managing Director, Mr. Rohtash Goyal (hereinafter referred to as the "Developer") assailing the Order dated 10.02.2021 passed by the State Consumer Disputes Redressal Commission, UT, Chandigarh (hereinafter referred to as the "State Commission") in Complaint No. 69 of 2018 whereby the complaint was partly allowed.

2. There is a delay of 4 days in filing the present appeal. No application for condonation of delay has been filed. However, in the interest of justice, the short delay in filing the appeal is condoned.

3. The facts, in brief, are that the complainant purchased a plot for a total consideration of Rs. 71,62,295.70 in the project, namely, "Omexe Chandigarh Extension", Mullanpur, LPA (GMADA), District SAS Nagar, Mohali, Punjab, launched by the developer. It is the case of the complainant that, in the first instance, against purchase of plot bearing no.47, measuring 301.38 square yards, allotment letter/agreement dated 27.07.2012, was executed between the parties and as per Clause 24 (a), the developer promised to deliver the possession thereof, within a period of 24 months (18 months plus 6 months grace period) from the date of execution of the allotment letter/agreement i.e. latest by 26.07.2014 but the failed to do so, for dearth of construction and development activities as also necessary approvals/sanctions from the competent authorities. It is alleged that as per demands raised by the developer, the complainant had paid an amount of Rs.59,38,800/- by 25.06.2013 under time linked payment plan. It has been further alleged that since plot no.47 measuring 301.38 square yards was not ready for delivery of possession, the complainant was relocated to a plot measuring 200 sq. yds. and difference amount of Rs.11,79,400/- was refunded to the complainant by the developer. Thereafter, some more amount was received from the complainant towards relocated plot, yet, the possession of the relocated plot was also not delivered to him. Thereafter, the complainant received a letter dated 11.09.2014, whereby plot no. 162-A, measuring 199.13 square yards was allotted in his favour, provisionally, but no agreement in respect of the relocated plot was executed. The developer raised demand of Rs.1,30,241.57/- from the complainant vide letter dated 23.05.2015. Under these circumstances, the complainant approached the developer with a request to refund the amount paid but he was told that demand letters have been sent to him, to which he replied that since the same have not been received, the same be handed over to him, by hand, but the developer refused to do so. The grievance of the complainant is that neither possession of initially allotted plot nor of the relocated one was delivered to the complainant and he was left in lurch.

4. Earlier, the complainant filed a consumer complaint bearing no. 69 of 2018 before the State Commission. The State Commission vide order dated 17.10.2018 allowed the complaint and directed refund of an amount of Rs.50,89,642/- along with 12% interest along with Rs.1,50,000/- compensation and Rs.35,000/- cost of litigation. The developer preferred first appeal No. 2222 of 2018 before this Commission and this Commission disposed of the appeal and remanded the matter back to the State Commission for decision afresh. The State Commission, vide its order dated 10.02.2021, again decided the complaint afresh by allowing the same and directed the developer to refund the amount of Rs. 50,89,642/- to the complainant, along with interest @12% p.a. from the respective dates of deposit. Rs. 1,85,000/- was also awarded as lumpsum compensation towards mental agony and harassment. A liberty was also granted to the complainant to withdraw the amount deposited by the developer before this Commission and in case the amount deposited falls less than the decretal amount, the developer was directed to pay the differential amount within 30 days from the date of receipt of a certified copy of the order. The National Commission vide order dated 25.03.2021 passed in MA No. 73 of 2021 in FA No.2222 of 2018 directed the office to release the entire amount in accordance with the directions passed by the State Commission.

5. Being aggrieved by the order dated 10.02.2021, the developer has filed the instant appeal before this Commission with the following prayer:

(a) allow the present appeal; and

(b) set aside the final judgment and order dated 10-02-2021 passed by the Hon'ble State Consumer Disputes Redressal Commission, UT, Chandigarh in Consumer Complaint No. 69 of 2018; and

c. Pass such other and further order or orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

6. Before us, the counsel for the developer argued that the deposited amount has already been released and the only issue remaining in this appeal is quantum of compensation. It was argued that the interest at the rate of 12% per annum on the deposited amount is on the higher side. It is admitted that the complainant has already received his principal amount with 12% and 1.85 lakhs with further interest accrued therein totaling Rs.91,06,666.03/-. He further argued that the compensation cannot be granted under multiple heads, therefore, the compensation of Rs.1.85 lakhs granted by the State Commission is erroneous. In support of this contention, reliance has been placed on the following decisions.

- a. *Kolkata West International City Pvt. Vs. Devasis Rudra, 2019 SCC OnLine SC 438*
- b. *Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, in Civil Appeal No. 6044 of 2019 decided on 07.04.2022*

DLF Homes Panchkula Pvt Ltd Vs. D.S. Dhanda IV (2019) SLT 675

7. In rebuttal, counsel for the complainant has argued that the developer has failed to prove the service of letter dated 29.04.2017 as well as subsequent letters dated 30.05.2017, 27.06.2017 and 28.07.2017 upon the complainant. He further argued that since there is no agreement executed between the parties, the developer is not legally entitled to retain the amount and also to force the complainant to accept the belated possession. He further argued that the developer has placed on record a partial completion certificate dated 28.04.2017 and before obtaining partial completion certificate, the developer cannot legally deliver the possession of the plot to the complainant and the developer has failed to deliver the possession of the plot within the stipulated period, which amounts deficiency in service. It is settled proposition of law that the possession cannot be offered without obtaining the completion certificate. Reliance is placed on the decision of this Commission in the case of **M/s Newtech Shelters Noida Pvt. Ltd. Vs. Rajiv S. Gupta F.A. No. 290 of 2020 decided on 04.03. 2020**. He further argued that the State Commission has passed a well-reasoned order.

8. We have heard the learned counsel for both the parties and have gone through the material available on record.

9. The question which falls for our consideration is whether there is deficiency in service on the part of the developer.

10. It is seen from the facts and circumstances of the case and perusal of evidences on record that the complainant initially purchased plot no.47 in the disputed project and according to clause 24 (a) of the allotment letter/agreement dated 27.07.2012, possession of the plot was to be handed over within 24 months (with a grace period of 06 months) i.e. by 26.07.2014, subject to force majeure circumstances. The developer had received

Rs.59,38,800/- from the complainant for plot no. 47 by 25.06.2013. However, there is nothing on record to indicate that possession of plot no. 47 or the relocated plot was ever offered to the complainant by the developer within the stipulated period. Furthermore, the developer has not provided any explanation as to why possession of the plot in question, as promised, was not delivered. Therefore, we are of the view that there is a clear deficiency in service on the part of the developer.

11. With regard to the rate of interest, the Hon'ble Supreme Court in the case of ***Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, in Civil Appeal No.6044 of 2019*** decided on 7.4.2022, has held as under :-

“We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the Order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in DLF Homes Panchkula Pvt. Ltd. Vs. DS Dhandra and in modification of the direction issued by the Commission, we direct that the interest on the refund shall be payable from the dates of deposit. Therefore, the Appeal filed by purchaser deserves to be partly allowed. The interest shall be payable from the dates of such deposits.

At the same time, we are of the opinion that the interest of 9% granted by the Commission is fair and just and we find no reason to interfere in the appeal filed by the consumer for enhancement of interest.”

12. In view of the above, we are of the opinion that the interest at the rate of 9% is just and appropriate. In view of the decision rendered in the case of ***DLF Homes Panchkula Pvt. Ltd. vs. D.S. Dhandra (supra)***, the award of compensation of Rs.1,85,000/- for mental agony and harassment granted by the State Commission is found to be not tenable.

13. In the result, the order of the State Commission is modified to the extent that the interest at the rate of 9% p.a. on deposited amount of Rs.50,89,642/- from the respective dates of deposit till the date on which the amount was released and/or refunded by the developer, shall be paid to the complainant. The amount already paid to the complainant and/or released by this Commission in favour of the complainant shall be duly adjusted while making the compliance of this Order and the balance amount, if any, shall be made good within eight weeks from today, failing which, it shall carry interest at the rate of 12% per annum. It is also made clear that in case excess amount has been paid to the complainant, the same shall be refunded by the complainant to the developer within the same period of eight weeks from today. The direction to pay Rs. 1.85,000/- as compensation towards mental agony and harassment is set aside.

14. The appeal stands disposed off in above terms. All pending applications, if any, stand disposed off.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER