

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1441 OF 2017

(Against the Order dated 16/05/2017 in Complaint No. 48/2013 of the State Commission
Rajasthan)

1. M/S. VATIKA LIMITED

7TH FLOOR, VATIKA TRIANGLE, MEHRAULI-GURGAON
ROAD,SUSHANT LOK, PHASE-1,
GURGAON
HARYANA

.....Appellant(s)

Versus

1. DR. KHOZEM A DIVAN & ANR.

S/O. AM DIVAN, R/O 3/1003,MILAN PRESS,BADRI
ROAD,JHAMPA BAZAR, KHADI,INDERPURA,
SURAT-395003

GUJRAT

2. HDFC LTD,

THROUGH ITS BRANCH MANAGER, APARTMENT NO.0-
19-A, ASHK MARG,C-SCHEME,
JAIPUR-302001

RAJASTHAN

.....Respondent(s)

FIRST APPEAL NO. 1581 OF 2017

(Against the Order dated 16/05/2017 in Complaint No. 48/2013 of the State Commission
Rajasthan)

1. DR. KHOZEM A. DIVAN

S/O. SHRI A.M. DIVAN. 3/1003, MILAN PRESS BADRI
ROAD, IMPA BAZAR KHADI, INDRAPURA.

SURAT

GUJRAT

.....Appellant(s)

Versus

1. VATIKA LTD. & ANR.

FLAT NO.621 A, 6TH FLOOR, DEVIKA TOWERS 6,
NEHRU PLACE.

NEW DELHI

DELHI-110019

2. HDFC LIMITED.

THROUGH MANAGING DIRECTOR/AUTHORISED
REPRESENTATIVES. RAMON HOUSE, H.T. PAREL MARG,
169, BANK AND RECLAMATION, CHURCHGATE.

MUMBAI-400020

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT :

Dated : 02 August 2024

ORDER

For Vatika Limited : Mr. Himanshu Chugh, Advocate proxy for
Mr. Pankaj Vivek, Advocate

For Dr. Khozem A. Divan : Mr. Anuj Bhandari and Mr. Rajat Gupta,
Advocates proxy

For HDFC Ltd. : None

ORDER

PER SUBHASH CHANDRA

This order will dispose of First Appeal No.1441 of 2017 filed by M/s Vatika Limited (Opposite Party No.1 before the State Commission) and First Appeal No.1581 of 2017 filed by the Complainant as both the cases challenge the same impugned order dated 16.05.2017 of the State Consumer Disputes Redressal Commission, Rajasthan (for short "the State Commission") in Complaint No.48 of 2013. First Appeal No.1441 of 2017 has been filed seeking setting aside of the impugned order whereas First Appeal No.1581 of 2017 has been filed seeking enhancement of the compensation.

2. In brief, the facts of the case are that on 23.03.2007 Complainant had booked one residential unit no.17/FF/KDAV/UW in the residential project of M/s Vatika Limited named as "Urban Woods" by paying booking amount of ₹5,71,245/- and executing an Agreement on 07.07.2007. Possession of the unit was to be handed over to the Complainant within three years, i.e., by 07.07.2010. In the subject unit, a modular kitchen and car parking space were also included. M/s Vatika Limited had made arrangement with Respondent No.2, M/s HDFC Limited, for housing loan to the applicants in the project under which, in addition to the booking amount, the loan of the balance price was to be sanctioned to the applicants and till the handing over of possession, pre EMI interest was to be paid by M/s Vatika Limited and three years after possession being given by M/s Vatika Limited, the EMI of the payment of this loan was to be paid by the Complainant to the Respondent No.2. It is alleged by the Complainant that M/s Vatika Limited did not complete construction in the stipulated period of three years. It is also alleged by the Complainant that he was assured that if M/s Vatika Limited did not fulfill its obligations, the booking amount would be refunded to him along with interest @ 18% p.a. It is alleged that M/s Vatika Limited issued a letter to the Complainant on 09.11.2011 demanding ₹6,95,702.93 and offering to hand over possession. However, M/s Vatika Limited did not fulfill the terms of the Agreement as per which possession could be handed over after obtaining a Certificate of Occupation from the concerned authorities. It was also alleged that car parking space was subsequently deleted by M/s Vatika Ltd. It is alleged that despite the promise that the entry of the project would be

from the Ajmer Express Highway, on which the project was located, the same was not developed.

3. Opposite Parties took preliminary objections that the Complaint had been filed beyond the period of limitation; the valuation of the Complaint was deliberately inflated with the basic intention of the Complainant being to seek refund of the booking amount. It was contended that the present dispute ought to have been referred to the Arbitrator. It was alleged that the Complainant defaulted in making payment on due dates and therefore he was a defaulter. It was stated that though the Complainant was informed about handing over of possession on 09.11.2011, he took no interest in the same. It was contended that the project has been completed in all respects and the flats have been completed. It was prayed that the Complaint be dismissed.

4. By the impugned order, the State Commission rejected the objection regarding jurisdiction and limitation but upheld that there was delay in giving possession of the unit in question. The State Commission allowed the Complaint and directed M/s Vatika Limited to pay to the Complainant the booking amount of ₹5,71,245/- along with interest

@ 9% p.a. from the date of filing of the Complaint till the date of payment and also to pay to the Respondent No.2 within one month the housing loan of ₹30,46,643/- which was sanctioned to the Complainant and disbursed to M/s Vatika Limited. Costs of ₹5,100/- was also awarded. No compensation towards mental agony was awarded. Both parties have impugned this order by way of the present Appeals.

5. We have heard learned Counsel for the parties and perused the material on record. We have also gone through the short synopsis of arguments filed by the parties.

6. The State Commission vide its impugned order has held and ordered as under:

The objection regarding jurisdiction and limitation is not liable to be accepted. The loan of ₹30,46,647/- which OP No.2 has sanctioned in favour of the complainant, is the liability of OP No.1 to repay the same to OP No.2 upon termination of the agreement and in this regard a request has also been in fact made through this complaint. In addition, the present complaint lies within the jurisdiction of this Commission and the complaint is also within a limitation as the possession was lastly offered on 09.11.2011 and the complaint was filed on 05.07.2013. Taking into the consideration all these circumstances, in our view the OP No.1 has not complied with terms of the agreement in totality and therefore the complainant has right to terminate the agreement and as such the complainant has right to claim his booking amount.

The complaint is therefore allowed. It is directed that the OP No.1 shall pay to the complainant booking amount of ₹5,71,245/- alongwith interest @ 9% per annum calculated from the date of filing on this complaint on 05.07.2013, till the date of payment and also to pay to the OP NO.2 within one month the housing loan amount of ₹30,46,643/- which was sanctioned by OP No.2 to the complainant and which was disbursed to the OP No.1. Looking at all the facts and circumstances,

we are not inclined to accept that the complainant is entitled to claim compensation for mental agony, but he would be entitled to an amount of ₹5,100/- from the OP No.1 as cost of the present complaint.”

First Appeal No.1441 of 2017 has been filed by M/s Vatika Limited with the following prayers:

- a. Call for the records of the State Commission below and after perusing the same, set aside/quash the Final Order dated 16.05.2017 passed in Complaint No.48/2013 by the State Consumer Disputes Redressal Commission, Rajasthan, Bench No.2, at Jaipur;
- b. Pass such other or further order as this Hon'ble Commission may deem fit and proper in the circumstances of the case and in the interest of justice and
- c. Allow costs.

First Appeal No.1581 of 2017 has been filed by the Complainant praying for the following reliefs:

- a. Modify the order dated 16.05.2017 passed by the State Consumer Dispute Redressal Commission, Rajasthan, Jaipur in Complaint No.48/2013 to the extent of interest awarded be accrued from the date of depositing the amount to Respondent No.1 and not from the date of filing of complaint;
- b. Modify the order dated 16.05.2017 passed by the State Consumer Dispute Redressal Commission, Rajasthan, Jaipur in Complaint No.48/2013 to the extent of the Respondent No.1 shall repay the entire loan amount to HDFC Ltd. along with interest and all other charges and hold that the Petitioner shall not be liable to make any payment to the HDFC Ltd.;
- c. Pass such further or other orders as may be deemed just, fit and necessary in the circumstances of the case.”

7. Learned Counsel for Appellant (M/s Vatika Limited) has argued that the State Commission failed to take into consideration Complainant's categorical admission in his email to them that the booking of apartment had been made by him for the purpose of

investment which makes it clear that the objective of the Complainant was to make profit by selling the apartment at higher prices and therefore, the Complainant was not a “consumer” under the Act. It is argued that the State Commission failed to consider that the Complainant had no valid justification to decline possession and seek refund of the booking amount when possession was offered. It is argued that since possession has been offered, Complainant cannot terminate the agreement and the Complainant was required to give a notice of 90 days before terminating the booking which he failed to do. It is also argued that the State Commission failed to consider that a Certificate of Occupation was not required to be obtained in respect of the construction raised under the provisions of Jaipur Development Authority (Jaipur Region Building) Regulations, 2000 (Regulation 16.1) and that M/s Vatika Limited has already paid substantial amount to Respondent No.2 Bank towards pre-EMI interest on the housing loan availed by the Complainant. It is contended that the main entry of the project had also been provided from Ajmer Road. It is, therefore, contended that the State Commission ought to have dismissed the Complaint as being without merit and substance.

8. On behalf of the Complainant, it was argued that M/s Vatika Limited could not deliver the possession within three years of the booking date, as agreed. It was submitted that the flat was not complete and M/s Vatika Limited had offered possession of the property in question despite not receiving Occupation Certificate which was contrary to the Builder’s obligations under the Apartment Buyers Agreement. It is argued that the demand of ₹6,95,702/- under additional heads was contrary to the agreement. It is submitted that due to delay and illegal acts of M/s Vatika Limited, the Complainant rightfully chose to exercise his right to terminate the agreement and sought refund of booking amount with interest @ 18% p.a. It is argued that the State Commission has granted refund of booking amount with interest from the date of institution of complaint and not from the date of payment and the interest awarded is significantly below par. It is prayed that the impugned order be modified to the extent that the interest be awarded from the date of deposit made by the Complainant and M/s Vatika Limited be directed to repay the entire loan amount to Respondent No.2 along with interest and all other charges and that the Complainant shall not be liable to make any payment to Respondent No.2.

9. In a catena of judgments, the Hon’ble Supreme Court and this Commission have held that an inordinate delay in offering the possession to allottees after receiving the deposits in a timely fashion would constitute “deficiency in service” on the part of the Opposite Party/Builder. The Hon’ble Supreme Court in **Kolkata West International City Pvt. Ltd. vs. Devasis Rudra – II** (2019) CPJ 29 SC has laid down that “*it would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable.*”

10. The Hon’ble Supreme Court in **Pioneer Urban Land And Infrastructure Ltd. Vs. Govindan Raghavan** (2019) 5 SCC 725 has held that an allottee/consumer was entitled to seek refund of the amount deposited by him with the Opposite Party since the Builder had failed to fulfill his contractual obligations of obtaining the Occupancy Certificate and offering possession of the flat to the purchaser within the time stipulated in the Agreement or within a reasonable time thereafter and that the purchaser could not be compelled to take

possession of the flat even if it was offered after the grace period under the Agreement expired.

11. The Hon'ble Supreme Court has also held in *Pioneer Urban Land & Infrastructure Ltd. Vs Govindan Raghavan*, (2019) 5 SCC 725 and *Fortune Infrastructure Vs. Trevor D'Lima* (2018) 5 SCC 442, that an allottee cannot be expected to wait indefinitely or for an inordinate period of time for possession of the flat booked by him and is entitled to seek refund in case of inordinate delay in making the offer of possession by the Opposite Party. It has also held in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna*, (2021) 3 SCC 241 that the provisions of the Act have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation.

12. As regards the rate of interest as compensation, the Hon'ble Supreme Court in *Experion Developers Pvt. Ltd. vs. Sushma Ashok Shiroor*, Civil Appeal No.6044 of 2019 decided on 07.04.2022 held that compensation by way of interest has to be both compensatory as well as restitutionary and that interest @ 9% would be fair and just. Further in *DLF Homes Panchkula Limited vs. D. S. Dhanda etc.*, Civil Appeal No.4910-4941 of 2019, decided on 10.05.2019, the Apex Court also laid down that awarding of multiple compensation for a single act of deficiency is not justifiable. This proposition of law has been reiterated in a catena of judgments of the Hon'ble Supreme Court and this Commission and is well settled.

13. The contention of M/s Vatika Limited is that under the Jaipur Development Authority Regulations, 2000 no Certificate of Occupation was required before offering possession. Irrespective of this fact, the Appellant in order to convey clear title would require a Certificate from the concerned authority with regard to completion of execution of the project as per the sanctioned plan. Even such a document has not been brought on record. Admittedly, there has been delay in the offer of possession which, as per the Agreement was to be done in 3 years i.e. by 07.07.2010, possession was offered on 09.11.2011 but without the necessary documentation as discussed above.

14. In view of the foregoing discussion and the facts and circumstances of the case, we are not inclined to accept the contentin of the Appellant M/s VATika Limited. On the other hand, there is merit in the contentions of the Appellant in First Appeal No.1581 of 2017. In light of the foregoing, the impugned order of the State Commission is modified with the following directions:

(i) It is directed that the Appellant Vatika Limited shall pay to the complainant booking amount of ₹5,71,245/- alongwith interest @ 9% per annum from the respective dates of deposits till the date of payment and also pay to the OP No.2 within one month the housing loan amount of ₹30,46,643/- which was sanctioned by HDFC Limited to the Complainant and which was disbursed to the Vatika Limited.

(ii) Appellant Vatika Limited shall pay to the Complainant litigation costs of ₹50,000/-.

15. Both Appeals No.1441 of 2017 and 1581 of 2017 stand disposed of in the above terms.

16. Pending applications, if any, also stand disposed of.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER