

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 490 OF 2020

(Against the Order dated 06/08/2019 in Complaint No. 295/2019 of the State Commission
Punjab)

1. GREATER MOHALI AREA DEVELOPMENT
AUTHORITY (GMADA)

THROUGH ITS ESTATE OFFICER, PUDA BHAWAN, SAS
NAGAR, MOHALI,

.....Appellant(s)

Versus

1. SUNIL KUMAR DAHIYA
S/O. SHRI RANJIT SINGH DAHIYA,R/O. B-34, CHANKYA
PLACE, PANKHA ROAD,
110059

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT :

Dated : 29 August 2024

ORDER

FA/490/2019

For the Appellant

Ms. Zehra Khan, Advocate

For the Respondents

Mr. Karan Kapoor, Advocate (VC)

FA/840/2019

For the Appellant

Ms. Zehra Khan, Advocate

For the Respondents

Mr. Naeem Ilyas, Advocate (VC)

Dated : 12th March 2024

ORDER

1. This order shall dispose of First Appeal No.840 of 2019 and First Appeal No. 490 of 2019 since they pertain to the same project of the Appellant. For the sake of convenience,

First Appeal No.490 of 2019 is considered as the lead case and facts of this case are considered in this order.

2. This Appeal under Section 19 of the Consumer Protection Act, 1986 (for short the "Act") assails the order dated 06.08.2019 in Complaint No.295 of 2019 of the Haryana State Consumer Disputes Redressal Commission Panchkula (for short "the State Commission") allowing the Complaint and directing refund with interest by the Opposite Party/Appellant herein.
3. Relevant facts of the case in brief are that the Appellant which is a Development Authority under the State Government of Punjab launched a project, namely, "Purab Premium Apartment", Sector 88, SAS Nagar, Mohali as a Group Housing Project for 4500 flats. Respondent/Complainant applied for a flat in the project and in the draw of lots in which 1400 applicants were successful, Respondent was allotted a Type II residential flat. He paid 95% of the deposit as per the agreed terms under clause 3. The Letter of Intent was issued on 21.05.2012. Subsequently, 1075 more eligible allottees were shortlisted. The Appellant issued an Allotment and Offer of Possession Letter No.34274 dated 26.07.2016 to the Respondent offering possession along with the demand to pay the balance 5% amount due. Respondent, vide letter dated 02.09.2016, sought refund of ₹59,75,752/- paid under clause 3 II of the Letter of Intent dated 21.05.2012. Appellant, thereafter, informed the Respondent, vide letter dated 09.03.2017, that as per the Punjab Regional and Town Planning and Development (Amendment) Act 2013, he was entitled to refund of only ₹53,31,245/-. Respondent approached the State Commission through Consumer Complaint No.295 of 2019 seeking refund of ₹6,27,510/-, which had been deducted arbitrarily by the Appellant, with interest @ 12% p.a. and compensation in the form of compound interest @ 12% p.a. on ₹59,75,752/- from the date of payment till realization along with compensation of ₹1 Lakh towards mental agony and harassment and litigation costs of ₹2 Lakhs. On contest, the State Commission directed refund of ₹6,27,510/- deducted illegally and arbitrarily and interest on the entire deposited amount of ₹59,75,752/-, @ 8% p.a. compounded from the date of deposit till 15.04.2017, the date on which refund of ₹53,31,245/- was directed by the Appellant and also interest @ 8% p.a. compounded annually on the amount of ₹6,27,510/- from 16.04.2017 till realization along with ₹20,000/- and litigation costs. This order is impugned before us.
4. Heard learned Counsel for the parties and perused the records. In FA 840/2019 learned Counsel for the Respondent did not file his short synopsis as directed and also chose not to argue the matter when the matter was finally listed for arguments.
5. According to the Appellant, the impugned order was without appreciating the facts and had failed to determine the deficiency in service by the Appellant. It was contended that an allottee could apply for refund only after the Letter of Intent was issued but before the Letter of Allotment was issued as per Clause 7 II. It was submitted that approximately 100 allottees opted for refund after completion of 36 months from the date of Letter of Intent and had been refunded their amounts with 8% interest. The present Respondent had applied for refund only two months after the Letter of Allotment was issued and, therefore, was not eligible. It was contended that as per the Indian Contract Act 1872, the contract could not have been held to be delayed as time was not the essence of the contract and that the State Commission erred in concluding that there was deficiency on part of the Appellant. It was also submitted that the Respondent had been negligent in not taking possession of the flat

within 30 days of the Letter of Allotment dated 26.07.2016 and actions taken as per the contract cannot be concluded to be deficiency under the Act. As per Clause 5 VII of the Letter of Intent, 10% of the consideration with interest and other penalty dues was liable to be forfeited as per rules of the Appellant. It was also submitted that 8% compounded rate of interest was exorbitant keeping in view various judgments of the Hon'ble Supreme Court. Respondent had been issued refund on 15.04.2007 and therefore, the Complaint dated 11.04.2019 was an afterthought with a delay of 131 days and therefore, the same should be set aside.

6. *Per contra*, on behalf of the Respondent it was argued that the Appellant failed to deliver possession by 21.05.2012 as per the Letter of Intent and, therefore, as per Clause 3 II, he was entitled to seek refund with interest @ 8% compounded annually. It was averred that the Appellant accepted the Letter of Withdraw and issued refund of ₹53,31,245/- (after deducting 10% under Section 45 (3) of the Punjab Regional Town Planning and Development Act 1955) which was assailed before the State Commission. According to the Respondent, deduction of 10% was incorrect and the State Commission had rightly upheld his Complaint. It was contended that the Respondent was entitled to full refund with interest as prayed. Reliance was placed on this Commission's judgment in **GMADA vs Priyanka Nayyar**, 2016 SCC Online NCDRC 2355 and **Vijay Gupta vs. Estate Officer, GMADA**, CC NO.750 of 2015 which had upheld the return of the entire amount with interest @ 8% p.a. compounded. Learned Counsel for the Respondent also relied on judgment of this Commission in **Chief Administrator, GMADA & Anr. Vs. Sandeep Bansal & Anr.** First Appeal No.304 of 2021 decided on 09.10.2023 which dealt with similar cases pertaining to the same project "Purab Premium Apartments" at Mohali.

7. It is seen that this matter is covered squarely under the ratio of the judgment in **Sandeep Bansal** (supra) which has considered similar issues relating to the refund of the entire deposited amount and the applicable rate of interest thereon. In this judgment it had been held as under:

11. Bare perusal of the aforesaid Clause and associated facts and circumstances of the case reveals that, in the event of non-completion of the development work at site within the stipulated period of 36 months, an Allottee is entitled to withdraw from the Scheme and, if he chooses to do so, GMADA is obliged to refund the entire amount so deposited, along with interest @ 8% compounded annually. Therefore, the stand of GMADA in respect of the option of refund under Clause 3(II) of the LOI to the Respondents/ Complainants is not tenable within the terms of contract entered into between the parties

12. As regards the issue 'whether the State Commission rightly awarded rate of interest (8% Compounded annually) on refund as per Clause 3(II) of LOI from the date of deduction i.e., 09.10.2017, it is well settled by the Hon'ble Supreme Court that a flat buyer cannot wait indefinitely for possession. In the vent of gross delay, he has option either to take possession with delay compensation or seek withdrawal with full refund and applicable interest. As regards delay in execution of construction projects and the rights of the consumers, the Hon'ble Supreme Court in **Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 SC**, decided on 25.03.2021 it was observed as under:

“.....It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by SCDRC and by the NCDRC for refund of moneys were justified.

...In the circumstances, we are of the view that the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified. Having regard to all the facts and circumstances of the case, we modify the order of the NCDRC by directing that the appellant shall pay interest at the rate of 9% per annum to the respondent instead and in place of 12% as directed by the NCDRC. Save and except for the above modification, we affirm the directions of NCDRC.”

(Emphasis supplied)

8. In view of the foregoing, this Appeal is disposed of in terms of the ratio of the judgment in **Sandeep Bansal** (supra) with the following terms:

- i. The Appellant is directed to refund the balance amount of ₹6,27,510/- along with interest @ 9 % p.a. from the date of deduction, i.e. 15.04.2017, till realization;
- ii. Appellant shall also pay interest @ 9% p.a. on the refunded amount of ₹53,31,245/- from the respective dates of deposit till the date of refund i.e. 15.04.2017:
- iii. Appellant shall also pay ₹20,000/- towards costs of litigation to the Respondent.

9. All the payments as mentioned above shall be made within a period of one month from the date of this order, failing which applicable rate of interest will be 12% p.a. till realization.

10. Registry is also directed to release the statutory amount deposited, if any, in favour of the Appellant in First Appeal No.490 of 2019 on due compliance of this order.

11. All pending IAs, if any, also stand disposed of with this order.

12. First Appeal No.840 of 2019 is also disposed of in terms of the order passed in First Appal No.490 of 2019.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER