

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 633 OF 2021

(Against the Order dated 28/07/2021 in Complaint No. 692/2019 of the State Commission
Delhi)

1. SINDHU MATTOO

H-351, NARAINA VIHAR, NEW DELHI-110028

.....Appellant(s)

Versus

1. PAN REALTORS PRIVATE LIMITED

S-406, (LG), GREATER KAILASH-II, NEW DELHI-110048

2. PAN RELTORS ;P; LTD.

GH-01, SECTOR-70, NOIDA, U.P. 201301

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT :

Dated : 02 September 2024

ORDER

For the Appellant

Ms Nikita Sharma, Advocate

For the Respondent

Mr Ashwin Kumar Nair, Advocate

ORDER

PER SUBHASH CHANDRA

1. The present First Appeal filed under Section 51 of the Consumer Protection Act, 2019 (for short "the Act") challenges the order dated 28.07.2021 of the State Dispute Redressal Commission, Delhi (in short, the 'State Commission') in Consumer Complaint No. 692 of 2019, wherein the State Commission disallowed the complainant seeking relief/ compensation under various heads including refund of car parking charges and the excess demands raised by the opposite party.

2. Briefly put, the relevant facts of the case are that the Appellant/Complainant is an allottee of apartment bearing Unit No. M-304, 3rd Floor at "PAN Oasis", GH-01, Sector 70, NOIDA being developed by the Respondent Company. The Appellant availed the services of the Respondent Company for constructing/developing a residential apartment, for a

consideration of Rs. 43,07,250/-. It is submitted that the Appellant purchased the subject apartment for her use and not for any commercial purpose, Pursuant to the booking of the apartment and payment of booking amount of Rs.3,68,924/- the Respondent executed a Flat Buyers' Agreement (FBA) dated 08.08.2011 and Allotment Letter dated 12.08.2011 allotting apartment No. N-1206A in the project to the Appellant. As per the FBA, delivery of possession was promised within 36 months plus 3 months grace period from the date of signing of the FBA i.e. by 08.11.2014. It is submitted that the apartment booked by the Appellant was No. N-1206A as the same was East facing and park facing. He availed a bank loan in 2011. However, on 26.08.2011, representative of the Respondent informed the Appellant that due to some error, the position of the apartment No. N-1206A had been changed from park facing and East facing to South facing and would not be park facing. On account of change in the apartment booked by the Appellant, the Respondent offered another apartment i.e. M-304 and enhanced Preferential Location Change (PLC) from Rs. 100/- to Rs. 150/- per sq. ft. resulting in increase in the consideration of the apartment by Rs. 1,68,750/-. As the Appellant had no other option, she agreed for the change in apartment. Respondent then issued a new Flat Buyers' Agreement dated 17.03.2012 (hereinafter referred to as the "Agreement") to the Appellant for apartment no. M-304, having super area of 1125 sq. ft. and total consideration of Rs.43,07,250/-. As per this Agreement, the date of possession of the apartment was changed to 16.06.2015 instead of 08.11.2014 (as per the old Agreement). At the time of signing of the Agreement, the Appellant had already made a payment of Rs.34,16,795/- and a balance amount of Rs.8,90,455/- was payable at the time of handing over of possession of the apartment. Respondent issued a letter dated 02.04.2016 to the Appellant informing her that the construction of the apartment had reached Pre-final Stage and offered the apartment after payment of dues and formalities only for the purpose of 'Fit-out' by handing over keys. The Respondent issued "Final Outstanding Statement" dated 16.11.2018, which, according to the Appellant, was unreasonable and raised 'unfair' demands. Due to the delay in handing over possession of the apartment for nearly 5 years, alleging deficiency in service and unfair trade practices on part of the Respondent, the Appellant filed Consumer Complaint No. 692 of 2019 under Section 17(a)(i), before the State Commission, Delhi seeking, *inter alia*, possession of the apartment along with compensation for delay, mental agony and litigation costs. On 15.01.2020 the State Commission placed Respondent *ex-parte* and directed the Appellant to file evidence by way of an affidavit. Based on oral arguments of Appellant on 19.07.2021 the complaint was decided by way of the impugned order which directed the Opposite Party as under:-

"9. The provisions of the Act enable a consumer to claim and empower the Commission/Forum to redress any injustice done to a consumer. The Commission or the Forum is entitled to award not only value of goods or services but also to compensate a consumer for injustice suffered by him. The word compensation is of very wide connotation. It may constitute actual loss or expected loss and may extend the compensation for physical, mental or even emotional suffering, insult or injury or loss. Therefore, for the purpose of determining the amount of compensation, the Commission/Forum must determine the extent of sufferance by the consumer due to action or inaction on the part of the Opposite Party. In Ghaziabad Development Authority Vs. Balbir Singh - (2004) 5 SCC 65, while observing that the power and duty to award compensation does not mean that irrespective of facts of the case, compensation can be awarded in all matters on a

uniform basis, the Hon'ble Supreme Court gave certain instances and indicated the factors, which could be kept in view while determining adequate compensation. One of the illustrations given in the said decision was between the cases, where possession of a booked/allotted property was directed to be delivered and the cases where only monies paid as sale consideration, are directed to be refunded. The Hon'ble Court observed, in this behalf, that in cases where possession is directed to be delivered to the Complainant, the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply refunded, then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is not only deprived of the flat/plot, he has been deprived of the benefit of escalation of the price of the flat/plot. Additionally, in my view, in such a situation, he also suffers substantial monetary loss on account of payment of interest on the loans raised; depreciation in the money value and escalation in the cost of construction etc.

10. Having reached to this conclusion, in the facts and circumstances of the case, it is felt that ends of justice would be met if a direction is issued to the OPs to handover the possession of the apartment booked by him without any additional amount beyond the terms of agreement. No cost done within three months from the date of receipt of the order.”

3. We have heard the learned counsel for the parties and carefully considered the material on the record.

4. The appellant's case is that he booked an apartment bearing Unit No. M-304, 3rd Floor at "PAN Oasis", GH-01, Sector 70, NOIDA with Respondent and executed a Flat Buyers' Agreement dated 08.08.2011, Allotment Letter dated 12.08.2011 initially allotting apartment No. N-1206A in the project to the Appellant for which delivery of possession was promised within 36 months (plus 3 months' grace period) from the date of signing of Agreement i.e. 08.11.2014 was issued by the Respondent/Opposite Party. However, this was subsequently changed to apartment bearing N-1206A with enhanced PLC from Rs.100/- to Rs.150/- per sq. ft. resulting in increase in consideration of the apartment by Rs.1,68,750/- which the Appellant agreed to pay as she had no other option. The new Flat Buyers' Agreement dated 17.03.2012 with revised date of delivery was 16.06.2015.

5. Appellant submitted that after nearly 5 years of the promised date of possession, Respondent issued "Final Outstanding Statement" dated 16.11.2018, which was unreasonable and unfair. It was also submitted that the Respondent failed to handover possession of the apartment by the promised date of delivery. Thereafter, the Appellant filed a complaint under Section 17 of the Consumer Protection Act 1986, before the State Commission seeking relief of possession, along with compensation for delay in handing over the possession of the apartment, loss suffered and other reliefs.

6. *Per contra*, it was argued by the learned counsel for the Respondents that the delay was caused in delivering the project within the stipulated period of 36 plus 6 months due to stoppage of work due to an order passed by NGT which constituted a *force majeure* event. The Hon'ble National Green Tribunal (NGT), Principal Bench, New Delhi, on 14.08.2013, in Original Application No. 158/2013, halted the construction work within a 10km radius of Okhla Bird Sanctuary, as proper Environmental Clearance was not obtained or violated. Consequently, in compliance with the aforesaid NGT order, all construction work was suspended from 27.08.2013.

7. Counsel for the respondent submitted that operation of order in *Amit Kumar vs. Union of India & Others* dated 14.08.2013 in O.A. No. 158 of 2013 ended only with issuance of a Gazette Notification on 19.08.2015 by the Ministry of Environment & Forest, Govt. of India, under Section 3 of the Environment Protection Act read with Rule 5(3) of Environment Protection Rules which created an Okhla Bird Sanctuary Eco-Sensitive Zone. The NOIDA Authority granted the Respondent a "Zero Period" from 14.08.2013 to 19.08.2015. Furthermore, Govt. of Uttar Pradesh in Respondents Appeal vide order dated 22.08.2023 extended the "Zero Period" from 20.08.2015 to 17.01.2018.

8. Opposite Party issued letter dated 02.04.2016 for "Fit-out" & "Key-handover" to the complainant for the allotted Unit. However, the Complainant failed to take possession. An Occupation Certificate (OC) was received on 17.01.2018, which was followed by the request to take possession. On various pretexts the Complainant failed take possession while other allottees settled the matter amicably. Instead of taking possession the complainant waited for another 1.5 years and filed the complaint before the State Commission on 20.07.2019.

9. We have considered the arguments of the parties and examined the material on record.

10. From the record, it is evident that the respondent relies upon *force majeure* as the reason for the delay and has contended that the delay was due to reasons beyond its control. Admittedly, there has been a delay of more than two years in the offer of possession by the opposite party. The Hon'ble Supreme Court in *Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra*, (2020) 18 Supreme Court Cases 613 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 a reasonable period. A period of seven years is beyond what is reasonable”.

In *Fortune Infrastructure Vs Trevor D'Lima*, (2018) 5 SCC 442 the Hon'ble Supreme Court had held that:

“a person cannot be made to wait indefinitely for possession of the flat allotted to him/her, and is entitled to seek refund of the amount paid by him, along with compensation.”

“Regarding quantum of compensation, the Hon’ble Supreme Court in *Experion Developers Private Limited Vs. Sushma Ashok Shiroor, 2022 SCC OnLine SC 416*, held that in case of refund, 9% interest is just compensation, which amounts to restitutory and compensatory both.”

11. In case of compensation for delay possession, the Hon’ble Supreme Court in *Wg. Cdr. Arifur Rahman Khan Vs. DLF Southern Homes Pvt. Ltd., (2020) 16 SCC 512* and *DLF Home Developers Pvt. Ltd. Vs. Capital Greens Flat Buyers Association, (2021) 5 SCC 537*, has held that 6% interest on the deposit of home buyers for the delayed period of handing over possession is appropriate compensation in case possession is being given.

12. In the instant case, the respondent has offered possession of the plot in question to the appellant after obtaining the Occupation Certificate (OC) for the same. The delay for the offer of possession requires to factor in the delay on account of the ‘Zero Period’ declared by the NOIDA AUTHORITY.

13. In view of aforesaid discussion, the appeal is partly allowed and the order of the State Commission is modified to the extent that Opposite Party shall pay damages in the form of interest @ 6% from the due date of possession i.e. 08.11.2014 till the date of offer of possession on receipt OC i.e.17.01.2018. Respondent is also directed to pay litigation cost of Rs.50,000/- to the Appellant. The order shall be complied within a period of 8 weeks from the date of this order failing which the applicable rate of interest will be 9% per annum till realization.

14. Pending IAs, if any, stand disposed of with this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**