

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 652 OF 2021

(Against the Order dated 17/02/2021 in Complaint No. 68/2015 of the State Commission
Uttar Pradesh)

1. GREATER NOIDA INDUSTRIAL DEVELOPMENT
AUTHORITY & ANR.

THROUGH ITS CHAIRMAN & CHIEF EXECUTIVE
OFFICER 169, CHIVAN STATE SECTOR, GAMMA-II,
GREATER NOIDA

GAUTAM BUDH NAGAR

UP-201308

2. GREATER NOIDA INDUSTRIAL DEVELOPMENT
AUTHORITY

THROUGH ITS MANAGER PROPERTY 169, CHIVAN
STATE SECTOR, GAMMA-II, GREATER NOIDA

GAUTAM BUDH NAGAR

UP-201308

.....Appellant(s)

Versus

1. ASHISH DEEP

S/O SH. KRISHNA GOPAL SHARMA R/O 6/254, DOONGAR
MOHALLA, FARSH BAZAR, SHAHDRA

DELHI-110032

.....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 Appellants
Advocate**

Ms Sthavi Asthana,

For the Respondent

Mr Puneet Kumar Saxena, Advocate

ORDER

PER SUBHASH CHANDRA

1. The challenge in this appeal under Section 51 of the Consumer Protection Act, 2019 (in short, the “Act”) is to order dated 17.02.2021 in Complaint No. 68 of 2015 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (in short, “State Commission”) allowing the complaint.
2. We have heard learned Counsel for the parties and perused the record carefully.
3. The relevant facts of the case, in brief, are that the appellant had allotted an independent, built up house on plot admeasuring 120 sq m in Sector 03, XU II & XU III, Greater NOIDA vide allotment letter dated 06.07.2008. As per payment schedule, respondent was required to pay in instalments. On 13.09.2012 and 23.04.2013 the appellant issued a letter for execution of Lease Deed. Another letter was issued on 23.09.2014 asking for deposit of Rs 1,75,800/- with other charges amounting to Rs.2,13,781.78 which was based upon the judgment of the Hon’ble Allahabad High Court in **Gajraj & Ors. Vs State of UP & Ors.**, WP No. 37443/2011 dated 21.10.2011 directing the Greater NOIDA Authority (GNIDA) to pay a suitable, higher compensation to farmers whose lands were being acquired and to decide upon its recovery from allottees under the scheme. A Lease Deed was executed with the respondent on 09.07.2013 and a Possession Certificate issued. However, respondent did not take possession and instead filed a complaint before the State Commission challenging the demand letter dated 23.09.2014 and praying for (a) handing over of possession of house no B-13, Sector XU-III of scheme code BHS09 (120 sq m) along with 98.24 sq m of constructed house in finished condition; (b) Rs 35,00,000/- for mental agony; (c) reimbursement for rent @ Rs 10,000/- per month from 07.07.2011 till actual date of possession which, till date of complaint amounted to Rs 4,40,000/-; (d) declare demand letter dated 23.09.2014 as null and void; (e) compensation for delayed possession @ 24% compound interest from date of deposit till actual possession and (f) Rs 50,000/- as litigation cost.
4. The complaint was decided on contest vide order dated 17.02.21 directing the opposite parties (appellant herein) to (i) complete construction of building and hand it over in a liveable condition within 6 months; (ii) compensate respondents @ 9% p.a. from 07.07.2011 till realization and to adjust the additional amount of Rs 1,75,800/- against the interest payable; (iii) pay Rs 1,00,000/- for mental and financial agony and (iv) pay Rs 25,000/- towards litigation costs. This order is impugned before us with the prayer to set it aside with heavy costs and any other order as may be deemed fit and proper.
5. The appellant’s preliminary objections are (i) that the impugned order has failed to appreciate that the complaint itself was barred by limitation as it was filed on 21.03.2015 challenging the letter dated 15.06.2011 and was clearly beyond the period of two years prescribed under Section 24A of the Act, and (ii) the State Commission lacked pecuniary jurisdiction in the matter as the claim of Rs 1,10,07,968/- was beyond the jurisdiction of Rs 1,00,00,000/- mandated under the Act for it. On merits it was contended, *inter alia*, that the impugned order was arbitrary and against facts and evidences, and erroneous in that the respondent himself was not adhering to the terms and conditions of the allotment and the

respondent had admitted that letters dated 13.09.2012 and 15.06.2011 to execute the lease had been issued followed by reminders and that in light of judgment in **Gajraj** (supra), the payment of additional cost of land was binding on the allottees, including the respondent.

6. Respondent has contended that possession of the plot and house had not been handed over to him till date. Reference was drawn to the Inspection Report of the CEO, GNIDA dated 14.07.2017 and to letters dated 14.10.2019 and 30.12.2019 which recorded that work was still in progress. The e-Tender notification for certain works published on 05.01.2021 further established the fact that work was not completed. Therefore, the contention of the appellant that the respondent had not taken over possession was contested on the ground that the house was not liveable even on date and hence the possession certificate dated 09.07.2013 was of no meaning. It was also contended that the rate for the additional amount for the increase in the cost of the land be considered @ Rs 1287/- per sq m and not Rs 1465/- per sq m which rate was applicable w.e.f. 01.05.2013. According to the respondent, only the additional charges for Farmers' Compensation was due from him which had not been paid in view of delay in finalization of dues payable by the respondent. It was further contended that the appellant was liable for unfair practices since it had forced the respondent to execute a lease deed without the completion of the work by way of notice dated 13.09.2012 and had directed him to deposit stamp duty of Rs 1,81,800/-. A letter dated 23.04.2013 as a warning letter to execute the lease deed with penal interest @ 1 % before 13.06.2013, failing which, late fee at 0.5% of the total cost would be charged per month was an unfair trade practice. According to the respondent, the details of amount incurred on construction of the house had not been divulged and additional costs were being demanded to be paid. The appellant had also not handed over physical position of the property despite being made to sign the possession letter on 09.07.2013. The demand letter dated 23.09.2014 requiring the respondent to pay additional compensation amount was after the execution of the lease deed and the issue of a 'No Dues Certificate' and was, therefore, being contested. It was contended that the promised amenities had not been provided and therefore possession of the house had not been accepted. As regards limitation, it is the contention of the respondent that since physical possession had not been handed over despite registration of lease deed in 2013, the cause of action was a continuing one. The complaint before the State Commission dated 27.03.2015 was within two years from the cause of action, i.e., date of registration 09.07.2013. Reliance was placed on the following judgments:

- (a) **Ramesh Thangarajan & Anr. Vs. Sylvanus Builders & Developers Ltd. & Ors.**, 2023 (1) CPJ 436
- (b) **Emaar MGF Land Ltd & Anr. Vs. Gurdev Singh Badal**, 2015 (3) CLT 285
- (c) **Sanjay Manidhar & Anr. Vs. M/s Emaar MGF Land Ltd.**, 2022 (2) CPR 31

7. Based on the record and the submissions made, the preliminary submissions of limitation and pecuniary jurisdiction are considered at the outset. In view of the fact that sale deed was executed on 09.07.2013 and the issue of completion of construction is in issue, the filing of the complaint on 27.03.2015 is within the period prescribed under Section 24A. As regards pecuniary jurisdiction, it is evident that the State Commission has jurisdiction which

is up to Rs 1,00,00,000/- as per the cumulative claim under all heads. This position is well settled as per the judgments in *Ambreesh Kumar Shukla vs Ferrous Infrastructure Pvt. Ltd.*, and *Renu Singh vs Experion Developers Pvt. Ltd.*, As per the complaint filed before the State Commission, the claim of the respondent is Rs 31,47,900/-. For the foregoing reasons and in the facts and circumstances of this case, and in view of the judgments referred to above, it is evident that the total claim of the respondent was Rs.1,10,07,968/- whereas, under section 17 of Consumer Protection Act, 1986, the pecuniary jurisdiction of the State Commission is Rs.1.00 crore. It is therefore, evident that the State Commission has exceeded its pecuniary jurisdiction in entertaining the complaint. The order of the State Commission cannot be sustained and is therefore set aside and the appeal is allowed.

8. Considering the issues raised in this appeal on merits, it is evident that the house in question is not yet complete as admitted by the appellant even though the Lease Deed was executed on 09.07.2013 and a Possession Certificate issued by the GNIDA. The appellant has not been able to bring on record reasons for the works on the amenities and facilities remaining incomplete or any mitigating reasons for the same even after having executed the Lease Deed and having issued a Possession Certificate. This is clearly a deficiency in service. As for the demand for the additional Farmer's Compensation by the appellant, it is manifest that it is as per the direction of the Hon'ble High Court of Allahabad in *Gajraj* (supra). The charges demanded by the GNIDA as per its rates are therefore upheld and the respondent is liable to pay the same.

9. The Hon'ble Supreme Court in *Wg Cdr Arifur Rahman Khan & Aleya Sultana & Ors. Vs DLF Southern Homes Pvt. Ltd.*, (2020) 16 SCC 512 dated 24.08.2020 has held that in cases where possession of a flat or a plot is being handed over, compensation for delay in handing over of the same @ 6% on the deposited amount till the date of offer of possession, would be a fair compensation. Accordingly, interest @ 6% on the amount deposited from 09.07.2013, the date of possession, till the date of handing over of the finished and liveable house to the respondent would be fair. This rate of interest will subsume all compensations since the respondent will also gain from the appreciation of the value of the land and the house he is receiving possession of.

10. In view of the foregoing discussions, the First Appeal is disallowed is disposed of with the following directions:

- (i) appellant is directed to complete the house in question within 3 months of this order in a completely liveable condition and offer possession of the to the respondent;
- (ii) appellant shall provide a clear statement of account to the respondent indicating details of payments received and due from the respondent within 30 days who shall ensure that all requisite payments to GNIDA, including additional Farmers' Compensation other and statutory payments are paid within 45 days;
- (iii) appellant shall compensate the respondent by way of interest @ 6% p.a. on the amount deposited from the date the Lease Deed was executed (09.07.2013) till the day of offer of possession as mentioned at (ii) above.

(iv) appellant shall comply with directions above within 8 weeks of this order failing which the applicable rate of interest will be 9% p.a. till realization;

(iv) appellant shall also pay a sum of Rs 1,00,000/- as litigation expenses along with the amounts directed above.

11. Pending IAs, if any, are also stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER