

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 74 OF 2021

(Against the Order dated 10/11/2020 in Complaint No. 821/2019 of the State Commission
Punjab)

1. M/S. MOTIA DEVELOPERS PRIVATE LIMITED
THROUGH MANAGING DIRECTOR/AUTHORIZED REP.
CHANDIGARH -AMBALA HIGHWAY, MC
ZIRAKPUR 140603
PUNJAB

.....Appellant(s)

Versus

1. PRIYA BOSE CHANDA & ANR.
W/O. COLONEL AMIT KUMAR CHANDA, R/O. C-102,
AASTHA APARTMENTS HIGHLAND MARG
ZIRAKPUR
PUNJAB 140 603
2. COLONEL (RET) AMIT KUMAR CHANDA
S/O. ARUN KANTI CHANDA S/O. ARUN KANTI
CHANDA, R/O. C102, AASTHA APARTMENTS HIGHLAND
MARG
ZIRAKPUR 140603

.....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 Srishti Singla, Proxy counsel with
Authority

For the Respondent Mr Ravi Sharma, Advocate

ORDER

PER SUBHASH CHANDRA

1. This appeal is directed against the order dated 04.05.2017 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh in Complaint no. 821 of 2019 allowing the complaint in part and directing the opposite party (appellant herein) to pay the complainant (respondent herein) the assured return @ 12 % p.a. from April 2018 till physical and legal possession of the unit along with Completion and Occupation Certificate along with Rs 22,000/- as litigation costs.
2. We have heard the learned counsel for the parties and perused the records. The delay of 16 days in the filing of the appeal was considered in light of the application seeking condonation of the delay. For the reasons stated therein, the delay was condoned in the interest of justice.
3. The relevant facts of the case, in brief, are that the respondents had booked a SOHO Unit in appellant's project Motia'z Workspace: Royal Business Park in Zirakpur for a sale consideration of Rs 37,70,000/-. On 04.05.2017 respondents paid Rs 1,00,000/- as booking amount and thereafter Rs 3,69,825/- and Rs 15,00,000/- on 08.05.2017. Vide allotment letter dated 11.05.2017 unit no. 917, 9th Floor admeasuring 666 sq ft was allotted and a Buyer's Agreement was executed on the same day. Rs 19,69,825/- was paid on 03.06.2017 and therefore the entire sale consideration of Rs 37,70,000/- was paid on that date. On 20.04.2018 appellant asked complainants to complete preliminary inspection and finalize a date of taking possession. Thereafter it also stopped payment of Rs 33,930/- per month as the 12% assured return under the terms of the allotment which was paid from 17.08.2017 to 18.04.2018. According to respondents, possession could not be taken as the unit was still incomplete and vide letter dated 07.07.2018 appellants were asked to resume payment of assured return followed by another letter dated 22.09.2019. On 04.04.2019 respondents conveyed willingness to take possession and sought resolution of the issue of assured returns which had stopped being paid. As no reply was received, CC No. 684 of 2019 was filed before the State Commission. However, the same was withdrawn on 18.09.2019 with liberty to file another complaint. Accordingly, CC 821 of 2019 was filed which came to be decided on contest by the impugned order.
4. Pithily put, appellants argued that respondents were not 'consumers' under the Act and had booked the unit for investment purposes. Preliminary objection was taken that the State Commission lacked territorial and pecuniary jurisdiction and a joint complaint had been filed without permission. The contention that construction was incomplete was stated to be incorrect since possession of units 908, 914, 916, 923, 924 and 926 had been handed over to the respective allottees as per possession certificates brought on record. It was contended that 12% assured return amounting to Rs 3,84,761/- had been duly paid till offer of possession.
5. *Per contra*, the contention of the respondents is that construction of the unit booked by them was not complete and it was not ready for possession on the date they were offered

possession (20.04.2018) and therefore they were entitled to payment of the 12% assured return.

6. Based on the evidences filed and submissions made before it, the State Commission over-ruled the preliminary objections and held that under Article 4(a)(i) of the Buyer's Agreement, possession was to be handed over on or before 36 months with an extended period of 12 months from the date of allotment, which, reckoned from 11.05.2017 would work out to 10.05.2021. It was noted that though this period had not expired when the offer of possession was made, since the letter offering possession mentioned that a date for possession be decided mutually in order to complete finishing works, it was evident that the construction was yet not completed.

7. Based on photographic evidence produced by the respondents, the State Commission came to the finding that construction was still in progress. It also held, on the basis of Section 14 of the Punjab Apartment and Property Regulation Act, 1995 ("PAPRA") that it was the promoter's responsibility to obtain a completion and occupation certificate which had not been done. It was further held that Clause 3.12 (i) of the Gazette Notification dated 07.07.2015 by the Punjab Government in a Gazette Extraordinary requiring occupation of a new building to be only subject to certification by the local authority that it was as per sanctioned plan, had not been complied with in the present case. It was also held that as per Section 272 of the Punjab Municipal Corporation Act, 1976 necessary certification of the completion had not been obtained. Accordingly, it was held that legal possession of the unit had not been offered in terms of this Commission's order in ***Vision India Realtors Pvt. Ltd. & Anr. Vs. Sanjeev Malhotra***, First Appeal No. 855 of 2018 dated 13.06.2018. The offer of possession dated 20.04.2018 was therefore held to be a mere paper possession and not a valid and legal offer since the appellants had failed to prove that the requisite approvals and sanctions from the competent authorities had been obtained. It, therefore, directed appellants to pay 12% p.a. assured return from April 2018 till actual physical and legal offer/ delivery of possession supported by Completion and Occupation certificates along with Rs 22,000/- towards litigation costs within 30 days of the order.

8. The appellant has submitted that the State Commission erred in not appreciating that a Partial Completion Certificate had been brought on record along with its written submissions. It was submitted that the Completion Certificate dated 03.04.2018 had been obtained prior to the offer of possession on 20.04.2018. Accordingly, possession of units from 8th to 13th Floor had been delivered from May 2018 to October 2018 and Possession Certificates brought of record. It was also stated that the respondents failed to respond to reminders dated 16.08.2019 and 26.09.2019. It was averred that 12% p.a. return as per the Buyer's Agreement was the appellant's liability only till the date of offer of possession which was made on 20.04.2018. As the project stood completed, the issue of such a return being payable did not arise. Lastly, as the unit had been booked for 'consultancy services', the respondents could not be considered 'consumers' and the State Commission lacked jurisdiction in terms of judgment of the Hon'ble Supreme Court in ***Rohit Chaudhary & Anr. Vs. Vipul Ltd.***, 2023 INSC 807 which held that if the dominant purpose of purchasing goods or services was profit, the purchaser will not fall under the ambit of 'consumer' under Section 2(1)(d) of the Act.

9. On behalf of the respondents it was submitted, in addition to submissions before the State Commission, that the impugned order did not suffer from any infirmity as it had correctly relied upon Section 14 of PAPRA and Clause 3.12(i) of the Notification dated 07.07.2015 read with Section 272 of the Punjab Municipal Corporations Act, 1976 and that as per information obtained by the respondents under the Right to Information Act from the Municipal Authority, Zirakpur in 2021 no Completion Certificate in respect of the project had been issued. Reliance was placed on this Commission's judgments in *Emmar MGF Land Pvt. Ltd. Vs. Krishan Chander Chandna*, in FA no. 873 of 2013 dated 29.09.2014 which held that possession without occupancy certificate offered by a builder is nothing but a paper possession which amounts to unfair trade practice and in *Vishesh Sood & Anr. Vs. Raheja Developers*, in CC No. 2923 of 2017 dated 15.11.2019. Reliance was also placed on judgment of this Commission in *M/s Motia Developers Pvt. Ltd. Vs. Saranjeet Kaur* in First Appeal No. 1195 of 2018 dated 21.06.2023 wherein it was held that failure to hand over possession within the committed date with a valid Completion and Occupation Certificate amounts to deficiency in service entitling the complainant to refund with reasonable compensation in terms of the judgment of the Hon'ble Supreme Court in *Wg Cdr Arifur Rahman Khan & Anr. Vs. DLF Southern Homes Pvt. Ltd & Ors.*, (2020) 16 SCC 512.

10. The issue which falls for consideration is whether the offer of possession dated 20.03.2018 by the appellant to the respondents in respect of the unit in question was a valid and legal offer.

11. While the State Commission has addressed the preliminary issue of whether the respondents are 'consumers' under the Act, in view of the reliance placed by the appellant on *Rohit Chaudhary & Anr.* (supra), the issue was examined. The issue of 'commercial purpose' has been addressed by the Hon'ble Supreme Court in *Laxmi Engineering Works vs PSG Industrial Institute* (1995) 3 SCC 583. However, the appellant has not established, through evidence, that the flat was booked for a 'commercial' purpose. Merely an assertion that as it was booked for 'consultancy' does not establish that it was for 'commercial' purpose. Therefore, this contention cannot be accepted.

12. It is not in dispute that the sale consideration of the unit booked by the respondents in the appellants had been paid for in full as on 03.06.2017. The possession of the unit was to be delivered within 36 months with a grace period of 12 months from the date of allotment (11.05.2017), i.e. by 10.05.2021. The offer of possession on 20.04.2018 stated to have been made by the respondents is not supported by a Completion and Occupation certificate although it is contended by the appellant that a Partial Completion Certificate dated 03.04.2018 was obtained by it.

13. In light of the provisions of Section 14 of PAPRA 2015, the contention of the appellant that the offer of possession dated 20.03.2018 was valid can only be considered if it is supported by a Completion Certificate and Occupation Certificate. Admittedly, the appellant relies only on a Partial Completion Certificate. No provision of law that permits offer of possession based on a Partial Certificate of Completion as against the statutory provisions in Section 14 of PAPRA, 2015 and the Punjab Municipal Corporation Act, 1976 has been brought to our notice by the appellant in support of its case that the offer of possession in respect of unit 917 to the respondents dated 20.04.2018 was valid and legal. Its contention

that it was so cannot be sustained in the absence of such evidence being brought on record and has been rightly rejected by the State Commission in the impugned order.

14. For the aforesaid reasons, we do not find any reason that warrants interference in the impugned order. The order is well reasoned and detailed and has addressed all issues raised. We therefore uphold the impugned order. It is, however, made clear that the liability of the appellant will exist only till such time as it obtains the Completion and Occupation Certificate in respect of the unit in question. The First Appeal is disposed of with these directions. All pending IAs, if any, also stand disposed with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER