

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 755 OF 2023

(Against the Order dated 07/06/2023 in Complaint No. CC/307/2018 of the State
Commission Punjab)

1. ATS INFRASTRUCTURE LIMITED

HAVING ITS REGISTERED OFFICE AT: 711/92, DEEPALI,
NEHRU PLACE, NEW DELHI-110019

.....Appellant(s)

Versus

1. ASHWANI GAUTAM

S/O LATE SH. V.P. GAUTAM, R/O FLAT NO. 0614, TOWER
NO. 06, 1ST FLOOR, ATS GOLD MEADOWS PRELUDE,
BARWALA ROAD, DERA BASSI, DISTRICT SAA NAGAR,
(MOHALI), PUNJAB-14050

.....Respondent(s)

FIRST APPEAL NO. 810 OF 2023

(Against the Order dated 07/06/2023 in Complaint No. CC/307/2018 of the State
Commission Punjab)

1. ASHWANI GAUTAM

S/O LT. SH. V.P. GAUTAM, R/O FLAT NO. 0614, TOWER
NO. 06, 1ST FLOOR, ATS GOLF MEADOWS PRELUDE,
BARWALA ROAD, DERA BASSI, DISTT. SAS NAGAR
(MOHALI), PUNJAB - 140507

.....Appellant(s)

Versus

1. M/S ATS INFRASTRUCTURE LTD.

THROUGH MR. GETAMBER ANAND(CHAIRMAN CUM
MANAGING DIRECTOR,ATS GOLF
MEADOWS,CHANDIGARH AMBALA HIGHWAY, OPP.
SADASHIV COMPLEX, NEAR DERABASSI BARWALA
CHOWK, DERA BASSI, DISTT. SAS NAGAR (MOHALI)
PUNJAB-140507

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT : MR. PRABHAKAR TIWARI, ADVOCATE WITH
 MS. DEEPSHIKHA MISHRA, ADVOCATE
 MS. SHRUTI, ADVOCATE

FOR THE RESPONDENT : IN PERSON

Dated : 31 May 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. These cross appeals have been filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the order dated 07.06.2023 passed by the State Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as the "State Commission") in consumer complaint No. 307 of 2018 whereby the complaint was partly allowed.

Since both the appeals have been filed against the same impugned order, they are being decided by this common order.

2. Mr. Ashwani Gautam (hereinafter referred to as the 'complainant') has filed appeal no. 810 of 2023 for enhancement of compensation as also for directing the ATS Infrastructure Limited (hereinafter referred to as the 'builder') to execute the conveyance deed of the flat his in favour.

The 'builder' has filed an appeal no. 755 of 2023 for setting aside the order dated 07.06.2023 of the State Commission.

3. Appeal No. 810 of 2023 has been filed with a reported delay of 06 days.

In the interest of justice and considering the reasons mentioned in the application for condonation of delay, the delay in filing the appeal is condoned.

4. Earlier, the complainant has filed a complaint along with M.A. No. 1118 of 2018 for condonation of delay, which application was allowed vide order dated 06.07.2018. Aggrieved by the said order, the builder approached this Commission by way of appeal, which was dismissed order dated 24.08.2018. Thereafter, complaint was dismissed vide order dated 21.12.2018 of the State Commission on the ground that the complainant was not falling under the definition of 'consumer' as he purchased the flat for commercial purposes.

5. Dissatisfied with this Order, the complainant again approached this Commission and this Commission set aside the order dated 21.12.2018 of the State Commission and remanded the case back to the State Commission to decide the complaint afresh, with the observation that complainant be treated as 'consumer' within the meaning of the Act and the issues of limitation and the purpose to purchase for commercial purposes are not required to be touched in the case as these issues have already been decided by this Commission.

6. The brief facts of the case are that the complainant purchased Flat No. 0614 of 1950 square feet area in Tower No. 06, 1st Floor in the project of builder i.e. ATS Golf Meadows Prelude situated at Barwala Road, Dera Bassi, Distt. SAS Nagar, Punjab-140507, from the original allottee, Mr. Harminder Sahni and Mrs. Punits Sahni for a sale consideration of Rs.39,00,000/-. He also paid transfer fee of Rs.2,19,102/- to builder. Thereupon, the said apartment was endorsed in the name of the complainant on 27.03.2015. The physical possession was handed over to him on 31.03.2015 by the builder vide certificate of possession and the builder offered for the execution of conveyance deed on 20.08.2015. It is alleged that the conveyance deed could not be executed without having Completion and Occupation Certificate as it was mandatory as per provisions of Punjab Apartment and Property Regulation Act, 1995 (in short the 'PAPRA'). It is alleged that the builder was not having occupation certificate even at the time of handing over the possession and had

violated the provisions of PAPRA which were applicable to the project in dispute. As per Clause No. 8 of the Building Permit of Municipal Council, Dera Bassi, the builder was not permitted to use the building without getting Occupation Certificate from Municipal Council, Dera Bassi. The builder had offered for execution of conveyance deed on 20.08.2015 but the complainant had expressed non-acceptance of it on 01.09.2015 as it was not as per the terms and conditions of the agreement for allotment. It has also been mentioned in the complaint that no maintenance agreement was executed by builder. It is also averred that the builder had received Rs.50,000/- towards open car parking charges against the rules.

7. The complainant filed a consumer complaint before the State Commission seeking directions for the builder to obtain Occupation Certificate from the competent authority as per the terms of Buyers Agreement and in line with The Punjab Apartment Ownership Act, 1995 (hereinafter referred to as the 'PAPRA Act') and to execute conveyance deed and maintenance agreement with the complainant as also to direct the builder to pay Rs.10,00,000 towards compensation for harassment and mental agony, to direct the builder to refund an amount of Rs.2,19,102/- along with interest @ 18% from the date of receipt of payment collected under the head of "Transfer Fee", and to direct the builder to allot one free "Covered/Basement Car Parking" as per PAPRA Act or in the alternative, refund an amount of Rs.50,000/- collected for "Open Car Parking" with 18% rate of interest from the date of receipt of payment.

8. The builder contested the complaint by filing written version stating that the builder had been issued partial completion certificate of the project in dispute and the complainant had taken the possession as per his own wish and he did not raise any objection while taking the possession of the flat. It is further stated that the builder had taken requisite approvals from the concerned authority i.e Municipal Council Derabassi under Municipal Building Bye Laws under Rule 3.12 and 3.13 and had also submitted the relevant form D, E and F by which he was granted permission to the builder to have occupation of the apartment to all the allottees. It is also alleged that the complainant never came forward to execute the conveyance deed. There is no deficiency in service on the part of the builder and the complaint is liable to be dismissed.

9. The State Commission, vide order dated 07.06.2023, partly allowed the complaint and directed the builder to pay lump sum composite amount of compensation of Rs. 40,000/- towards mental agony and harassment and litigation expenses and to refund an amount of Rs. 50,000/- towards "open car parking" along with interest @8% from the date of deposit till actual realization.

10. Aggrieved by the Order of the State Commission, both the parties have filed the present appeals before this Commission.

11. The learned counsel for the complainant argued that even on 26.11.2018, the builder still possessed only a partial completion certificate and the State Commission has wrongly held that the builder was having completion certificate on 11.09.2014 and therefore, the possession offered to the complainant on 31.03.2015 was illegal. He further argued that the complainant was bound by clause 8 of agreement for allotment as the said clause imposes penalty in case the complainant fails to take possession within specified timeframes. Therefore, the complainant took the possession on 31.03.2015 under compelling

circumstances but still he had not obtained the 'legal possession' of the flat as the occupation certificate was obtained by the builder on 24.09.2019, which is a clear cut case of deficiency in service on the part of the builder. In support of his contentions, reliance has been placed on *Samruddhi Co-operative Housing Society Ltd. vs Mumbai Mahalaxmi Construction Pvt. Ltd. Civil Appeal No 4000 of 2019, decided on January 11, 2022* and *Purab Premium Apartment Allotees Association Vs. Greater Mohali Area Development Authority, CC/1278/2016*.

12. Further, the learned counsel has drawn the attention of the bench to Section 15 of PAPRA (Punjab Apartment and Property Regulation Act), which emphasizes that after the occupancy certificate is obtained, the promoter shall submit a copy to the competent authority and thereafter he shall take all necessary steps to complete his title and convey the exclusive ownership of the flat. Therefore, it is the duty of the builder to complete his title and to convey the exclusive ownership of the flat and not of the complainant and the State Commission has wrongly held that the complainant could have gone to the complainant authority to get his conveyance deed done under the PAPRA Act. They also pointed out clause 13 of the agreement states that the said apartment shall be used by him/her only for purposes of providing interior fit-out works and not for any residential purposes”.

Further, regarding maintenance agreement, it is argued that the State Commission failed to order the builder to execute such an agreement and erroneously accepted that maintenance charges were voluntarily deposited by the complainant, despite an alleged stay order issued by the SDM at the builder's request.

Lastly, it was argued that the State Commission erroneously accepted builder contention that transfer fee receipt was in the name of the original allottee but it did not resolve whether the builder could collect the transfer fee in violation of its own agreement which constitutes deficiency in service on its part. Therefore, the counsel prayed for adequate compensation, including interest on delayed possession and recovery of maintenance charges.

13. Learned counsel for the builder argued that the complainant's claims were an afterthought and lacked proper verification and the directive to refund the open car parking charges, without adequate examination of the facts and documents provided by the complainant, is contrary to both legal principles and factual evidence. Additionally, they expressed concern that upholding the impugned order regarding the refund of open car parking charges would unfairly impact the builder and set a problematic precedent. They invoked the principle that the burden of proof lies with the party making a claim or asserting a fact, highlighting the absence of payment receipts demonstrating the complainant's payment of the parking charges. Regarding the maintenance agreement, they pointed out that the Hon'ble State Commission correctly noted the formation of an association by the residents and the builder's attempt to transfer maintenance responsibility. However, since no party stepped forward to assume this responsibility, the complainant remained liable for maintenance charges as per the agreement terms. As per clause 12 of agreement to sell, the buyer is liable to pay the maintenance charges. The said maintenance agency has been receiving the amount for maintaining the work of the society; as such he is competent to receive the amount for providing services. It was also argued that the complainant has made no allegation regarding the standard of services provided. Further, it was argued that the complainant has not impleaded ATS maintenance services agency, which is collecting the

maintenance charges. Also, it was contented that the transfer fee was paid by the original allottee at the time of transfer.

14. Heard the learned counsel for the builder and the complainant in person and carefully perused the material available on record.

15. The main question which falls for our consideration is whether there was deficiency in service on part of builder while delivering the flat to the complainant.

16. It is seen from the facts and evidence on record of this case that the possession of the said flat was taken on 31.03.2015 and a partial completion certificate dated 23.05.2014 was issued to them at the time of possession. The Partial Completion Certificate included Tower No. 6 wherein the disputed flat is situated. Therefore, at the time of possession i.e. 31.03.2015, a valid Completion Certificate was available for this flat.

17. Further, it is seen that on perusal of possession letter dated 31.03.2015, no evidence on record has been brought on record by the complainant that he was forced to take possession. The plea that he took the possession on account of a clause in the agreement has not been mentioned by him in any communication addressed to the builder and the complainant has not raised any objection regarding forced possession and the possession was taken on their accord. Therefore, the plea of the complainant that he took possession under compelling circumstances is not sustainable.

18. Further, it is observed that as per Section 16 of PAPRA, the complainant is competent to get the conveyance executed in his favour by moving appropriate application to competent authority. Moreover, the complainant has already got the conveyance deed executed dated 21.03.2014 of flat No. 824 which is another flat owned by the complainant in the same Project.

19. It is undisputed that the builder has charged Rs.50,000/- for open parking space. It is seen from the record that as per the receipts, the parking fee was paid by the original allottee. In view of the decision of Hon'ble Supreme Court in *M/S Laureate Buildwell Pvt. Ltd. Vs Charanjeet Singh, civil appeal no. 7042 of 2019 decided on 22.07.2021* wherein it has been held that the subsequent allottee has stepped into the shoes of original allottee with due endorsement of opposite party and that the transferees have same rights as the original allottees, we are of the view that the subsequent allottee has entered into the shoes of the original allottee. Since the builder is not entitled to collect the parking charges for open parking spaces as per the provisions of RERA, charging of the same amounts to deficiency in service and this amount needs to be refunded to the complainant. It is seen that the State Commission has awarded an interest at the rate of 8% on the parking fee, it is felt that an interest at the rate of 6% would be just and reasonable from the date of deposit till realization.

20. It is seen that the transfer fee has also been paid by the original allottee as per the receipt on record. It has been stated that no transfer fee could have been charged as per the builder's own agreement. However, on perusal of the record, the allotment agreement which is the only agreement on record makes no reference to any transfer fee. In these circumstances, this plea of the complainant cannot be substantiated.

- 21.** In view of the above discussion, we are of the view that the compensation of Rs. 40,000/- awarded by the State Commission is just and appropriate and commensurate with the loss and injury suffered by the complainant. The builder has already complied with the direction of State Commission towards compensation of Rs.40,000/- regarding mental agony and harassment.
- 22.** As regards the refund and interest awarded by the State Commission is concerned, we are of the view that the refund of Rs.50,000/- along with interest at the rate of 6% per annum is just and appropriate.
- 23.** As such, the Order dated 07.06.2023 of the State Commission is modified to the extent that the builder shall refund Rs.50,000/- with interest at the rate of @ 6% per annum from the date of deposit till actual realization within a period of four weeks, failing which, the rate of interest shall be enhanced to 9% per annum till realization.
- 24.** In the result, the appeal no. 810 of 2023 of the complainant is dismissed and the appeal no. 755 of 2023 is disposed of. All pending applications, if any, stand disposed of.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**