

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 1943 OF 2017**

(Against the Order dated 08/06/2017 in Complaint No. 104/2015 of the State Commission  
Punjab)

1. ELDECO INFRASTRUCTURE & PROPERTIES LTD.  
THROUGH ITS AUTHORIZED SIGNATORY. 201-202, 2ND  
FLOOR, SPLENDOR FORUM, DISTRICT CENTRE,  
JASOLA.  
NEW DELHI-110025

2. ELDECO INFRASTRUCTURE AND PROPERTIES LTD.  
THROUGH ITS AUTHORIZED SIGNATORY. 4-5TH AND  
7TH FLOOR, CARNIVAL SHOPPING CENTRE, MALL  
ROAD.  
LUDHIANA  
PUNJAB

.....Appellant(s)

Versus

1. RAJINDER SHARMA & ANR.  
S/O. KARAM CHAND. R/O. B-1, 638/2, NEW KUNDAN  
PURI, NEAR SHIV MANDIR, BINDERABAN ROAD.  
LUDHIANA  
PUNJAB

2. DEWAN HOUSING FINANCE CORPORATIN LIMITED.  
401-402, 4TH FLOOR, LODHI COMPLEX, MALL ROAD.  
LUDHIANA-141001

.....Respondent(s)

**BEFORE:**

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

FOR THE APPELLANT : MR. VIKAS PANDEY, ADVOCATE WITH  
AUTHORITY LETTER

FOR THE RESPONDENT : MR. M. S. SETHI, ADVOCATE

**Dated : 05 April 2024**

**ORDER**

**DR. SADHNA SHANKER, MEMBER**

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") in challenge to the Order dated 08.06.2017 passed by the State Consumer Disputes Redressal Commission, Punjab, Chandigarh (hereinafter to be referred to as 'State Commission') in complaint No. 104 of 2015, whereby the complaint of the complainant was allowed.

2. Heard learned counsel for the appellants (hereinafter referred to as the 'builder company') and the learned counsel for the respondent no. 1 (hereinafter referred to as the

‘complainant’) and perused the record including the State Commission’s impugned Order dated 08.06.2017 and the memorandum of appeal.

No one appears for the respondent no. 2 - Dewan Housing Finance Corporation Ltd. (hereinafter referred to as the ‘bank’)

3. There is a delay of 17 days in filing the present appeal.

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. The brief facts of the case are that on 19.10.2012 the builder company entered into an agreement with the complainant for sale of independent floor Unit No. 279, measuring 260 sq. yds. at second floor in “Eldeco Estate One” situated in Ludhiana at Ludhiana-Jalandher Road for a total price of Rs.30,71,040/-. The complainant had made an initial payment of Rs.1,50,000/- (145,504 + 4496) vide receipt no. 2231 dated 27.09.2012. The complainant paid the amount of Rs. 30,58,165/- during the period from 27.09.2012 to 08.06.2013 after availing loan of Rs. 18 lakh from the bank. It is alleged that the physical possession of the flat was to be handed over within 18 months of the receipt of the entire basic price as per specifications and details provided in the agreement dated 19.10.2012. It is alleged that the complainant paid the total amount by 08.06.2013 but the builder company had failed to handover the physical possession of the flat till the date of filing of the complaint i.e. till 05.05.2015. It is also alleged that even the basic amenities have not been provided by the builder company. It is further alleged that the builder company deliberately and intentionally wrote the total cost of the unit as Rs. 30,71,040/- and succeeded in getting the tripartite agreement with the bank on the said amount and the builder company received the total amount of Rs. 30,71,040/- without giving him the discount of Rs. 2,45,683/-, which is excess and lying with the builder. It is further alleged that the builder company disclosed deduction of service tax @ 3.09% amounting to Rs. 87,304/-whereas there is no clause in the agreement. Hence, the complainant is not liable to pay Rs. 87,304/- towards service tax. It is further alleged that the builder company claimed EDC of Rs. 91,000/- whereas in the agreement dated 19.10.2012, there is no such clause for claiming or paying EDC and the amount of Rs. 91,000/- paid against EDC is refundable to the complainant. Apart from this, the complainant had alleged that he has been staying in a rented house and is paying the rent at the rate of Rs. 9,500/- per month, hence, he is entitled to Rs. 2,04,370/- towards the rent paid by him till the date of filing the complaint along with future rent till possession. It is further alleged that the complainant is also paying the instalment of finance availed by him and as such, the builder company are liable to bear interest at the rate of Rs. 11.10 equal to interest as paid to the bank on the amount of Rs. 18 lakhs. As per the bank statement for the period from 06/2013 to 31.03.2014, and 1.04.2014 to 31.03.2015 interest stood paid comes to Rs. 3,79,915/- and the complainant is entitled for the same. It is further alleged that the bank had charged insurance premium of Rs. 99,983/- in order to indemnify its losses for the tenure of 20 years but without possession, the said amount is not payable by the complainant. In addition to this, the builder company also failed to provide basic amenities like electricity, water, sanitation, roads, park, school, swimming pool, etc. as promised and the complainant has been suffering loss on account of non-delivery of physical possession of the said unit.

5. By stating the above facts, the complainant filed a complaint before the State Commission with the following prayer :-

- A) To direct opposite parties 1-2 to provide basic amenities at the site within three months.
- B) To direct opposite parties 1-2 to give physical possession qua independent floor unit no. 279 measuring 260 sq. yards at second floor in Eldeco Estate One situated in Ludhiana without any further delay and without any addl. cost/extra charges/penalty/Interest.
- C) To direct opposite parties 1-2 to execute sale deed of the independent floor unit no. 279 measuring 260 sq. yards at second floor in Eldeco Estate One without any extra/illegal charges.
- D) To direct the opposite parties 1-2 to refund or adjust the excess amount of Rs. 2,45,683/- or its parts as the case may be, alongwith intt. @12% p.a. till realization.
- E) To provide all necessary documents to show that their project is cleared from all concerned Departments and opposite party 1-2 has got necessary and approved sanction for construction and they are in a position to give physical possession of flats to allottees.
- F) To pay 12% interest on Rs. 30,58,165/- (on account of deposit by complainant for flat) from the date of deposit till date of actual delivery of actual possession of above mentioned flat.
- G) To pay the amount of Rs.2,04,370/- as rent paid by the complainant plus future rent till possession of the independent floor unit no. 279.
- H) To pay the interest amount of Rs.3,79,915/- as paid to the financier respondent no. 3 for the period 06/13 to 31/03/2015 plus future interest till the date of possession.
- I) To direct opposite parties 1-2 to adjust the sum of Rs. 87,304/- as deducted being service tax against the basic cost of the unit no. 279.
- J) To direct opposite parties 1-2 for not claiming the sum of Rs. 91,000/- as EDC against the flat unit no. 279 as well as to quash the said demand.
- K) To pay Rs. 5,00,000/- on account of increase in cost of construction in last three years.
- L) To pay Rs. 5,00,000/- on account of compensation for causing mental tension, harassment and mental agony to the complainant.
- M) To pay Rs. 33,000/- as cost of litigation.

N) Any other Relief this this Hon'ble Commission may deem proper in the facts and circumstances of the case, may kindly be passed against the Opposite Parties, in the interest of justice.

6. No written statement has been filed by the builder company despite availing numerous opportunities before the State Commission and the defence of the builder company was struck off.

7. After appreciation of the facts of the case, the State Commission allowed the complaint and directed as under:

- i. *to deliver the possession of the Unit/Flat in question, complete in all respects along with all agreed basic amenities to the complainant within two months from the date of receipt of copy of this order;*
- ii. *to pay interest on the amount of Rs. 30,58,165/- at the rate of 9% per annum from 8.12.2014 till the date of delivery of actual possession;*
- iii. *to refund Rs. 54,504/- to the complainant on account of excess payment towards the price of the Unit/Flat;*
- iv. *To pay Rs. 3,00,000/- as compensation, on account of mental tension, mental agony and harassment; and*
- v. *To pay Rs.30,000/- as litigation expenses.*

8. The builder company has filed the present appeal before this Commission with the following prayer:

- a. *Set-aside the Impugned Order dated 08.06.2017, to the extent of orders/directions of (i) payment of interest @9% per annum on the amount of Rs. 30,58,165/- from 08.12.2014 till the delivery of actual possession, (ii) to refund Rs. 54,504/- on account of excess payment and (iii) payment of compensation of Rs. 3,00,000/- on account of mental agony and harassment, passed by Hon'ble State Consumer Disputes Redressal Commission, Chandigarh, in Consumer Complaint No. 104 of 2015 titled as Rajinder Sharma vs. Eledeco Infrastructure & Properties Ltd., or in the alternative reduce the interest on the amount deposited;*
- b. *Stay the operation of Impugned Order dated 06.06.2017, during pendency of the present appeal;*
- c. *Pass any other and/ or further order(s) as this Hon'ble Commission may deem just and proper in the facts and circumstances of the present case and to meet the ends of justice.*

9. The learned counsel for the builder company confined his prayer to the reduction of rate of interest, refund of Rs. 54,504/- on account of excess payment and that the compensation of Rs. 3,00,000/- towards mental agony. He argued that the builder company got the occupation certificate, it had offered possession on 30.06.2016, therefore, the interest should not be imposed after 30.06.2016 and that the rate of interest of 9% per annum awarded by the State Commission is on the higher side. He further argued that in terms of the order dated 11.12.2018 passed by this Commission, the builder company had delivered physical possession of the flat to the complainant on 03.01.2019 but as complainant had not complied with the Final Demand Notice dated 11.09.2015 to make the payment due, the complainant is not entitled to any interest. The learned counsel also argued that the

complainant should be directed to pay the outstanding balance amount as specified in the Final Demand Notice and also bear the stamp duty and registration fees as required for the registration of the sale deed. He further argued that the builder company had received the agreed amount and no excess amount was received, hence, the direction to refund of Rs. 54,504/- as the excess amount is liable to be set aside. He furthermore argued that the compensation of Rs. 3,00,000/- granted by the State Commission towards mental agony is exorbitant and the same may be set aside.

**10.** Learned counsel for the complainant has argued that as the physical possession of the unit was delivered on 03.01.2019, therefore, the complainant is entitled for interest from the date of promised date till the date of handing over possession to the complainant. He further argued that the net price of the unit is Rs. 28,25,357/- excluding service tax of Rs. 87,304/- and Rs. 91,000/- as EDC. If we add both these charges with the basic sale price, the total amount comes to Rs. 30,03,661/- whereas the complainant had paid a sum of Rs.30,58,165/- i.e. Rs. 54,504/- in excess. He further argued that the rate of interest awarded by the State Commission is just and reasonable and the order of the State Commission does not suffer from any illegality.

**11.** The main question which falls for our consideration is as to whether there was delay in handing over the possession of the flat.

**12.** It is an admitted fact that the agreement between the builder company and the complainant was executed on 19.10.2012 and the possession of the unit was to be delivered within 18 months from the date of execution of the agreement. The builder company admitted in the written submissions that the flat was handed over to the complainant on 03.01.2019. The fact is that there has been a substantial delay on the part of the builder company in handing over the possession of the flat to the complainant. Therefore, complainant has rightly claimed compensation for delay in delivery of possession. The delay in delivery of possession stretched for approximately 4 years and 8 months beyond the initially promised possession date till the handing over of physical possession. Therefore, the complainant is justified in claiming compensation in delivery of possession.

As regards excess payment of Rs. 54,504/- is concerned, the builder company has admitted in the appeal that the complainant had made the payment of Rs.28,25,357/- as net basic price but in that calculation, it had not included the amount of Rs.1,50,000/- inclusive of service tax (Rs. 145504/- minus Rs. 4496/-) deposited on 19.10.2012. If we calculate the amount of Rs. 28,25,357/- + 1,45,504/- + Rs. 87,304/-, as service tax, the amount comes to Rs.30,58,165/-. Hence, it is clear that the complainant had made the payment of Rs. 30,58,165/-. Therefore, he is entitled for refund of Rs. 54,504/- from the builder company.

**13.** There are a number of landmark judgments of the Hon'ble Supreme Court holding builders responsible for compensation for delay in delivery of possession.

**14.** The issue to be decided in this case is what would be the reasonable quantum of interest.

In this regard, we would like to quote the recent judgment of the Hon'ble Supreme Court in the case of **Wing Commander Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF**

**Southern Homes Pvt. Ltd., (2020) 16 SCC 512** wherein it was held as:

*“54. .... The general appreciation in land values results in an increase in the value of the investment made by the buyers. Difficulties in determining the measure of compensation cannot however dilute the liability to pay. A developer who has breached a clear representation which has been made to the buyers of the amenities which will be provided to them should be held accountable to the process of law.”*

*“69.1. ....the first and second respondents shall, as a measure of compensation, pay an amount calculated @ 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of the occupation certificate.”*

In a similar case of the Hon’ble Supreme Court **DLF Home Developers Ltd. vs. Capital Greens Flat Buyers Assn., (2021) 5 SCC 537 decided on December 14, 2021**, wherein it was held as under:

*“It is true that in the present case, the contractual rate of Rs.10 per square foot per month is double the rate fixed in the agreements in the above case. On the other hand, the court must be conscious of the fact that the situation in the real estate market in Delhi is very distinct from that in Bengaluru both in terms of rentals and land values. This has not been disputed. The flat buyers had to suffer on account of a substantial delay on the part of the appellants. In such a situation, they cannot be constrained to the compensation of Rs.10 per square foot provided by the agreements for flat purchase. However, having regard to all the facts and circumstances, we are of the view that the compensation on account of delay should be brought down from 7% to 6%. Moreover, the amount, if any, which has been paid in terms of the contractual rate shall be adjusted while computing the balance”*

**15.** The Buyer’s Agreement represents a legally binding contract that imposes obligations on both Buyers and Builders/Developers.

**16.** The Hon’ble Supreme Court in the case of ***DLF Homes Panchkula Pvt. Ltd. vs. D.S. Dhandra***, in CA Nos. 4910-4941 of 2019 decided on 10.05.2019 has held that multiple compensations for singular deficiency is not justifiable. Therefore, the award of compensation of Rs.3,00,000/- for mental agony and harassment is found to be not tenable.

**17.** In view of the judgments rendered by Hon’ble Supreme Court, we are of the view that the compensation has to be just and equitable, commensurate with the loss and injury suffered. We feel that in particular facts and circumstances of the case, the compensation in the form of simple interest at the rate of 6% per annum for delay in delivery of possession would be just and reasonable. Also, it would be apt that the compensation should be calculated from the promised date of delivery of possession as mentioned in the agreement i.e. 19.10.2012 till the date of handing over the physical possession i.e. 03.01.2019.

We also feel that refund of excess amount of Rs. 54,504/- along with interest at the rate of 9% per annum from the date of deposit till the date of realization is just and appropriate and commensurate with the loss and injury suffered by the complainant.

**18.** In view of the aforesaid discussion, we modify the award made by the State Commission as under:

a. the builder company shall pay compensation in the form of simple interest at the rate of 6% per annum deposited amount from the promised date of possession i.e. 08.12.2014 till the date of handing over the physical possession of the flat i.e. 03.01.2019, failing which the rate of interest shall be 9% per annum till realization.

b. the builder company shall also refund the excess amount of Rs. 54,504/- along with interest at the rate of 9% per annum from the date of deposit till the date of payment, failing which the applicable rate of interest shall be 12% per annum till realization.

c. the direction to pay Rs. 3,00,000/- towards compensation towards mental agony is set aside.

c. the direction to pay Rs. 10,000/- towards litigation cost is sustained.

The order be complied with within two months from the date of the order.

**19.** The appeal is disposed of in the above terms. All pending applications, if any, stand disposed of.

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**SUBHASH CHANDRA  
PRESIDING MEMBER**

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**DR. SADHNA SHANKER  
MEMBER**