

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1845 OF 2018

(Against the Order dated 13/07/2018 in Complaint No. 11/2018 of the State Commission
Punjab)

1. M/S OMAXE CHANDIGARH EXTENSION
DEVELOPERS PVT. LTD. & ANR.
THROUGH ITS MANAGING DIRECTOR/AUTHORIZED
SIGNATORY, INDIA TRADE NEW CHANDIGARH
MULLANPUR
SAS NAGAR
PUNJAB 140 901

2. KRISHNA KUMAR AGGARWAL
DIRECTOR/AUTHORIZED SIGNATORY, M/S. OMAXE
CHANDIGARH EXTENSIN DEVELOPERS PVT LTD,
INDIA TRADE TOWER 1 FLOOR MADHYA MARG EXTN
ROAD NEW CHANDIGARH MULLANPUR
SAS NAGAR
PUNJAB

.....Appellant(s)

Versus

1. PAWAN KAPOOR
S/O. SHRI BAU LAL, R/O. F-16, CIVIL LINES JAIL ROAD
BATHINDA
PUNJAB

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE APPELLANT : FOR THE APPELLANTS : MR. SUNIL MUND, ADVOCATE
MR. VEDANT MUND, ADVOCATE

FOR THE RESPONDENT : FOR THE RESPONDENT : MR.DEV RISHI, PROXY COUNSEL

Dated : 27 May 2024

ORDER

1. The present First Appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (“the Act”) against the Order dated 13.07.2018 passed by the learned Punjab State Consumer Disputes Redressal Commission Chandigarh (“the State Commission”), in Consumer Complaint No.11 of 2018 wherein the State Commission allowed the complaint filed by the Complainant (Respondent herein).

2. Brief facts of the case, as per the Complainant, are that the Complainant/ Respondent booked a residential plot in the upcoming Township project of OP called “*Omaxe Chandigarh Extn*”. (In short “Residential Project”) situated at Mullanpur, Chandigarh

Extension, SAS Nagar, Mohali, Punjab. The Complainant initially paid Rs.14,00,000/- as booking amount by cheques against receipt dated 03.10.2011. The plot was purchased under Time Link Plan. As per the Agreement, the Basic Sale Price of 301.38 Sq Yds plot was Rs.31,33,185.66 along with Rs.1,00,000/- as club charges, Rs.30,000/- as Interest Free Maintenance Security (IFMS), Rs.4,95,770/- as PLC and Rs.1,490/- per Sq Yd (Rs.4,04,150.58) as External Development Charges (EDC) and thus the Total Price of the Plot was Rs.41,63,106.24.

3. The Complainant paid further sum of Rs.9,00,000/- vide cheque dated 25.10.2011 qua which receipt dated 01.11.2011 was issued by the OP. Subsequently, he again made the payment of Rs.11,25,000/- vide cheque dated 05.11.2011 qua which receipt dated 05.11.2011 was issued by the OP. Thereafter, OP made the provisional allotment vide letter dated 17.03.2012. Subsequently, he made further payment of Rs.5,16,500/- by cheque dated 17.09.2012. The Complainant paid the total amount to the OP of Rs.39,41,500/-. Thereafter, the allotment letter-cum-agreement was issued by the OP on 27.12.2012.

4. As per clause 24(a) of the Allotment Letter-Cum- Agreement, the possession of the plot was to be handed over within 18 months, or within an extendable period of 6 months. The relevant portion of the clause 24(a) of the Agreement is as under:

“The Company shall put its best efforts to complete the development of the plot/project within 18 (Eighteen) months or within an extended period of Six months from the date of signing of this Allotment Letter by the Allottee(s), subject to force-majeure conditions.....”

5. Vide letter 18.06.2017, the OP offered possession of the plot along with a demand for residual sale price, External Development Charges, Club Costs, Infrastructure Maintenance & Security and Power Backup, which was to be paid within a period of 10 days.

6. Upon visiting the plot, it was revealed that the same was not ready for possession. Moreover, there was absence of water, electricity, sewerage facilities and road connection. Consequently, he alleged that the OP's actions amounted to deficiency in service and unfair trade practices. Being Aggrieved the Complainant filed a Consumer Complaint no. 11 of 2018, before the State Commission, U.T. Chandigarh Punjab, with prayer as under: -

a) Directions to the OPs to deliver the possession of the plot to the complainant after completing all the development and infrastructure works at the site where, plot is situated and after providing all the facilities/conveniences as promised by the OP, within one month or within such suitable time as this Hon'ble forum directs.

b) Grant of interest on the total deposited amount i.e. Rs.39,41,500/- with 12% interest p.a. from the date of respective deposits till the time the plot is ready for possession in all respects by providing all the facilities/conveniences as promised.

c) Refund of, and directions not to claim, additional claims under different heads like Power Backup Equipment Cost i.e. Rs. 80,000/-, Infrastructure Cost/Cess (IC) i.e. Rs.62,086.34/-, Electrical Equipment Cost (EEC) i.e. Rs.30,018,44/-, Dual Source Energy Meter and Prepaid Metering System (DEM) i.e. Rs. 26,550/-, Utility Cost (UC) i.e. Rs. 12,000/- etc. which have been imposed arbitrarily and unilaterally and which are figuring in the statement of account but the said costs/claims were clearly missing in the initial allotment letter/agreement.

d) Compensation for mental agony and harassment amounting to Rs.5,00,000/-.

e) Litigation expenses amounting to Rs.1,00,000/-.

f) And/or any other relief which this Hon'ble Commission deems fit and proper may kindly be granted in the favour of the complainant.

7. In reply before State Commission, the OPs raised objections that the Complainant is not a consumer as he has not purchased the plot for construction of house for personal use. The Complainant is a resident of Bathinda and did not mention as to why he is purchasing a plot near Chandigarh which is over 250 KM from Bathinda. This shows that the intention was investment. The State Commission had no territorial jurisdiction to entertain the complaint as all payments were made at Chandigarh Office and allotment letter/ agreement was also signed at Chandigarh. The State Commission does not have pecuniary jurisdiction to entertain the complaint as the relief sought exceeded Rs.1 Crore. The present case raises complex questions of fact and would involve detailed evidence and as such, it ought to have been referred to Arbitration, in terms of the allotment letter/agreement. On merits, as the complainant delayed payments, he is not entitled to invoke clause 24-A regarding possession delay, as delay, if any, is attributable to him. The provisions of the PAPRA have been duly followed by OPs and now since allotment letter/ buyer's agreement stands duly executed in the year 2012, he cannot be allowed to raise any grievance qua the same after a period of more than six years. The allotment letter specified that no claims for damages/compensation would be accepted for delay in possession. The OP denied any deficiency in service or unfair trade practices..

8. The learned State Commission allowed the Complaint vide order dated 13.07.2018 and directed the OPs as follows:-

“i. to deliver vacant physical possession of the plot, in question, complete in all respects, to the complainant along with completion certificate and occupation certificate within a period of three months from the date of receipt of certified copy of this order.

ii. to execute the sale/ conveyance deed and get the same registered in the name of the complainant after handing over the actual physical possession of plot, in question, as per direction (i), above, within a period of three months thereafter and the expenses for the same shall be borne by the Complainant.

iii. to pay interest on the deposited amount of Rs.39,41,500/- at the rate of 12% per annum with effect from 27.4.2015 till the date of actual delivery of possession of the plot in question; and

iv. to pay Rs.66,000/- as compensation for mental tension and harassment suffered by the complainant including litigation costs.

The compliance of this order be made by the opposite parties within the period mentioned above and failing that they shall be liable to pay interest on the amount of compensation of Rs.66,000/- at the rate of 12% per annum from the date of this order till the date of compliance. However, the opposite parties shall first adjust the amount of interest payable to the complainant and the amount of compensation and litigation costs, as ordered above, towards the amount due payable by the complainant and if some amount still left, then the same be paid to him.”

9. Aggrieved by the Order of the State Commission, the Appellants / OPs filed the present Appeal seeking the following:-

(a) Allow the present Appeal; and

(b) Set aside the final judgment and order dated 13-07-2018 passed by the Hon'ble State Consumer Disputes Redressal Commission, Punjab, Chandigarh in Consumer Complaint No. 11 of 2018; and

(c) pass such other and further order or orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of this case.

10. In the instant Appeal, the Appellant mainly stated the following:-

- a. The State Commission failed to note that awarding interest for delay in handing over possession is without jurisdiction in as much as the same is the outside the purview of the Act.

- b. The State Commission failed to appreciate that possession of the plot has already been offered to the Respondent in June 2017 and it is the complainant who was not taking possession.
- c. The State Commission failed to note that relief of possession with interest and compensation could not have been awarded beyond the scope of the contract between the parties.
- d. The State Commission failed to note that the award of interest @ 12% per annum is not justified in view of the broad principles laid down by the Hon'ble Supreme Court in ***Ghaziabad Development Authority Vs Balbir Singh reported as 2004(3) Scale, that award of compensation necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury...."***

11. Upon notice, the Respondents/ Complainants have filed brief synopsis to the present Appeal.

12. The learned Counsel for the Appellants painstakingly argued that the compensation for delay in delivery of the property can only be granted from the committed date of possession up to the date of offer of possession, after obtaining the partial completion certificate. Further, awarding @12% interest and Rs.66,000/- as compensation for delay in handing over is excessive and not aligned with directives of the Hon'ble Supreme Court and this Commission. Compensation cannot be granted on multiple heads. He placed reliance on: -

a) I (2019) SLT, Supertech Ltd. Vs. Rajni Goyal.

b) DLF Home Developers Ltd. & Anr. Vs. Capital Greens Flat Buyers Association etc. CA Nos. 3864-3889 of 2020.

c) IV(2019)SLT 675- DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda.

13. The learned Counsel for the Respondents/ Complainants reiterated the facts of the complaint and relied on certain judgments of the Hon'ble Supreme Court in favour of the Respondents/ Complainants. He argued that the Complainants prayed for possession of the plot at the earliest, complete in all respects. Additionally, the Complainants sought Compensation for delay in possession from 26.04.2015 (expected date of possession) till the date of actual possession.

14. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

15. It is an established fact that there has been an unreasonable delay in the development of the project in dispute. The Allotment-Cum-Agreement was executed on 27.12.2012. Possession was to be given within a period of a total of 18 months. The argument of the Appellants that it had partial Completion Certificate is of limited consequence. The non-availability of the Occupancy/Completion Certificate points to the deficiency on the part of the Appellant.

16. In this regard the Hon'ble Supreme Court, in ***Samruddhi Co-Operative Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction Pvt. Ltd. in Civil Appeal 4000 of 2019,***

decided on 11th of January 2022, has held that:

“In the present case, the respondent was responsible for transferring the title to the flats to the society along with the occupancy certificate. The failure of the respondent to obtain the occupation certificate is a deficiency in service for which the respondent is liable. Thus, the members of the appellant society are well within their rights as ‘consumers’ to pray for compensation as a recompense for the consequent liability (such as payment of higher taxes and water charges by the owners) arising from the lack of an occupancy certificate”.

17. As regards interest @ 12% awarded by the learned State Commission, the Hon’ble Supreme Court in *Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 SC*, decided on 25.03.2021 has held that:

“.....It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by SCDRC and by the NCDRC for refund of moneys were justified.

...In the circumstances, we are of the view that the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified. Having regard to all the facts and circumstances of the case, we modify the order of the NCDRC by directing that the appellant shall pay interest at the rate of 9% per annum to the respondent instead and in place of 12% as directed by the NCDRC. Save and except for the above modification, we affirm the directions of the NCDRC.”

18. While there are several landmark judgments of the Hon'ble Supreme Court holding Builders responsible for delay compensation in case of delay in handing over the possession, the issue to be also decided in this case is what would be the reasonable quantum of interest that should be paid. In this regard, I would like to quote the recent judgment of the Hon'ble Supreme Court in the case of *DLF Home Developers Ltd. vs. Capital Greens Flat Buyers Assn., (2021) 5 SCC 537*, wherein it was held as:

"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 Page 10 of 13 of FA No.225 of 2020 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.”

19. The other contention of the Appellant is that the possession was already offered to the Respondents in June 2017 and it is the Complainant who failed to take possession citing one or the other objection. The Hon’ble Supreme Court in *Supertech Ltd. Vs. Rajni Goyal (2019) 17 SCC 681* decided on 23.10.2018 has held that:-

“However, the Commission held that since there was a delay in handing over possession of the flat to the Respondent purchaser, the Appellant builder was liable to pay interest to the Respondent purchaser by way of compensation. The scheduled date for handing over possession was 31.10.2013. The Appellant builder had issued the pre-possession letter on 31.10.2015. As per the Respondent purchaser, the Appellant builder did not have the occupancy certificate on that date. The Commission directed the Appellant builder to pay compensation in the form of simple interest @ 8% p.a. from 1.11.2013 till the date on which possession was actually offered to the Respondent purchaser.

The Appellant builder inter alia submitted that possession of the flat was offered to the Respondent purchaser in December, 2015 after obtaining the completion certificate for the building. Even though the agreement provided for delivery of possession by 31.10.2013, the delay occurred because of various legal impediments in timely completion of the project because of various orders passed by the National Green Tribunal. The delay ought to be computed from six months after 31.10.2013 i.e. from 1.5.2014 by taking into consideration, the 6 months grace period provided in the agreement. Furthermore, the period of interest should close on April, 2016 when the full occupancy certificate was obtained as per the admission of the Respondent purchaser herself in para 4(j) of the Consumer Complaint, wherein she has admitted that the Appellant builder had obtained the completion certificate as late as April, 2016 with respect to delay in handing over possession. The Respondent purchaser ought not to be allowed to reap the benefits of her own delay in taking possession. In the light of the aforesaid discussion, the period of compensation of interest must be computed from 1.5.2014 till 30.4.2016 at the rate awarded by the Commission. The Order of the Commission is modified only to the extent mentioned hereinabove. The Appeals are disposed of accordingly.”

20. As regards the contention of the learned Counsel for the Appellant that the Respondents purchased the Plot for commercial purpose, this Commission in the case of **Sanjay Rastogi v. BPTP Limited & Anr** (CC No. 3580 of 2017 decided on 18.06.2020), which was upheld by Hon'ble Supreme Court, held as under:

1.

21. Similar observation was made by this Commission in **Sai Everest Developers v. Harbans Singh Kohli, 2015 SCC OnLine NCDRC 1895 decided on 21.07.2015**, in which it was held that

“the Opposite Party should establish by way of documentary evidence that the Complainants were dealing in real estate or in the purchase and sale of the subject property for the purpose of making profits.”

22. In the instant Appeal while the Respondent denied that the property was purchased for commercial purpose, the Appellant had led no evidence to assert that the said Unit was purchased by the Respondent for the purpose of resale.

ORDER

23. In view of the foregoing the order of learned State Commission dated 13.07.2018 is modified as follows:-

(i) To deliver vacant physical possession of the plot in question, complete in all respects, to the complainant along with completion certificate and occupation certificate within a period of three months, from the date of this order;

(ii) To execute the sale/conveyance deed and get the same registered in the name of the complainant after handing over the actual physical possession of the plot in question as per direction (i) above within a period of two months thereafter. The expenses for the same shall be borne by complainant;

(iii) The Opposite Parties are directed to pay interest to the complainants @ 6% per annum on Rs.39,41,500/- from 27.04.2015 till the date of offer of possession, after obtaining completion certificate, within a period of one month from the date of this order. Failing which, this amount shall carry penal interest @ 9% per annum from the date of default till actual payment.

(vi) The order pertaining to payment of compensation of Rs.66,000/- is set aside.

(vii). The Opposite Parties are further directed to pay Rs.50,000/- to the complainants as cost of litigation.

24. All pending Applications, if any, are disposed of accordingly. The statutory amount deposited by the Appellant, if any, be refunded after due compliance of the order.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER