

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

**MISCELLANEOUS APPLICATION NO. 209 OF 2024
IN
CC/3308/2017**

1. MOHAN KHANNAAppellants(s)

Versus

1. JAI PRAKASH ASSOCIATE LTD.Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE APPELLANT :

Dated : 21 May 2024

ORDER

For the Complainant IN PERSON

For the Opposite party Mr Paras Chaudhry, Advocate

ORDER

1. This Miscellaneous Application has been filed by M/s Jaiprakash Associates Limited, the opposite party/ builder seeking modification/ recall of the order dated 24.01.2023 of this Commission in RA no. 14 of 2023.

2. To briefly recapitulate the facts and developments in CC no.3308 of 2017 filed by Mohan Khanna complainant against M/s Jaiprakash Associates Limited, the complainant had alleged delay in handing over the possession of the flat booked by him in the opposite party's project 'Imperial Court' at Jaypee Greens, Noida, and seeking compensation for delay in offer of possession and refund of the amounts charged pertaining to increase in super area and service tax thereon with interest. This Consumer Complaint was disposed of by an order dated 06.12.2022 allowing the complaint and directing compensation for delay in handing over possession with effect from 19.07.2014 to the actual date of offer of possession, i.e., 23.03.2018 with compensation @ 6% per annum on the deposited amount as on 19.07.2014 with litigation cost of Rs.50,000/-.

3. Complainant filed a Review Application No. 14 of 2023 seeking correction of this order dated 06.12.2022 seeking change of the promised date of payment from 19.07.2014 to 19.04.2014 and the actual date of offer of possession from 23.03.2018 to 23.04.2018. Directions were also sought that compensation be over and above the contractual rate of 9%. This application was disposed of vide order dated 24.01.2023 holding that the date of promised date of possession was 19.04.2014 and the actual date of offer of possession was 23.04.2018 and that these errors needed rectification.
4. This order has been contested by the opposite party/ builder on the ground that the date of offer of possession was actually 25.10.2016 and that on the basis of a completion certificate received by it, a sub-lease had been executed between the parties on 16.03.2017. Hence, actual date of possession was 16.03.2017. It was also submitted that this document had been part of the record and that the order in RA no.14 of 2023 dated 24.01.2023 may be suitably amended to incorporate the correct dates which are supported by documents on record.
5. It is evident from the provisional allotment letter dated 20.04.2011 that clause no.7.1, mentioned possession of the said flat within a period of 36 months with a further period of 90 days (3 months) from the date of agreement as under:

7.1 The company shall make best efforts to deliver possession of the said premises to the Applicant within the period more specifically described in the provisional allotment letter with a further grace period of 90 (ninety) days. If the completion of the said premises is delayed by reason of non- availability or scarcity of steel and/ or cement and/ or other building materials and/ or water supply and/ or electric power and/ or slow down, strike and/ or due to a dispute with the construction agency employed by the Company, lock out or civil commotion or any militant action or by reasons of war, or enemy action, or earthquake or any act of God or if non-delivery of possession is as a result of any law or as a result of any restrictions imposed by a Government Authority or delay in the sanction of building/ zoning plans/ grant of completion/ occupation certificate by any Governmental Authority or for any other reasons beyond the control of the Company (hereinafter referred to as "*Force Majeure Events*" and each individual even referred to as a '*Force Majeure Event*'), the company shall be entitled to a reasonable extension of time for delivery of possession of the said premises.

6. Hence, the promised date of possession was therefore, 20th April 2014 (i.e., within 36 months), and it is, 20.07.2014 including three months of grace. An offer of possession dated 25.10.2016 which records that completion certificate has been received on 20.07.2016 from Noida Authority was issued by the opposite party. It is, therefore, evident from the material on record that against the promised date of 20.07.2014 for possession, the actual offer of possession was made on 25.10.2016. The sub-lease was executed between the parties on 16.03.2017. Hence possession of the flat in question was handed over to the complainant on this date.

7. The order dated 06.12.2022 has awarded compensation to the complainant for the delay in handing over the possession @ 6% per annum in keeping with the judgment of the Hon'ble Supreme Court in *Wg Cdr Arifur Rahman Khan and Aleya Sultana and Others vs*

DLF Southern Homes Pvt. Ltd., and Others (2020) 16 SCC 512. Even though the prayer of the complainant was for compensation @ 8% per annum, the issue of this compensation being over and above the contractual compensation had been considered and not found admissible. In any case, that issue cannot be raised by way of review.

8. The only issue, therefore, pertains to the promised date of possession and the date of actual offer of possession. As per the agreement signed between the parties, the period as mentioned by the builder/ opposite party to hand over the possession was 36 months plus 3 months grace period, with effect from April 2011 which works out to July 2014. The letter of offer of possession dated 25.10.2016 is on record. The contention of the complainant that he is entitled for delay compensation till 23.04.2018 needs to be considered in this light.

9. The Hon'ble Supreme Court has held in ***Samruddhi Cooperative Housing Society Ltd., vs Mumbai Mahalaxmi Construction Pvt. Ltd.***, 2022 SCC Online SC 35 that the builders liability with regard to damages ends with the making of an offer of possession based on a valid completion certificate/ occupation certificate.

10. In view of the fact that the offer of possession dated 25.10.2016 was based on the completion certificate dated 20.07.2016 and possession was handed over on 16.03.2017 with the execution of sub-lease, the liability of the opposite party/ builder should be reckoned to have stopped in respect of the compensation for the delayed possession on that date i.e., 25.10.2016.

11. In view of the foregoing, the relevant dates in the order dated 06.12.2022 in paragraph 8 need to be amended as discussed above, since this is an error apparent on the face of the record.

12. Paragraph 8 of the order in CC no.3308 of 2017 dated 06.12.2022 is therefore, is directed to be read as:

In the light of the above, it is held that the complainant is entitled for refund for the delay in handing over the possession of the apartment booked by them. Accordingly, it is ordered that compensation from the promised dated of handing over the flat, i.e., 19.04.2014 to the actual date of offer of possession, i.e., 23.04.2018 be provided by the opposite party to the complainants at the rate of 6% per annum on the deposited amount as on 19.07.2014. In addition, litigation cost of Rs.50,000/- will be paid by the opposite party.

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SUBHASH CHANDRA
PRESIDING MEMBER