

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 347 OF 2021

(Against the Order dated 23/11/2020 in Complaint No. 39/2020 of the State Commission
Punjab)

1. MAHESH GUGNANI & ANR.

S/O. LATE SH, SUNDER LAL GUGNANI, FLAT NO 262, 5
FLOOR, SAVITRAY TOWER, VIP ROAD, ZIRAKPUR SAS
NAGAR

MOHALI

2. SMT. SAMTA GUGNANI

W/O. MAHESH GUGNANI , FLAT NO 262, 5 FLOOR,
SAVITRY TOWER , VIP ROAD ZIRAK PUR SAS NAGAR

MOHALI

.....Appellant(s)

Versus

1. M/S. SUSHMA BUILDTECH LIMITED

THROUGH ITS DIRECTOR, PARTNERS, CHIEF
EXECUTIVE OFFICER AND MANAGING DIRECTOR. MR.
PRATEEK MITTAL, 172-137, 1 FLOOR, SECTOR 9C,
MADHYA MAGAR

CHANDIGARH

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT :

FOR THE APPELLANTS : MR. ASHISH NAIK, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENT : MR. ARJUN JAIN, ADVOCATE
MR. VIPIN CHAUDHARY, ADVOCATE

Dated : 27 May 2024

ORDER

1. The present First Appeal has been filed under Section 51 of the Consumer Protection Act, 2019 ("the Act") against the Orders dated 23.11.2020 and 19.01.2021 passed by the Punjab State Consumer Disputes Redressal Commission Chandigarh (the 'State Commission) in CC No.39 of 2020 filed by the Appellant/ Complainant wherein the State Commission allowed the complaint.

2. As per report of the Registry, there is 125 days delay in filing the present Appeal and the present Appeal has been treated to have been filed within limitation vide Order dated 08.02.2023.

3. Brief facts of the Case, as per the Complainant, are that the Opposite Party (OP) launched a project called "Sushma Chandigarh Grande" at Dishangarh and Bishanpura, MC, Zirakpur, Distt. SAS Nagar, Mohali and invited applications for residential flat allotments. The Complainants booked Flat No. 203, 2nd floor, D-Tower in the project with super area of 1885 Sq Ft at Basic Sale Price of Rs.67,50,000/- plus additional charges and taxes vide Application dated 27.12.2016. A Flat Buyer's Agreement dated 11.01.2017 was executed between the Complainants and the OP specifying the Basic Sale Price along with other charges such as IFMS (Rs. 56,550/-) and applicable taxes and stamp duty to be borne by the Complainants. As per Clause 14(d) of the Buyer's Agreement, possession was to be offered within 30 months (24 months plus 6 months grace period). The OP assisted in securing a home loan for the Complainants and executed a tripartite agreement with HDFC Ltd and the Complainants on 08.02.2017 upon request. A demand letter for Rs.4,25,220/- was issued on 05.04.2018, which they duly paid. By 23.04.2018, they paid Rs.64,27,245/- against the Basic Sale Price of Rs.67,50,000/- plus other charges and taxes. Despite receiving 97% of the sale price, the OP failed to deliver possession of the flat within the stipulated period. Aggrieved by this delay, the Complainant filed a Consumer Complaint before the State Commission seeking redressal.

4. In reply, the OP raised preliminary objections that the complaint should be dismissed or returned due to pecuniary jurisdiction. The Complainants are not 'consumers' under the Act as they purchased the flat for speculative purposes and already own a house in Zirakpur. The OP suggested that the Complainants may need to submit an affidavit regarding their properties in the Tricity area. There was no deficiency in service on their part, as they were actively developing the project and committed to delivering possession as per agreement terms. They claimed that the funds received from the Complainants were utilized for project construction and development. They cited force majeure circumstances such as labor issues, sand shortages due to mining bans by State Authorities, and demonetization as reasons for project delays beyond their control. They accelerated development later on. They expressed readiness to adjust penalty amounts as per the agreement terms and emphasized that the agreement did not specify a definite possession period and referenced a Supreme Court judgment in support. They highlighted that the agreement mandated arbitration for dispute resolution and argued that the Complainants were bound by its terms, negating the need for interest or enhanced compensation. The complainants filed the complaint without clean hands, suppressing material facts. On the merits, the OP asserted that the project had all necessary approvals and licenses, which they had seen while booking and then signed the subsequent Apartment Buyer's Agreement signed. They always delivered housing and commercial projects in time. The OP pointed that the Complainants availed the housing loan voluntarily and that they facilitated the process by mortgaging the unit and entering into a Tripartite Agreement with HDFC Ltd. There is still outstanding amount due as of 05.04.2018 from the Complainants.

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5. The State Commission, vide Order dated 23.11.2020, allowed the complaint and the following direction were passed:

i) to deliver actual, physical and legal possession of the flat, in question, to the complainants, complete in all respects, along with agreed facilities and Completion and Occupancy Certificates issued by the competent authorities and execute Sale/Conveyance Deed in favour of the complainants, subject to payment of remaining sale consideration without any interest/penalty;

ii) to pay compensation for delay in delivery of possession @ ₹5/- per sq. ft. per month of the super area of the flat, in question, after the expiry of stipulated date of delivery of possession i.e. from 11.07.2019 till the delivery of possession of the unit, as ordered above, as per Clause 14 (d) of the agreement Ex.C-1. In addition to it, the opposite party shall also pay simple interest on the entire amount deposited by complainants i.e. Rs.54,30,226/- at the rate of 6% per annum from 11.07.2019 till delivery of possession of the unit in the manner, as ordered above.

iii) to pay ₹65,000/-, as litigation costs and other expenses.

iv) The balance sale consideration payable by the complainants shall be adjusted against the above said liability of the opposite party.

6. Being aggrieved with the State Commission Order dated 23.11.2020, the Complainant filed the Appeal seeking the following:

“i). Stipulated date of delivery of possession kindly be considered as 16.12.2018 instead of 11.07.2019 and 6 month grace period for completing and handing over the said unit to the buyer be taken in favour of the Complainant/ Appellants.

ii). Total amount towards the sale price be considered as Rs. 64,27,245/- which was paid upto 23.04.2018 by the Appellants to the respondents instead of Rs. 54,30,226/-.

iii). 6% per annum rate of interest on total deposited amount kindly be enhanced to 10% per annum as prayed for by the Appellants in the original complaint.

iv). Compensation to the tune of Rs. 10 lacs kindly be provided to the Appellants on account of mental agony, harassment, humiliation and tortured suffered by the Appellants at the hands of the respondents/opposite party.

v). Litigation costs and other expenses kindly be provided to the tune of Rs. 1 lac.”

7. The learned Counsel for the Appellants/Complainants argued that the learned State Commission has erred in awarding the delay compensation in the form of interest @ 6% per annum on Rs.54,30,226/- from 11.07.2019. It should have been 10% per annum on Rs.64,27,245/- from 16.12.2018. He also sought enhancement of the compensation to Rs.10 Lakh and Litigation cost as Rs.1,00,000/-.

8. The learned Counsel for the Respondent/Opposite Party asserted the delay in filing the Appeal, Force Majeure, time is not the essence of the Contract in this case, the Complainant is not a consumer etc. He also argued that the State Commission erred in granting compensation of Rs.5/- per sq. ft. per month and in addition, @ 6% p.a. from the period of delay. He sought to set aside the impugned order passed by the State Commission. He relied on certain judgments of Hon'ble Supreme Court and this Commission.

9. I have examined the pleadings, associated documents placed on record, the judgments cited by the parties and heard the arguments advanced by the learned counsels for both the parties.

10. The Appellants/Complainants paid Rs.64,27,245/- towards the flat. Receipts confirming this payment have been submitted as evidence. According to the agreement executed dated 11.01.2017, the possession of flat was to be delivered within 24 months from the agreement date, with an additional grace period of 6 months. Therefore, possession was to be handed over by 11.07.2019. Despite agreed terms and the Complainants' payments, it is established that the possession of the flat in question has not been handed over to the Complainants in the stipulated timeline. Therefore, the Respondent failed to fulfil their obligation under the agreement to deliver possession of the flat within the agreed timeframe. Therefore, undisputedly there was delay in handing over the unit in question.

11. The Complainants invested substantial amount seeking possession of the flat and raised home loan from HDFC Ltd and was servicing the EMIs. As per the agreement, it was incumbent upon the OP to be compliant with the law and procedures and ensure timely completion and handing over the possession. Therefore, the reasons stated by the OP attempting to explain absence of liability for delay are untenable. They cannot absolve themselves of liability in this regard, after collecting 97% of the total consideration. It is the right of the home buyers to be compensated for delay in handing over and/or non-completion of the projects and failure to hand over the unit.

12. In ***Emmar MGF Land Ltd. & Ors. Vs. Amit Puri- {(II 2015 CPJ 568 (NC)}***, decided on 30.03.2015, this Commission has held:

“After the promised date of delivery, it is the discretion of the Complainant whether to accept the offer of possession, if any, or to seek refund of the amounts paid by him with some reasonable compensation and it is well within his right to seek for refund of the principal amount with interest and compensation.”

13. Hon’ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghvan, ll (2019) CPJ 34 (SC)***, decided on 02.04.2019 it was held as under:

“We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfil his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent-Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent-Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent-Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the 22 Respondent-Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest”.

Further, para 6.7 of the Order reads as :

“A term of a contract will not be final and binding if it is shown that the flat purchasers had no option to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement of 08.05.2012 are ex-facie one sided, unfair and unreasonable. The incorporation of such one-sided clauses in an Agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling flats by the Builder.

Further, para 7 of the Order reads as under :

“In view of above discussion, we have no hesitation in holding that the terms of the Apartment Buyer’s Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent-Flat Purchaser. The Appellant-Builder cannot seek to bind the Respondent with such one-sided contractual terms.”

14. The Appellant’s contention that the delay was not intentional and it was due to labour problem, shortage of sand due to ban on mining by the authorities/State Government as well

as demonetization etc., a situation falling under “Force Majeure” clause is untenable. This Commission in CC 379 of 2013 *Sivarama Sarma Jonnalagadda & Anr vs. M/s Maruthi Corporation Limited & Anr.* decided on 21.09.2021 has held that:

“We are of the view that that the Complainant cannot be made to wait indefinitely for the delivery of possession and the act of the Opposite Party in relying on force majeure clause while retaining the amounts deposited by the Complainant, is not on only an act of deficiency of service but also amounts to unfair trade practice.”

15. The crucial question at his stage is determining compensation to be awarded to the Complainant for the deficiency in service. The State Commission awarded compensation for delay in delivery of possession @ Rs.5/- per sq. ft. per month of the super area of the flat and also interest @ 6% p.a. on deposited amount of Rs.54,30,226/- from 11.07.2019 till delivery of possession of the unit and also awarded Rs.65,000/- for as litigation expenses.

16. While there are number of landmark judgments of the Hon'ble Supreme Court holding Builders responsible to pay 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 is to be paid. In this regard, the judgment of the Hon'ble Supreme Court in *DLF Home Developers Ltd. vs. Capital Greens Flat Buyers Assn., (2021) 5 SCC 537*, it was held that:

"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".

17. Hon'ble Supreme Court in *DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda*, 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 payment of Rs.5/- per sq. ft. per month of the super area of the flat in question w.e.f. 11.07.2019 till handing over of the possession is untenable.

18. Accordingly, the order of the learned State Commission dated 23.11.2020 in C.C. No.39 of 2020 is modified as below:

ORDER

- I. *The Respondent/Opposite Party is directed to execute the sale deed of the flats in question in favour of the Appellants/ Complainants and handover the possession within a period of 60 days' from the date of this order, after receiving the balance payment, if any, as per the Agreement.*

 - II. *The Respondent/Opposite Party is directed pay simple interest @ 6% on the amount deposited i.e. Rs.64,27,245/- by the Appellants/Complainants from 11.07.2019 i.e. the date the Flat was due to be handed over till the date of handing over the possession, within a period of one month after handing over the possession of the said Flat. In the event of delay beyond one month, the rate of interest applicable shall be @ 9% for such extended period. The amount already paid in terms of Order dated 23.11.2020 passed by the learned State Commission is liable to be adjusted from this amount.*

 - III. *The Respondent/Opposite Party is directed to pay Rs.1,00,000/- to the Complainants as litigation expenses.*

 - IV. *The orders for payment of Rs.5/- per sq. ft. per month of the super area of the flat in question w.e.f. 11.07.2019 till handling over of the possession in terms of order dated 23.11.2020 passed by the learned State Commission is set aside.*
19. With the above Orders, the Appeal No. FA/347/2021 stands disposed of.
20. All pending Applications, if any, are disposed of accordingly.

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