

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 305 OF 2017

(Against the Order dated 16/12/2016 in Complaint No. 176/2016 of the State Commission
Chandigarh)

1. M/S. PREMIUM ACRES INFRATECH PVT. LTD.

THROUGH ITS GENERAL MANAGER, MR. RANJIT
SINGH, VILLA NO. 205, TDI CITY PREMIUM ACRE
COURTYARD, SECTOR-110-111,
S.A.S. NAGAR, MOHALI,

.....Appellant(s)

Versus

1. DEVINDER SINGH CHEEMA

S/O. SH. BACHAN SINGH CHEEMA, R/O. 184, KAMAL
COLONY, KHANNA ROAD, SAMRALA,
DISTT. LUDHIANA
PUNJAB

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT : MR. PAWAN KUMAR RAY, ADVOCATE

FOR THE RESPONDENT : MR. GURADESH SINGH CHEEMA, 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 (for short "the Act") in challenge to the Order dated 16.12.2016 passed by the State Consumer Disputes Redressal Commission, U. T. Chandigarh (hereinafter referred to as the "State Commission") in Complaint No. 176 of 2016 whereby the complaint was partly accepted.

2. Heard the learned counsel for the appellant (hereinafter referred to as the 'builder company') and the learned counsel for the respondent (hereinafter referred to as the 'complainant') and perused the record including the State Commission's impugned Order dated 16.12.2016 and the memorandum of appeal.

3. There is a delay of 03 days in filing the present appeal.

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

4. The facts, in brief, are that the complainant applied for a flat in the "TDI City" project of the builder company vide application on 16.08.2010. The complainant was allotted flat No.19101, measuring 1200 sq. ft. vide an allotment letter dated 11.09.2010 for a sale consideration of Rs. 28,46,800/- inclusive of EDC and PLC charges. Subsequently, a buyer's agreement was executed on 19.02.2011 stipulating that the possession of the flat would be handed over within a period of 24 months (18-month period plus a 6-month grace period) from the date of the agreement, meaning thereby, the possession of the flat would be handed over on or before 18.02.2013. The complainant had opted for the construction linked payment plan and made the total payment of Rs.15,76,000/- vide receipts dated 06.06.2011 and 23.11.2011. It is alleged that as no construction work was in progress, no demand letter was ever issued by the builder company and hence, no further payment was made. It is further alleged that after a lapse of more than three years, the builder company sent payment default notices dated 01.12.2015 and 25.12.2015 to the complainant. Thereupon, the complainant visited the construction site and found that only the basic structure of the building was erected, with no electrical, plumbing, or flooring work completed, and lacking proper access roads and amenities but the builder company persisted in sending payment default notices on 15.01.2016 and 28.01.2016. Ultimately, the builder company cancelled the allotment of the flat vide cancellation notice dated 22.03.2016.

5. Being aggrieved the Complainant filed a complaint before the State Commission with the following prayer:-

- I. *Declare the cancellation notice dated 22.03.2016 (Annexure C7) issued by the OPs to the complainant as null and void being arbitrary and illegal.*
- II. *The Opposite parties be directed to handover the possession of the flat No. 19101 complete in all respects along with all amenities to the complainant at the earliest.*
- III. *The OPs be directed to pay interest @ 18% p.a. on the amount of Rs. 15,76,000/- deposited by the complainant with the OPs from the date of deposit till the date of actual physical possession of the flat.*
- IV. *The OPs be directed to pay the delay charges as per Clause 9 of the Buyer Agreement @ Rs.7000/- per month along with 18% interest since 19.02.2013 i.e. date of expiry of time period of handing over of possession of the flat to the complainant.*
- V. *Award an amount of Rs. 5.00 lacs as compensation on account of mental harassment and suffering upon the complainant at the hands of OPs due to their unfair trade practices and deficiencies in service.*
- VI. *Award Rs.50,000/- as cost of litigation in favour of the complainant as against the OPs.*
- VII. *Any other relief which this Hon'ble Court may deem fit under the facts and the circumstances of the case in favour of the complainant.*

6. The builder company contested the complaint by filing reply raising preliminary objections, firstly, that the State Commission lacks territorial jurisdiction since Clause 36 of the agreement states that the Courts at Delhi is the appropriate forum for resolving disputes related to the Agreement and the branch office in Chandigarh has been closed for several years, secondly, that the complainant had purchased the flat for investment purpose. It is also stated that 75% of clients have already obtained possession and settled their dues, implying satisfaction with the services provided. It is further stated that no cause of action had accrued to the complainant as the complainant had not paid the dues and an amount of Rs. 30,99,345/- was pending against the complainant qua the flat. It is also stated that the amount

of Rs. 15,76,000/- was received, which is just around 50% of the BSP only and apart from that other charges, which also finds mention in the allotment letter had not been paid and the complaint is a false and not maintainable and the same is liable to be dismissed.

7. After appreciation of the facts of the case, the State Commission, vide its Order dated 16.12.2016 partly accepted the complaint and directed as under:

- i. *Complainant is directed to make the payment of sale consideration of the balance amount of Rs. 16,94,164/- to Opposite Parties No.1 to 4, within a period of one month from the date of receipt of a certified copy of the order.*
- ii. *Opposite Parties No.1 to 4 shall jointly and severally hand over the legal physical possession of the unit, in question, within a period of four months, to the complainant, from the date of receipt of a certified copy of this order, on payment of the legally due amount, by the complainant.*
- iii. *Opposite Parties No.1 to 4 shall jointly and severally execute the sale/conveyance deed and get it registered in the name of the complainant after handing over the actual physical possession of unit, in question, within a period of one month thereafter. The stamp duty, registration charges and all other incidental and legal expenses for execution and registration of sale deed shall be done by the complainant.*
- iv. *Opposite Parties No.1 to 4 are further jointly and severally, directed to pay compensation, in the sum of Rs.2.00 lacs (Two Lacs) for causing mental agony and physical harassment, to the complainant, within two months from the date of receipt of a certified copy of this order.*
- v. *Opposite Parties No.1 to 4 are further jointly and severally, directed to pay cost of litigation, to the tune of Rs.50,000/- to the complainant.*
- vi. *In case the order is not complied with, within the stipulated period, as indicated above, then Opposite Parties No.1 to 4 shall be jointly and severally liable to pay the amount mentioned in Clause (iv) alongwith interest @12% per annum from the date of default, till realization, besides payment of cost of litigation.*

8. Being aggrieved by the order of the State Commission, the builder company has filed the present appeal before this Commission with the following prayer:

- a. *Allow the present Appeal and set aside the order dated 16.12.2016 passed by the Hon'ble State Consumer Dispute Redressal Commission, U.T. Chandigarh in Consumer Complaint No. 176 of 2016;*
- b. *Stay the further proceeding in the consumer Complaint No. 176 of 2016;*
- c. *Remand the matter in the court of competent jurisdiction or civil court;*
- d. *Pass such and other further orders as this Hon'ble Commission may deems fit and proper in the facts and circumstances of the present case.*

9. Learned counsel for the builder company strongly argued that the possession of the flat was to be handed over within 24 months from the date of agreement subject to force majeure circumstances and on receipt of all payment punctually as per the agreed terms but complainant had failed to make the due payment as per the Construction Linked Payment Plan despite several demand notice being sent, therefore, it cannot be said that there is any deficiency on the part of the builder company. He further argued that the total sale consideration as mentioned in the agreement was not the final price but was subject to the

final sale area of the unit, increases/decreases in the taxes, inflation etc. and the charges were levied on the complainant as per clauses of the buyer's agreement, and, hence, there is no unfair trade practice on the part of the builder company. He further argued that the dispute in question involves various complicated questions of disputed facts of the amount due and the amount demanded besides fraud, misappropriation of fund of the builder, fabrication of the documents criminal conspiracy, which cannot be decided by the consumer fora. He further argued that the State Commission did not have the territorial jurisdiction as the branch office at Chandigarh was started in the year 2012 and the same was vacated in June 2014. In support of this contention, he has placed reliance on the decision in the case of *Sonic Surgical vs. National Insurance Co.*, Civil Appeal No. 1560 of 2004.

10. In rebuttal, the learned counsel for the complainant vehemently argued that the complainant wants the accommodation for shifting to the tri-city for the career of his children, therefore, it cannot be said that the flat was purchased for investment purpose. It is pertinent to mention that the appellant never intimated the status of construction work to the complainant and as and when he visited the site, he found that there was no progress on the construction work. He further argued that the builder company had its office in Chandigarh and the buyers agreement dated 19.02.2011 was executed in Chandigarh as also the payments were also received by the builder in Chandigarh office, therefore, the complaint is within the territorial jurisdiction. It is further argued that the complainant was ready to make the balance payment of the sale consideration but he had not received any demand notice from the builder company and the builder company sent payment default notice and when the legal notice was served, the builder company cancelled the allotment, which is arbitrary in the eye of law.

11. The primary issue in this case revolves around the question as to whether there was failure on the part of the builder in handing over the physical possession of the flat to the complainant within the stipulated period.

From a perusal of the record, it is apparent that the agreement was executed on 19.02.2011 and the physical possession was to be handed over within 24 months (18months plus 06 months grace period) i.e. on or before 18.02.2013 but the builder company slept over the matter for a long period and had not taken any step for ensuring handing over physical possession within the prescribed period of 24 month. It is only on 01.12.2015 and 25.12.2015 when the builder company sent default payment notices after the expiry of prescribed period. Therefore, it is clear that the flat was not ready for handing over the physical possession within the prescribed period. Hence, there is clear deficiency on the part of the builder company. It is to be noted that when the complainant sent the legal notice, the builder company had cancelled the allotment of the flat, which is arbitrary and not sustainable in the eye of law.

12. As regards, the builder company's contention that the court in Delhi has only jurisdiction to deal with the complainant, it is clear that the agreement was executed in Chandigarh and payments were made at Chandigarh. It has been settled by this Commission in the case of *Smt. Shanti Vs M/s Ansal Housing and Construction Limited (First Appeal No. 142 of 2001)*, that a complaint can be filed against the opposite party not only where they reside or work for gain but also where they conduct business or have a branch. Since the cause of action had arisen in Chandigarh, it is clear that the builder company worked for gain

at Chandigarh. Therefore, we are of the view that the State Commission has rightly dealt with the matter. Therefore, the contention of the builder company regarding territorial jurisdiction carries no merit and the same is rejected.

13. The allegations regarding that the complainant, in collusion with one Sanjay Jain, committed frauds are unfounded and unreasonable. It is important to note that FIRs under various sections of the Indian Penal Code are solely registered against Sanjay Jain, and there is no evidence linking the complainant to any fraudulent activities. Since the complainant's interaction was with the entire company and not with any individual, any grievance is directed towards the company as a whole, rather than any specific individual.

14. In so far as the issue regarding complicated question of facts, from the perusal of the case, it is clear that it is a clear case of delay in handing over the physical possession of the flats and no documentary document has been produced to prove that any proceedings for fraud, misappropriation of fund of the builder, fabrication of the documents criminal conspiracy are going on. Therefore, the contention of the learned counsel for the builder company is rejected.

15. Furthermore, the builder company's assertion that the complainant is not a consumer within the scope of this Act lacks substantiation, as the burden of proof rests on the builder company and there is no evidence on record supporting this claim. In view of this Commission's judgment in *Kavita Ahuja Vs. Shipra Estate Ltd. and Jaikrishan Estate Developers Pvt. Ltd. and Ors., I (2016) CPJ 31 (NC)* the onus of proof to prove the same lies upon the appellant which has not been discharged.

16. It is an admitted position that the builder company and the complainant entered into an agreement for a flat No.19101 and there is no dispute that the complainant paid Rs.15,76,000/- out of total consideration. It is also established from the record that the builder company had failed to hand over physical possession of the flat within the prescribed period and instead of addressing the issue, the builder company arbitrarily cancelled the allotment via a notice dated 22.03.2016.

From the perusal of the record, it is clearly established that the builder company had failed to hand over the physical possession of the flat within the prescribed period. Therefore, in our opinion, when the flat was not ready for handing over the physical possession of the flat, it cannot be said that the complainant had defaulted in making the payment. There is clear deficiency on the part of the builder company.

17. It is clear that there was significant delay in handing over possession of the flat. The complainant cannot be expected to wait indefinitely, as the complainant has already paid a substantial amount with the expectation of timely possession. In several cases, the Hon'ble Supreme Court has asserted the right of buyers to receive fair delay compensation when developers unduly and unreasonably delayed possession as per the Agreement. Hon'ble Supreme Court in *Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 SC*, decided on 25.03.2019 has observed 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.”

18. 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”

19. Furthermore, the Hon’ble Supreme Court in the case of ***DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhandu***, 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.2,00,000/- on account of mental agony awarded by the learned State Commission is untenable.

20. In view of the foregoing, the appeal of the builder company is disposed of and the order dated 16.12.2016 of the State Commission is modified as under:

1. The complainant is directed to make the payment of the sale consideration of the balance amount of Rs. 16,94,164/- to the builder company within a period one month from today.
2. Upon receiving the balance amount, the builder company shall hand over the legal physical possession of the flat to the complainant within a period of one month from today.
3. The builder company shall execute the sale/conveyance deed and get it registered in the name of the complainant after handing over the actual physical possession of the flat within a period of one month thereafter. It is made clear that the stamp duty, registration charges and all other incidental and

legal expenses for execution and registration of the sale deed shall be borne by the complainant.

4. For the delay in handing over the physical possession, the builder company shall pay interest @6% per annum on Rs.15,76,000/- from the date of deposit till date of handing over the possession of the unit to the Respondent.

5. The builder company shall also pay cost of litigation to the tune of Rs.50,000/- to the complainant.

6. In case the order is not complied with, within the stipulated period, as indicated above, then the builder company shall pay the amount mentioned in direction no. (4.) along with interest @9% per annum from the date of default, till realization.

21. The appeal stands disposed of in 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