

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 655 OF 2021

(Against the Order dated 11/06/2021 in Complaint No. 31/2020 of the State Commission
Chandigarh)

1. DLF HOMES PANCHKULA PVT. LTD.

SCO 190-191-192. SECTOR-8-C, CHANDIGARH-160009Appellant(s)

Versus

1. AMIT CHHOKRA & 2 ORS.

S/O SH.KEWAL KRISHAN CHHOKRA, R/O WARD NO.-10,
BARWALA, DISTRICT HISSAR, HARYANA

2. MR. RAJEEV SINGH

DLF GATEWAY TOWER, SECOND FLOOR, DLF CITY,
PHASE-III, GURGAON-122002, HARYANA

3. MR. VISHAL GUPTA

DIRECTOR, DLF GATEWAY TOWER, SECOND FLOOR,
DLF CITY, PHASE-III, GURGAON-122002, HARYANARespondent(s)

BEFORE:

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

FOR THE APPELLANT :

FOR THE APPELLANT : MR. PRAVIN BAHADUR, ADVOCATE
MR. PRABHAT RANJAN, ADVOCATE
MR. ASHRAY BHATIA, ADVOCATE
MR. DROUHN GARG, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENT NO. 1 : MR. AMARJEET SINGH,
ADVOCATE
FOR RESPONDENTS NOS 2 & 3 : PROFORMA PARTIES

Dated : 27 May 2024

ORDER

1. The present First Appeal has been filed under Section 51 of the Consumer Protection Act, 2019 (hereinafter referred to as "the Act") against the Order dated 11.06.2021 passed by the learned State Consumer Disputes Redressal Commission, U.T. Chandigarh, (hereinafter referred as "the State Commission"), in Consumer Complaint No. 31 of 2020 whereby the State Commission partly allowed the complaint.

2. There was 67 days delay in filing the Appeal and for the reasons stated in IA No. 7283/2021 the delay is condoned.

3. For Convenience, the parties are being referred to as stated in the Complaint before the State Commission. Amit Chhokra is referred to as the Complainant (Respondent No. 1 herein). DLF Homes Panchkula Pvt. Ltd. is referred as the Opposite Party (OP)/ Builder (Appellant herein) & Mr. Rajeev Singh and Vishal Gupta are referred to as the OP-2 & 3 (Proforma Respondent No. 2 & 3).

4. Brief facts of the case, as per the Complainant, are that one Shri Alok Kumar Roy initially booked a flat in the residential Group Housing Project "The Valley," Sector 3, Kalka - Pinjore Urban Complex on 30.03.2010, paying Rs. 6 lakhs. Subsequently, an Independent Floor Buyer's Agreement dated 01.12.2010 was executed with the OPs wherein unit No.C-3/45 GF and parking No. P-GF was allocated, with a total price fixed at Rs. 42,34,599.72. The OPs had already received over Rs. 12 lakhs from previous allottees before entering into this Agreement. The Complainant later entered into an Agreement on 07.10.2018, after settling entire dues with the previous allottee. Despite submitting all necessary documents for transfer, the OPs who had not stipulated transfer charges/fee in the Agreement, refused to process the transfer until he paid Rs.4,13,236/- as transfer charges/fee. Subsequently, he protested vide letter dated 24.04.2019 and an email to the OPs. The Complainant paid a total of Rs.47,86,313/- to the OP and took possession of the unit on 26.04.2019. The OPs arbitrarily levied transfer charges amounting to Rs.4,13,236/- without justification contravening the Haryana Govt Notification dated 22.06.2018 Rule 32 which provides only Rs.10,000/- should be charged for the sale of an apartment, subject to modified bye-laws approved by the District Registrar. He contended that the actions of OPs amounted to service deficiency and unfair trade practices. Feeling aggrieved, the Complainant filed a consumer complaint (No. 31 of 2020), seeking specific directions for refund of transfer charges amounting to Rs. 4,13,236/- along with 12% interest per annum, Rs.2,00,000/- for mental agony and Rs.50,000/- as litigation costs.

5. In reply before the State Commission, the Appellant/OPs objected that the Complainant, being a subsequent allottee, failed to include the first/original allottee as a party to the complaint, thus necessitating the dismissal of the complaint for non-joinder of the necessary party. The Complainant characterized as an investor, acquired the unit from the original allottee for profit-making purposes, thereby falling outside the definition of a consumer. As there exists arbitration clause in the agreement, the consumer complaint is non-maintainable. Further, the complaint sought modification or rewriting of the agreement's terms and conditions, a matter within the jurisdiction of the civil court. On merits, the Appellant/OPs admitted that the Complainant purchased the unit from the original allottee. He being a subsequent allottee, was fully aware of the agreement dated 01.12.2010 executed between the parties and completed the transfer of the property in his name on 26.04.2019. The original allottee settled all grievances by executing a settlement deed on 01.08.2018 and absolved the Company from any further litigation. The Complainant took physical possession on 18.03.2018. The charging of transfer fees is as per the terms and conditions of the Agreement, to which the Complainant had agreed willingly. They refuted any allegations of service deficiency or unfair trade practices, denying the remaining averments as incorrect.

6. The learned State Commission vide Order dated 11.06.2021, partly allowed the Complaint Case No.331/2020 filed by the Complainant/ Respondent with Compensation and

costs as follows:

***“i. To refund the transfer charges, as paid by the complainant after deduction of Rs.10,000/-, to the complainant, alongwith interest @9% p.a. from the respective date of payment of transfer charges, within a period of 30 days, from the date of receipt of a certified copy of this order, failing which, thereafter, the said amount shall carry 3% penal interest i.e. 12% p.a. (9% p.a. plus (+) 3% p.a.), from the date of passing of this order, till realization.*”**

ii. To pay compensation for causing mental agony and harassment and also cost of litigation, in lumpsum, to the tune of Rs.50,000/-, to the complainant, within a period of 30 days, from the date of receipt of a certified copy of this order, failing which, the said amount of Rs.50,000/-, shall carry interest @9% p.a. from the date of passing of this order, till realization.”

7. Dissatisfied with the Impugned Order, the OP No. 1-DLF Homes Panchkula Builder Pvt. Ltd. filed the present Appeal bearing no.655 of 2021 with the following prayers:

“i) Set aside order dated 11.06.2021 passed by the Ld. State Commission, Chandigarh in Consumer Complaint No. 31 of 2020 and allow the First Appeal; and

ii) Pass any appropriate order as may be deemed just and necessary in the facts and circumstances of the case.”

8. In the instant Appeal, the Appellant/OP No.1 mainly raised the following grounds:

(a) The State Commission failed to recognize that the Appellant offered legal and valid possession of the unit to the Original Allottee only upon receipt of the Occupation Certificate dated 19.10.2016. Subsequently, all disputes and claims were amicably settled between the original Allottee and Appellant through a settlement deed dated 28.07.2018.

(b) The State Commission ignored Clause 3 of settlement deed stipulating that the Appellant indemnifies the Original Allottee for any loss or damage due to any actions, or litigation about the property in question.

(c) The State Commission failed to consider Clause 34 of the Agreement, which grants the Appellant the discretion to permit the Allottee to substitute, add, or delete nominees, subject to terms, conditions and charges imposed by them.

(d) The State Commission disregarded Clause 6 of the Sale Agreement wherein the Original Allottee and Respondent agreed that nomination and other charges demanded by the Appellant for nomination shall be borne by the Complainant.

(e) The State Commission erred in interpreting Rule 32, that the Appellant could only levy Rs. 10,000/- as transfer fee. Rule 32 of Haryana Registration and Regulation of Societies Rules, 2012, is applicable only to societies under the said Act and not to the present dispute.

9. The learned counsel for the Appellant/ OP-1 reiterated the grounds of Appeal and emphasized that the State Commission failed to appreciate Clause 34 of the Agreement clearly entitling the Appellant to collect transfer charges. The Appellant has right to recover the transfer charges. He placed reliance judgment dated 04.10.2018 of this Commission in CC/1709/2016 titled ***Sanjay Goel Vs Greater Noida Industrial Development Authority***. It was further argued that the Ld. State Commission ignored Clause 6 of the Sale Agreement dated 08.10.2015, wherein the Respondent agreed to bear the transfer charges. Additionally, on 22.10.2019, the Respondent corresponded with the Appellant, acknowledging the transfer fee at Rs. 200 per sq. ft. excluding GST. The Counsel emphasized that the State Commission erred in its interpretation of Rule 32 and contended that it applies to societies formed under the Haryana Registration and Regulation of Societies Act, 2012. In the present dispute, the transfer fee was levied by the Appellant, not by any society. Moreover, the said rule is applicable for sale of an Apartment, whereas in the instant dispute, the Appellant imposed charges for the nomination/assignment of the independent floor. He relied on a judgment dated 05.12.2019 passed by this Commission in RP/1577 of 2019 titled ***Sunil Kumar Joshi & Anr. Vs M/s. Hanumant Builders & Land Developers & Ors. on Pg. No. 139.***

10. The learned Counsel for the Complainant/Respondent No. 1 reiterated the facts and argued that on 22.06.2018, the Haryana Govt Industries & Commerce Dept issued a Notification amending the 2012 Rules with the introduction of Haryana Registration and Regulation of Societies (Amendment) Rules, 2018. It introduced Rule 32 fixing the maximum transfer fee at Rs.10,000. It was contended that Clause 34 of the Agreement was arbitrarily used by the Builder, as evidenced by the judgment in ***DLF Panchkula Pvt. Ltd. vs. Rekha Sihag & Manju Singla*** (FA. No. 437/2015 dated 27.07.2015) against the same Builder and project, where the transfer fee was deemed invalid. The Builder's reliance on ***Sanjay Goyal (Supra)*** was misplaced since it involved a lease deed by a Government Agency, which is not applicable here. Similarly, the judgment in ***Sunil Kumar Joshi' (Supra)*** does not apply because the Complainant in that case failed to prove any payment of transfer fees. Additionally, the Builder defence that the agreement was executed in 2010 and thus Rule 32 was not applicable is baseless, as the Rule was in effect in 2018 when the transfer occurred. Therefore, the law was applicable at the relevant time.

11. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

12. The primary issue to be determined is whether the transfer charges can be levied by the Builder/Appellant on Complainant/ Respondent No. 1? If so, to what extent in accordance with the terms of the Agreement and relevant law.

13. It is admitted position that the Complainant had entered into an Agreement with the previous allottee on 07.10.2018 for a residential unit in "The Valley" project developed by the OP. The Complainant paid all amounts due and submitted documents for the transfer of the unit. There is nothing on record to indicate any allegations or dispute in this regard. The Opposite Parties refused to transfer the unit, until the Complainant paid transfer charges of Rs. 4,13,236/-. The Complainant eventually paid a total amount of Rs. 47,86,313/- to the Opposite Parties and received possession of the unit on 26.04.2019 and thereafter raised his grievances in this regard that the OP charged transfer charges without justification, allegedly in violation of government regulations. While having demanded and obtained Rs.4,13,236/- towards transfer fees, the OP failed to place on record any Rule/ Regulation or law entitling them to demand and receive such high value transfer fee. No cogent justification, policy etc have been brought on record by the OP to establish that they can charge such amount.

14. Admittedly, the basic sale price of the unit in question is Rs.33,87,525/- and Rs.4,13,236/- was charged by the OP towards transfer charges, which is significantly high. At no stage the OP established as to why they need to charge such huge amount from the Complainant to merely issue the NOC, with no liability whatsoever but for unfairly profiteering. It is contended that the State of Haryana, vide notification dated 22.06.2018 directed the Societies to receive only Rs.10,000/- for such service. Thus, the State Govt has laid down some rules/regulations wrt to transfer of flats and allied services and stipulated Rs.10,000/- as maximum charges. In these circumstances, charging Rs.4,13,236/- by the OP towards transfer fees is grossly unjustified, irrespective of the fact that it is a private builder, especially, due to the fact that on such transfer, a property passes forthwith to the transferee and the builder has no right, title or interest over the property post registration of the property in the name of the owner. Clearly, the OP adopted unfair trade practice in charging such a huge amount towards transfer fee from the Complainant. In the absence of any reasonable justification or proportionate expenditure, liability or loss that has been brought out by the OP, in my considered view, the OP should not have charged more than Rs.10,000/- as transfer fees from the Complainant, which is reasonable and fair.

15. In view of the foregoing considerations, I find no reason to interfere with the well reasoned order dated 11.06.2021 passed by the learned State Commission, except for payment of multiple compensations, the Hon'ble Supreme Court in the case of *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, award of Rs.50,000/- as compensation for causing mental agony and harassment by the learned State Commission are untenable. The order of the learned State Commission dated 11.06.2021 is modified as follows:-

ORDER

- I. The Opposite Party/Builder is directed to refund the transfer charges, after deducting Rs.10,000/-, to the complainant along with simple interest @ 9 % per annum from the date of payment, within a period of one month from the date of this order. In the event of default, the simple interest applicable shall be @ 12% for such additional payment till its realization.**

II. The Opposite Party/Builder shall pay Rs.20,000/- to the Complainant as cost of litigation.

III. The order of learned State Commission directing the Opposite Party/Builder to pay Rs.50,000/- as compensation for causing mental agony and harassment etc is set aside.

16. With the above orders, the First Appeal No. 655/2021 stands disposed of. All the pending Applications, if any, also stand disposed of accordingly.

17. The statutory amount deposited by the Appellant, if any due, be refunded after due compliance of the order as per law.

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