

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 623 OF 2023

(Against the Order dated 23/09/2021 in Complaint No. 67/2018 of the State Commission
Tamil Nadu)

1. VGN PROJECTS ESTATES PVT. LTD.

REP. BY ITS MANAGING DIRECTOR Y-222, VGN
KIMBERLY TOWERS, 2ND AVENUE, ANNA NAGAR,
CHENNAI-600040

CHENNAI

TAMIL NADU

.....Appellant(s)

Versus

1. M.P. NAGENDRAN

S/O. LATE M.S. PADMANABHA CHETTY, NO.6/55,
MOGAPPAIR EAST, CHENNAI-600037

CHENNAI

TAMIL NADU

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

FOR THE APPELLANT : MR. AMOL CHITALE, ADVOCATE (THROUGH VC)
MS. SHWETA SINGH PARIHAR, ADVOCATE

FOR THE RESPONDENT : IN PERSON

Dated : 03 April 2024

ORDER

1. Heard Mr. Amol Chitale, Advocate, for the appellant and the respondent in person.
2. Above appeal has been filed against the order of Tamilnadu State Consumer Disputes Redressal Commission, Chennai, dated 23.09.2021, partly allowing Consumer Complaint No.67 of 2018, directing the appellant to refund Rs.2352609.58 to the complainant with interest @ 18% per annum from the date of complaint till the date of realization and also to pay Rs.200000/- as compensation for mental agony as well as Rs.10000/- as litigation cost.
3. The office has reported delay of 55 days in filing the appeal. The appellant has filed IA/7518/2023, for condoning the delay, in which, it has been stated that free certified copy of the impugned order was received on 06.03.2023. It took some time to retrieve the documents from the local advocate. The appellant examined the mater and decided to challenge the impugned order. This procedure caused delay in filing the appeal. If the delay is not condoned, the appellant will suffer irreparable loss. For the reasons stated in the application and in the interest of justice, delay in filing the appeal is condoned and the argument in the appeal was heard on merit.

4. M.P. Nagendran (respondent) filed CC/67/2018 with the State Commission for directing the appellant to (a) declare the Maintenance Agreement for VGBN Temple Town as null and void; (b) refund the amount of Rs.2352609.58 with interest @ 18% per annum from the date of the payment; (c) pay Rs.5/- lacs as compensation for mental agony suffered by the complainant; (d) pay Rs.7000/- per month (total Rs.164250/-) for loss of rental income from 02.3.2016 till the date of actual date of handing over of the possession; (e) pay Rs.5/- lacs as litigation cost; and (f) pass any such order as this Commission deems fit in the facts and circumstances of the case.

5. The complainant stated that he and his wife entered into two agreements dated 02.09.2013 with the opposite party for purchase and development and construction of apartment No.118-L in the project "CGN Temple Town" situated at Thriveerkadu Village, Poonamallee Taluk, Thiruvallpur District for consideration of Rs.2560184/-. On the same day, the complainants also entered into an agreement for maintenance with M/s Hemisphere Facility Management India Pvt. Ltd., a sister concern of the opposite party. All three agreements were signed by one and the same authorised signatory on the behalf of the opposite party and its sister concern. After depositing the earnest money and before signing the agreements, the complainant requested the opposite party to give some time to study the agreement but he was threatened by the opposite party to forfeit the advance of Rs.260000/- in case of non-signing of the agreements. Therefore, the complainant signed the agreements under threat. As per development agreement dated 02.09.2013, construction of the project was to be completed within 24 months with a grace period of 6 months from the date of the agreement i.e. upto 02.03.2016. The complainant noticed that the opposite party has not completed even half of the work in spite of expiry of four and half years. The opposite party has received 95% of the sale consideration by 12.08.2016. Remaining 5% amount was to be paid at the time of the possession but the opposite party is threatening the complainant to make payment of the balance amount. The opposite party has illegally demanded maintenance charges without completing the project and handing over the possession to the complainant. The complainant tried to visit the site but the opposite party never allowed him to do so. When the complainant tried to meet the officials at the site, the security personnel literally thrown out the complainant, which caused humiliation to him. The opposite party also illegally demanded Rs.130053.03. The complainant has paid a total amount of Rs.2352609.58. The complainant alleged that he cannot wait for indefinite period for getting the possession of the flat allotted to him. Therefore, he filed CC/67/2018 with the State Commission.

6. The appellant filed written version and contested the complaint stating that the flat is ready for occupation and the complainant was asked to make payment of the balance consideration of Rs.130053/- and obtain possession, but he failed to make the payment. Delay in handing over the possession was due to the market conditions, unexpected demand and non-availability of construction material etc., which was beyond the control of the opposite party. Possession of the flat was to be handed over within 24 months with a grace period of 6 months, subject to force majeure conditions as per clause 13 (B) of the development agreement. Thus, the opposite party is not liable to give any compensation to the complainant for delay in handing over of the possession. The opposite party has not stopped any customer from visiting the site to know the stage of the construction. The allegations made by the complainant are false and the complaint is liable to be dismissed.

7. State Commission, after hearing the parties, by the impugned order dated 23.09.2021, held that when the opposite party is unable to handover the possession, it cannot compel the complainant to take possession. The State Commission partly allowed the complaint with the direction to the opposite party as stated above.

8. Counsel for the appellant submitted that the offer of possession was made vide email dated 15.12.2017 and the complainant himself refused to take the possession nor he deposited the balance amount, therefore, there is no fault on the part of the appellant. It is pertinent to note that in the written statement, the opposite party (appellant herein) admitted that the partial completion certificate was obtained on 17.10.2018. The appellant has not produced any evidence to prove that before 17.10.2018 it has obtained any partial completion certificate. Therefore, offer of possession dated 15.12.2017 without obtaining the completion certificate cannot be said to be a valid offer. The appellant has also not produced any evidence whatsoever to prove that it had issued offer of possession after obtaining the completion certificate. Possession of the flat was to be handed over latest by March, 2016. The opposite party obtained partial certificate on 17.10.2018. Therefore, the State Commission was justified in directing the appellant to refund the amount with interest in view of the judgment of Supreme Court **Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711, Fortune Infrastructure Vs. Trevor D' Limba, (2018) 5 SCC 442, Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, (2019) 5 SCC 725, Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, 2019 (6) SCALE 462,** held that the buyer cannot be made to wait for indefinite period for possession. However, I find that the interest @ 18% per annum awarded by the State Commission is on higher side. State Commission has also awarded Rs.200000/- as compensation for mental agony although Supreme Court in **DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda, (2020) 16 SCC 318** held that compensation in multiple heads cannot be granted.

ORDER

In view of aforesaid discussions, the appeal is partly allowed. The appellant is directed to refund entire amount deposited by the respondent with interest @ 9% per annum from the date of respective deposit till the date of refund within a period of two months from the date of this judgment. The appellant shall also pay a consolidated cost of Rs.20000/- to the respondent.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER