

Dlf Home Developers Ltd. (Earlier Known ... vs Capital Greens Flat Buyers Association on 14 December, 2020

Bench: D.Y. Chandrachud, Indu Malhotra, Indira Banerjee

CA 3864-3889/2020

1

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 3864-3889 of 2020

DLF Home Developers Ltd. (Earlier
Known as DLF Universal Ltd) and Another

Versus

Capital Greens Flat Buyers Association
Etc. Etc.

ORDER

1 These appeals arise from a judgment of the National Consumer Disputes Redressal Commission dated 3 January 2020 in a batch of consumer complaints. The complaints were instituted inter alia by an association representing flat purchasers, called the Capital Greens Flat Buyers Association and by individual flat purchasers against the appellant. The gist of the grievance was that there was a substantial delay on the part of the developer in handing over possession of the apartments which were contracted to be sold. The complainants also specifically challenged the recovery of parking and club charges by the developer. A claim for compensation for delay in handing over possession of the flats was made. CA 3864-3889/2020 2 The appellants in their defence to the complaints inter alia contended that as a result of force majeure conditions, they were prevented from achieving timely completion of their contractual obligations. The circumstances which according to the appellants triggered the force majeure clause of the agreements with flat buyers were: (i) delay in the approval of building plans; and (ii) issuance of stop work orders as a result of fatal accidents during the course of construction. The NCDRC has, after a detailed evaluation of the facts, rejected the force majeure defence.

3 While allowing the complaints, the NCDRC has issued the following directions in paragraph 37 of its impugned decision:

“For the reasons stated hereinabove, the complaints are disposed of with the following directions:

(i) The OP is entitled to the additional demand on account of increase in the super area of the apartments.

(ii) The OP is not entitled to car parking charges.

(iii) The OP is not entitled to club charges.

(iv) The allottees shall be entitled to early payment rebate and timely payment rebate, wherever they have complied with the terms on which the said rebates were offered by the developer or wherever the benefit of the said rebates was extended to them, either by the developer itself or by this Commission.

(v) The OP shall pay compensation in the form of simple interest @ 7% per annum from the expected date for delivery of possession till the date on which the possession was actually offered to the allottees. In case of subsequent purchasers, the period expected for the delivery of possession will be computed from the date of purchase by them.

CA 3864-3889/2020 If the possession was delayed solely on account of the allottee having not executed the Indemnity-cum-Undertaking, prescribed by the OP, the compensation in the form of simple interest @ 7% per annum shall be payable with effect from the expected date for delivery of possession till the date on which the consumer complaint by/on behalf of such an allottee was instituted. The compensation shall be paid within a period of three months from today.

(vi) The car parking charges and club charges wherever already paid to the developer shall be refunded to the concerned allottee within three months from today, failing which the said charges shall carry interest @ 9% per annum from the date of this order, till the date of refund.

(vii) The conveyance deed in favour of the allottees shall be executed within three months from today, subject to payment of outstanding dues, if any, payable by the allottees to the developer, in terms of this order and the requisite stamp duty and registration charges.

(viii) In CC/351/2015 and CC/2047/2016, the developer shall pay Rs.50,000/- as the cost of litigation in each complaint whereas in the other consumer complaints, the developer shall pay Rs.46,000/- as the cost of litigation in each.” 4 Mr Pinaki Misra, learned senior counsel appearing on behalf of the appellants submits that in view of the recent judgment of this Court in Wing Commander Arifur Rahman Khan and Aleya Sultana and Others vs DLF Southern Homes Pvt Ltd and Others [Civil Appeal No 6239/2019 decided on 24 August 2020], the direction for the refund of

parking and club charges together with interest would have to be set aside. This decision was in the context of a consumer dispute in relation to another project of the same developer, in Bengaluru. The present dispute relates to a construction CA 3864-3889/2020 project in Delhi. Apart from this, it has been urged that force majeure conditions at the site occasioned the delay. Laying stress on the conduct of the developer in the present case, and to establish its bona fides, it was submitted that (i) exit offers were given to the flat buyers on two occasions when the developer became aware of the fact that there was a delay beyond the contractual period of thirty-six months and the purchasers were offered refunds of the consideration together with interest at the rate of 9% per annum; (ii) 45% of the flat buyers in the project have sold away their apartments; (iii) the flat buyers have the benefit of an appreciation in the capital value of the apartments purchased; and (iv) the developer has extended the benefit of other contractual terms, such as timely payment and goodwill rebates to the flat purchasers. Moreover, the flat buyer agreements provide compensation of Rs 10 per square foot per month towards compensation. Hence, it was urged that apart from the force majeure defence, the award of compensation at the rate of 7% on account of the delay of the developer is erroneous. It has been submitted that the NCDRC has not distinguished between the facts of individual cases. 5 Responding to the above submissions, Mr Shyam Divan, learned senior counsel appearing on behalf of the respondent submitted that the NCDRC has carefully evaluated the grounds which were set up in support of the force majeure defence. Hence, there is no need for this Court to interfere with a finding which is borne out from the evidentiary record. On the aspect of compensation for delay, it has been urged that the tribunal took due notice of the fact that the developer had offered exit options to the flat purchasers, and that it was justified in coming to the conclusion that the offer of a refund CA 3864-3889/2020 of consideration together with interest did not sub-serve the needs of particularly those flat buyers who entered into the project not as investors, but as genuine flat buyers. Hence, it has been submitted that the direction against the appellant for the payment of compensation is justified since there is admittedly a substantial delay in the completion of the project. Mr Divan urged that an omnibus contention that several flat buyers in the project have sold their apartments should not prevent the complainants from receiving the benefit of the compensation which has been awarded by the NCDRC, particularly in a situation where the contractual rate of Rs 10 per square foot provides inadequate recompense. On the aspect of parking and club charges, Mr Divan has fairly submitted that the Court may take an appropriate view of the matter having regard to its decision dated 24 August 2020 in Wing Commander Arifur Rahman Khan (supra).

6 At the outset, we must deal with the force majeure defence. The NCDRC has carefully evaluated the basis on which the defence was set up and has come to the conclusion that there is no cogent evidence in regard to the nature of the delay and the reasons for the delay in the approval of the building plans. Quite apart from this finding of fact, it is evident that a delay in the approval of building plans is a normal incident of a construction project. A developer in the position of the appellant would be conscious of these delays and cannot set this up as a defence to a claim for compensation where a delay has been occasioned beyond the contractually agreed period for handing over possession. As regards the stop work orders, there is a finding of fact that these were occasioned by a succession of fatal accidents which took place at the site and as a result of the failure of the appellant to follow safety CA 3864-3889/2020 instructions. This is a pure finding of fact. There is no error of law or fact. Hence, we find no substance in the force majeure defence. 7 On the

compensation for delay in handing over of possession, this Court is guided by the principles which have been formulated in the judgment in Pioneer Urban Land and Infrastructure Ltd vs. Govindan Raghvan (2019) 5 SCC 725, delivered by one of us (Hon'ble Indu Malhotra, J). The judgment in Pioneer Urban Land and Infrastructure Ltd (supra) was cited in Wing Commander Arifur Rahman Khan (supra) rendered on 24 August 2020. The fact that the developer offered an exit option with interest at 9% would not disentitle the flat purchasers from claiming compensation. For a genuine flat buyer, who has booked an apartment in the project not as an investor or financier, but for the purpose of purchasing a family home, a mere offer of refund would not detract from the entitlement to claim compensation. A genuine flat buyer wants a roof over the head. The developer cannot assert that a buyer who continues to remain committed to the agreement for purchase of the flat must forsake recourse to a claim for compensation occasioned by the delay of the developer. Mere refund of consideration together with interest would not provide a just recompense to a genuine flat buyer, who desires possession and remains committed to the project. It was for each buyer to either accept the offer of the developer or to continue with the agreement for purchase of the flat. Similar is the position in regard to the submission on the appreciation of the value of the flats. Undoubtedly, this is one factor which has to be borne in mind in considering whether and, if so to what extent, compensation for delay should be awarded. Having regard to the principles which have been enunciated in the CA 3864-3889/2020 earlier two decisions which have been noted above, we are unable subscribe to the submission that the flat buyers are not entitled to any payment whatsoever on account of delayed compensation.

8 Mr Misra submitted that in the present case, the agreement provided for compensation at the rate of Rs 10 per sq ft as distinct from the agreement in the decision of this court in Wing Commander Arifur Rahman Khan where the contractual compensation was at the rate of Rs 5 per sq ft per month. Hence, it was submitted that no compensation over and above the contractual rate should be allowed. Alternately, it was urged that in the present case if the court is inclined to award compensation, it should be brought down to a 6% per annum (or even less) which was awarded in the above case.

9 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 CA 3864-3889/2020 due and payable in terms of the judgment. (In the earlier decision noted above, compensation at 6% was ordered to be paid in addition to the contractual rate since the amenities agreed to be provided by the developer had not been set up).

10 Insofar as the parking and club charges are concerned, in view of the decision of the court in Wing Commander Arifur Rahman Khan (supra), the direction of the NCDRC in that regard shall

stand set aside. 11 Accordingly, we allow the appeals in part to the following extent:

(i) The compensation on account of delay in handing over possession of the flats to the flat buyers is reduced from 7% to 6%; and

(ii) The direction for the refund of parking charges and club charges and interest on these two components shall stand set aside.

12 We clarify that the directions of the NCDRC are upheld, save and except, for the above two modifications in terms of clauses (i) and (ii) above. The payment at the rate of 6% per annum shall be made after making due adjustments for the compensation for delay at the contractual rate (where it has been paid in terms of the agreement to the flat purchasers). The order shall be complied with within a period of two months from today. 13 The Civil Appeals are partly allowed in the above terms. 14 Pending applications, if any, stand disposed of. CA 3864-3889/2020 IA No 128417/2020 in Civil Appeal Nos 3864-3889/2020 1 The interlocutory application recites that settlements have been entered into with two sets of flat buyers. In view of the settlements, two sets of flat buyers, namely, Sharad Mittal (CC/410/2015) and Chetali Goyal and Deepak Goyal (CC/1751/2016) shall be treated as proforma respondents. They shall be governed by their own settlements.

.....J. [Dr Dhananjaya Y Chandrachud]J.
[Indu Malhotra]J. [Indira Banerjee] New Delhi;

December 14, 2020

CKB

CA 3864-3889/2020

ITEM NO.2

Court 6 (Video Conferencing)

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos.3864-3889/2020

DLF HOME DEVELOPERS LTD. (EARLIER KNOWN
AS DLF UNIVERSAL LTD.) & ANR.

Appellant(s)

VERSUS

CAPITAL GREENS FLAT BUYERS ASSOCIATION

Respondent(s)

(With appln.(s) for IA No. 128417/2020 – APPROPRIATE and ORDERS/DIRECTIONS, IA No. 128427/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 128423/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 124245/2020 - PERMISSION TO FILE LENGTHY LIST OF DATES and IA No. 124244/2020 -

STAY APPLICATION) Date : 14-12-2020 These matters were called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MS. JUSTICE INDU MALHOTRA HON'BLE MS. JUSTICE INDIRA BANERJEE For Appellant(s) Mr. Pinaki Misra, Sr. Adv.

Ms. Ruby Singh Ahuja, Adv.

Ms. Seema Sundd, Adv.

Mr. Pravin Bahadur, Adv.

Mr. Sanjeet Ranjan, Adv.

Ms. Kritika Sachdeva, Adv.

Mr. Aditya Singh, Adv.

Mr. Ritu Raj, Adv.

Mr. Alabhya Dhamija, Adv.

M/s. Karanjawala & Co.

| | |
|-------------------|---------------------------|
| For Respondent(s) | Mr. Shyam Divan, Sr. Adv. |
| | Mr. Ajay Kohli, Adv. |
| | Mr. S.S. Sobti, Adv. |
| | Ms. Aastha Garg, Adv. |

CA 3864-3889/2020

Ms. Priyanka Ghorawat, Adv.
Ms. Monisha Handa, Adv.
Mr. Mohit D. Ram, AOR

Mr. Tapan Bijoy Deb Choudhury, AOR

Mr. Siddharth, AOR

Mr. Arjun Syal, Adv.
Mr. Apoorve Karol, Adv.
Mr. Mithu Jain, AOR
Mr. Arnav Vidyarthi, Adv.

UPON hearing the counsel the Court made the following O R D E R 1 Leave granted.

2 The Civil Appeals are partly allowed in terms of the signed order.

3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)

A.R. -cum-P.S.

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)

Court Master