

M/S Nexgen Infracon Pvt. Ltd. vs Manish Kumar Sinha on 11 January, 2021

Bench: Uday Umesh Lalit, Hemant Gupta, S. Ravindra Bhat

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 62 OF 2021
[@ Diary No(s). 26281/2020]

M/S NEXGEN INFRACON PVT. LTD.

...APPELLANT(s)

VERSUS

MANISH KUMAR SINHA & ANR.

...RESPONDENT(s)

WITH

CIVIL APPEAL NO.64 OF 2021
[@Diary No(s). 26383/2020]

AND

CIVIL APPEAL NO.65 OF 2021
[@Diary No(s). 26385/2020]

O R D E R

CIVIL APPEAL NO. 62 OF 2021 [@ Diary No(s). 26281/2020] Delay condoned.

This appeal challenges the order dated 23.12.2019 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as ‘the Commission’) in Consumer Complaint No. 1606 of 2018.

The respondents had booked an apartment in the project named, ‘Mahagun Mezzaria’ developed and constructed by the appellant and had paid requisite instalments. Submitting that the project was not completed by the appellant within the stipulated period, the aforementioned complaint case was filed by the respondents seeking following reliefs:

“(i) to handover possession of the booked Flat to the Complainants, completely in conformity with the allotment Letter / Brochure / Agreed Drawings / Specifications, for the consideration-mentioned therein with all promised additional facilities and to execute the requisite documents within eight months in favour of the Complainants

(ii) to pay interest @ 12% p.a. on the amount deposited by the Complainants from the promised date of delivery given in the Allotment Letter till the date of actual possession with all necessary documents and common areas and facilities promised initially;

(iii) to pay Rs.6,000/- per day to the complainants in case of failure to give possession within the time as directed by this Hon’ble Commission;

(iv) to pay compensation to the Complainants if, at the time of giving possession, the Flat and the Project are not found to be in conformity with the Allotment Letter/Brochure/Agreed Drawing/Specification;

(v) to refund the price charged for wrongful and illegal increase in area from 3200 sq.ft. To 3430 sq. ft. of the Flat compared to other buyers of similar flats;

(vi) to refund the wrongfully charged taxes including GST with interest @12% from the date of receipt of such wrongfully charged tax till refund;

(vii) to compensate the Complainants for increase in Stamp Duty from 5% to 7%;

(viii) to increase the maintenance charges maximum by the inflation rate and not by 15% every year;

(ix) to pay compensation of Rs.5,00,000/- towards mental agony, etc. and costs of litigation of Rs.1,00,000/-” The matter was gone into by the Commission which considered the material on record and the rival submissions.

Allowing the complaint case, directions were passed by the Commission, asking the appellant to:

“(I) Refund the entire amount deposited by the Complainants along with compensation @12% p.a. from the respective dates of deposits till the date of realization, within a period of one month from today failing which the Builder/Opposite Party shall be liable to pay compensation @ 14% p.a.. The compensation @ 12% p.a. has been directed to be paid for the reason that the Complainants have taken home loans from the Banks/Financial Institutions for making payment to the Builder/Opposite Party for purchasing the Flats/Apartments in question.” Challenging the aforesaid judgment, it was submitted on behalf of the appellant that (a) the rate of interest awarded by the Commission was at a higher scale; that (b) occupancy certificate in respect of the tower where the apartment was

booked by the respondents was expected to be granted in the month of March, 2021 and; that (c) the appellant would hand over the possession of the apartment booked by the respondents soon thereafter. Reliance was placed on the decision of this Court passed in C.A. No. 2504/2020 tiled as “Prateek Infra Projects India Pvt. Ltd. vs. Nidhi Mital & Anr.” In the case of Prateek Infra Projects, an order was passed by the Commission directing refund along with 12% interest per annum (liable to increase @14% if payment was not made within 45 days). This Court, however, scaled down the rate of interest to 9% per annum. Another feature of the order was that the direction issued by the Commission restraining the builder from deducting tax at source was also vacated.

On the last occasion, this appeal was adjourned to see whether the respondents would accept possession of the apartment booked by them as suggested by the appellant.

Mr. Piyush Singh, learned counsel appearing for the respondents, on instructions, now submits that the respondents are not willing to take possession of the apartment as suggested and that they will be satisfied in taking refund of the amount deposited by them along with interest at such rate as this Court may deem appropriate to grant.

Having gone through the entirety of the matter, we see no reason to take a different view in respect of the entitlement of the respondents to seek refund of the amount deposited by them. We, therefore, hold that the respondents were justified in seeking refund.

This takes us to the next question whether the rate of interest awarded by the Commission be maintained or whether such rate is required to be scaled down.

In keeping with the directions issued by this Court in the case of Prateek Infra Projects, we scale down the interest from 12% & 14% as ordered by the Commission to 9% per annum. We also modify the direction restraining the appellant from deducting the tax at source.

It is, therefore, directed that the amounts deposited by the respondents in respect of the apartment in question shall be refunded to them along with interest @ 9% per annum from the dates of respective deposits. The other direction issued by the Commission as regards cost of litigation is maintained.

Mr. Mitra, learned counsel for the appellant prays that time of one month be given to the appellant to refund the amounts in terms of the above direction.

Accepting his submission, we grant to the appellant time of one month from today to refund the aforesaid sums in favour of the respondents.

With the aforesaid direction(s), this appeal is disposed of. No costs.

CIVIL APPEAL NO.64 OF 2021 [@ Diary No(s). 26383/2020] & CIVIL APPEAL NO. 65 OF 2021 [@Diary No(s). 26385/2020] These appeals challenge the final order dated 23.12.2019 passed by the Commission in Consumer Complaint Nos. 1648 & 1641 of 2018 respectively. The factual aspects in the present appeals are identical to the above said appeal [@ Diary No(s). 26281/2020] except that in these matters the towers where the apartments were booked by the concerned respondents have already received occupancy certificates. Rest of the issues and the submissions on behalf of the parties are identical and, therefore, they need not be set out in detail.

For the reasons recorded in the appeal [@ Diary No(s). 26281/2020], these appeals also stand disposed of on similar terms. No costs.

.....J. [UDAY UMESH LALIT]
.....J. [HEMANT GUPTA]
.....J. [S. RAVINDRA BHAT] New Delhi,
January 11, 2021.

ITEM NO.13+15+16 Court 4 (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 Diary No(s). 26281/2020 (Arising out of impugned final judgment and order dated 23-12-2019 in CC No. 1606/2018 passed by the National Consumers Disputes Redressal Commission, New Delhi) M/S NEXGEN INFRACON PVT. LTD. Petitioner(s) VERSUS MANISH KUMAR SINHA & ANR. Respondent(s) (FOR ADMISSION and IA No.129252/2020-STAY APPLICATION and IA No.129251/2020-CONDONATION OF DELAY IN FILING APPEAL and IA No.129254/2020-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES) ITEM NO.15 CIVIL APPEAL Diary No(s). 26383/2020 (IA No.130533/2020-CONDONATION OF DELAY IN FILING and IA No.130537/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.130534/2020-STAY APPLICATION and IA No.130535/2020-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES) ITEM NO.16 CIVIL APPEAL Diary No(s). 26385/2020 (IA No.130421/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.130420/2020-STAY APPLICATION and IA No.130425/2020-CONDONATION OF DELAY IN FILING APPEAL and IA No.130419/2020-PERMISSION TO FILE ADDITIONAL

DOCUMENTS/FACTS/ANNEXURES) Date : 11-01-2021 These petitions were called on for hearing today. CORAM : HON'BLE MR. JUSTICE UDAY UMESH LALIT HON'BLE MR. JUSTICE HEMANT GUPTA HON'BLE MR. JUSTICE S. RAVINDRA BHAT For Petitioner(s) Mr. Gaurav Mitra, Adv.

Mr. Deepak Goel, AOR For Respondent(s) Mr. Piyush Singh, Adv.

Mr. Aditya Parolia, Adv.

Mr. Nithin Chandran, Adv.

Mr. Akshay Srivastava, Adv.

Mr. Aditi Sinha, Adv.

Mr. Rajesh Kumar, Adv.

Mr. Mohit Kumar Bansal, Adv.

Mr. Gaurav Goel, AOR UPON hearing the counsel the Court made the following O R D E R Delay condoned.

The appeals stand disposed of in terms of the signed order. Pending application(s), if any, stand disposed of accordingly.

(ASHWANI KUMAR)
ASTT. REGISTRAR-cum-PS

(PRADEEP KUMAR)
BRANCH OFFICER

(Signed order is placed on the file)