

MARVEL OMEGA BUILDERS PVT. LTD. AND ANR. A

v.

SHRIHARI GOKHALE AND ANR.

(Civil Appeal Nos.3207-3208 of 2019)

JULY 30, 2019 B

[UDAY UMESH LALIT AND VINEET SARAN, JJ.]

Consumer Protection Act, 1986 – s.23 – Respondents booked a residential villa viz., Emerald-07 in a project named 'Marvel Selva Ridge Estate' to be developed by the Appellants – Agreement dated. 22.03.2013 entered between the parties – Total consideration for the villa was to be Rs.8.31 crores – Respondents paid Rs.8.14 crores by November, 2013 – Though the appellants had agreed to deliver possession on or before 31.12.2014, neither the villa was complete by the due date nor was any refund made by the appellants – Respondents filed complaint before the Commission – Complaint allowed by the Commission inter alia directing refund of the entire principal amount of Rs.8.14 crores to the Respondents with compensation in the form of simple interest @ 10% p.a.– Appellants filed application seeking extension of time to comply with the judgment – Rejected – On appeal, held: As against the total consideration of Rs.8.31 crores, the Respondents had paid Rs.8.14 crores by November, 2013 – Though the Appellants had undertaken to complete the villa by 31.12.2014, they failed to discharge the obligation – As late as on 28.05.2014, the Revised Construction Schedule had shown the date of delivery of possession to be October, 2014 – Thus, there was total failure on part of the Appellants and they were deficient in rendering service in terms of the obligations undertaken – Even assuming that the villa is now ready for occupation (as asserted by the Appellants), the delay of almost five years is a crucial factor and the bargain cannot now be imposed upon the Respondents – Respondents justified in seeking refund of the amounts deposited with reasonable interest – Findings rendered by the Commission neither incorrect nor unreasonable on any count – Villa in question shall not be sold nor any third party rights can be created by the Appellants in respect of said villa till the decree in favour of the Respondents is completely satisfied – So long as the

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- A *decree remains to be satisfied, said villa shall be under attachment, subject to such orders as may be required to be passed in connection with the execution of the order passed by the Commission.*

Dismissing the appeals, the Court

- HELD:** 1.1 As against the total consideration of Rs.8.31 crores, the Respondents had paid Rs.8.14 crores by November, 2013. Though the Appellants had undertaken to complete the villa by 31.12.2014, they failed to discharge the obligation. As late as on 28.05.2014, the Revised Construction Schedule had shown the date of delivery of possession to be October, 2014.
- C There was, thus, total failure on part of the Appellants and they were deficient in rendering service in terms of the obligations that they had undertaken. Even assuming that the villa is now ready for occupation (as asserted by the Appellants), the delay of almost five years is a crucial factor and the bargain cannot now be imposed upon the Respondents. The Respondents were, therefore, justified in seeking refund of the amounts that they had deposited with reasonable interest on said deposited amount. The findings rendered by the Commission cannot therefore be said to be incorrect or unreasonable on any count. [Para 10] [379-D-F]
- E 1.2 The residential villa admeasuring 648.46 square metres bearing No. Emerald-07 in the complex known as 'Marvel Selva Ridge Estate' namely the villa in question shall not be sold nor any third party rights can be created by the Appellants in respect of said villa till the decree in favour of the Respondents is completely satisfied and so long as the decree remains to be satisfied, said villa shall be under attachment and would be subject to such orders as may be required to be passed in connection with the execution of the order dated 31.05.2018 passed by the Commission in Consumer Case No.2010 of 2016. [Para 11] [379-G-H; 380-A]
- G CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3207-3208 of 2019
- From the Judgment and Order dated 05.09.2018 of the National Consumer Dispute Redressal Commission, New Delhi in Miscellaneous Application No. 578 of 2018
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R. P. Bhatt, Sr. Adv., Javed Shaikh, R. C. Sharma, Rahul Kr. A Singh, R. P. Chhibber, Ms. Bharti Tyagi, Advs. for the Appellants.

Saurabh Jain, P. K. Jain, Advs. for the Respondents.

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

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1. These Appeals under Section 23 of the Consumer Protection Act, 1986 are directed against (i) the judgment and final order dated 31.05.2018 passed in Consumer Case No.2010 of 2016 and (ii) the order dated 05.09.2018 passed in Miscellaneous Application No.578 of 2018 by the Commission¹.

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2. The Respondents had booked a residential villa viz: Emerald-07 in a project named 'Marvel Selva Ridge Estate' to be developed by the Appellants. The total consideration for the villa with three covered car parking spaces and open terrace was to be Rs.8,31,04,425/-. An agreement was entered into between the parties on 22.03.2013 incorporating mutual obligations and paras 5(a) and (b) thereof were as under:-

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"5. The Promoter declares that:

a) The said Unit shall be constructed in accordance with the plans and specifications approved and sanctioned by the Municipal Corporation of Pune.

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b) Possession of the said Unit agreed to be purchased by the Purchaser/s shall be handed over to the Purchaser/s by the Promoter on or before 31.12.2014 provided that the Purchaser/s shall have made payment of the instalments towards the purchase price of the said Unit and other charges/ deposit/s as mentioned in Clauses 20 to 23 hereinbelow as agreed upon without delay at the times stipulated for payment therefor."

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3. It is a matter of record that during the period July, 2012 to November, 2013 the Respondents had deposited Rs.8.14 crores with the Appellants. Though the Appellants had agreed to deliver possession on or before 31.12.2014, neither the villa was complete by the due date

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¹ National Consumer Disputes Redressal Commission, New Delhi

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A nor was any refund made by the Appellants. It was the case of the Appellants that sometime in April, 2014 the Respondents had suggested extra work amounting to Rs.2,67,000/- and that Stop Work Notices were issued by the Pune Municipal Corporation on 23.07.2014 and 15.11.2014.

4. Since the possession of the villa was not delivered, the B Respondents filed Complaint Case No.2010 of 2016 before the Commission praying *inter alia* for the following reliefs:-

C “a) Grant a sum of Rs.13,24,07,052/-(towards principal amount of Rs.8.14 crores paid towards purchase of villa along with compensation in the form of interest of Rs.5.1 crores) at the rate of 18% per annum calculated upto 31st October, 2016, along with *pendente lite* and future interest at the same rate or such higher rate of interest which this Hon’ble Commission may deem fit in the interest of justice, from the date of making payments till the date of actual realisation of the payment.

D b) Grant cost of Litigation to the complainants.”

E 5. The matter was contested by the Appellants. The Commission observed that the additional work requested by the Respondents was of such nature that at best three months additional period could be granted for executing such extra work. It was observed that even till the filing of the Complaint, the possession of the villa was not offered to the Respondents and that if there were Stop Work Notices issued by the Pune Municipal Corporation, the Respondents could not in any way be held responsible for the same. While allowing the Complaint by its judgment and final order dated 31.05.2018, the Commission directed:-

F “ (i) The opposite party shall refund the entire principal amount of Rs.8.14 crores to the complainants, along with compensation in the form of simple interest @ 10% per annum from the date of each payment till the date of refund.

G (ii) The opposite party shall pay a sum of Rs.25,000/- as cost of litigation to the complainants.”

H 6. The Appellants thereafter filed Miscellaneous Application No.578 of 2018 seeking extension of time to comply with the aforementioned judgment and order passed by the Commission. Said Miscellaneous Application was rejected by the Commission vide its order dated 05.09.2018.

7. The aforesaid judgment and orders of the Commission are presently under challenge in these appeals, which were preferred with 93 days delay. When the matters were taken up on 03.12.2018, the learned counsel appearing for the Appellants submitted that the villa was ready in all respects and the Completion Certificate would be obtained within 21 days.

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8. In their affidavit in reply, with the help of photographs and other material, it was asserted by the Respondents that the villa was still incomplete. It was stated that on 28.05.2014 the Revised Construction Schedule was sent by the Appellants through e-mail which had promised delivery of possession by October, 2014 and even after five years from said commitment the villa was still incomplete.

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9. In this factual background, the basic issues that arise are whether the view taken by the Commission was correct and whether it requires any interference by this Court?

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10. The facts on record clearly indicate that as against the total consideration of Rs.8.31 crores, the Respondents had paid Rs.8.14 crores by November, 2013. Though the Appellants had undertaken to complete the villa by 31.12.2014, they failed to discharge the obligation. As late as on 28.05.2014, the Revised Construction Schedule had shown the date of delivery of possession to be October, 2014. There was, thus, total failure on part of the Appellants and they were deficient in rendering service in terms of the obligations that they had undertaken.

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Even assuming that the villa is now ready for occupation (as asserted by the Appellants), the delay of almost five years is a crucial factor and the bargain cannot now be imposed upon the Respondents. The Respondents were, therefore, justified in seeking refund of the amounts that they had deposited with reasonable interest on said deposited amount. The findings rendered by the Commission cannot therefore be said to be incorrect or unreasonable on any count.

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11. While parting, we must direct that the residential villa admeasuring 648.46 square metres bearing No. Emerald-07 in the complex known as 'Marvel Selva Ridge Estate' namely the villa in question shall not be sold nor any third party rights can be created by the Appellants in respect of said villa till the decree in favour of the Respondents is completely satisfied and so long as the decree remains

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- A to be satisfied, said villa shall be under attachment and would be subject to such orders as may be required to be passed in connection with the execution of the order dated 31.05.2018 passed by the Commission in Consumer Case No.2010 of 2016.

12. With the aforesaid observations the appeals stand dismissed.

- B No order as to costs.

Divya Pandey

Appeals dismissed.