

A KOLKATA WEST INTERNATIONAL CITY PVT LTD

v.

DEVASIS RUDRA

(Civil Appeal No. 3182 of 2019)

B MARCH 25, 2019

**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Consumer Protection Act, 1986:

- Housing – Failure to deliver possession – Buyer having claimed compensation from the developer, entitled to seek refund amount or estopped from doing so – On facts, in terms of the buyer's agreement, developer was to handover possession to the buyer by the stipulated date with a grace period of further six months – However, failure of developer to deliver the possession of houses –*
- D Complaint by the buyer seeking possession of houses and in alternate for refund of the amount paid to developer with 12% interest p.a. and compensation of Rs.20 lakhs – Order by the State Commission directing the developer to refund the amount with 12% interest p.a. and compensation of Rs 5 lakhs – However, compensation amount reduced to Rs. 2 lakhs by the National*
- E Commission – On appeal, held: In the buyer's agreement, for default on the part of the buyer, the buyer liable to pay interest at the rate of 18% p.a., however, for default on the part of the developer, the developer liable to pay interest only at the savings bank rate prescribed by the SBI – Agreement being one sided, would not preclude the right and remedy available to the buyer to claim reasonable interest or compensation – Buyer can be expected to wait for possession for a reasonable period – It would be unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession – Completion certificate was received nearly seven years after the extended date for the handing over of possession which was not at all reasonable – Thus, the orders passed by the forum below for refund justified – Rate of interest payable by the developer to the buyer modified to 9% p.a. instead of 12% p.a. – Interest.*

H

Disposing of the appeal, the Court

A

HELD: 1.1 Under the Agreement clause, any delay beyond 30 June 2009 would result in the developer being required to pay interest at the prevailing savings bank interest of the State Bank of India. Interestingly, where the buyer is in default, the agreement stipulates that interest at the rate of 18 per cent from the date of default until the date of payment would be charged for a period of two months, failing which the allotment would be cancelled by deducting 5% of the entire value of the property. The agreement was evidently one sided. The clause will not preclude the right and remedy available to the buyer to claim reasonable interest or, as the case may be, compensation. [Para 10][1074-A-D]

B

C

1.2 In terms of the Buyer's agreement, the date for handing over possession was 31 December 2008, with a grace period of six months. Even in 2011, when the buyer filed a consumer complaint, he was ready and willing to accept possession. It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund. [Para 11][1074-E-G]

D

E

F

1.3 In the circumstances, the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified. Having regard to all the facts and circumstances of the case, the order of the NCDRC is modified by directing that the appellant would pay interest at the rate of 9% per annum to the respondent instead and in place of 12% as directed by the NCDRC. [Para 12, 13][1075-A]

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3182 of 2019.

From the Judgment and Order dated 21.11.2016 of the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No. 958 of 2016.

H

A Ravinder Narain, Siddharth Banthia, Rajat Gava, Rajan Narain, Advs. for the Appellant.

Supriya Bose, Sr. Adv., Debajyoti Deb, Subhasish Bhowmick, Ms. Goldy Goyel, Advs. for the Respondent.

B The Judgment of the Court was delivered by
DR. DHANANJAYA Y CHANDRACHUD, J.

C 1. Leave granted.
2. This appeal arises from the judgment dated 21 November 2016 of the National Consumer Disputes Redressal Commission¹.

D 3. A Buyer's Agreement dated 2 July 2007 was entered into between the appellant and the respondent.

The respondent paid an amount of Rs 39,29,280 in 2006 in terms of a letter of allotment dated 20 September 2006. The agreement between the parties envisaged that the appellant would hand over possession of a

E Row House to the respondent by 31 December 2008 with a grace period of a further six months ending on 30 June 2009.

F 4. The respondent filed a consumer complaint before the West Bengal State Consumer Disputes Redressal Commission² in 2011 praying for possession of the Row House and in the alternative for the refund of

G the amount paid to the developer together with interest at 12% per annum. Compensation of Rs 20 lakhs was also claimed.

H 5. The SCDRC allowed the complaint by directing the appellant to refund the moneys paid by the respondent together with interest at 12% per annum and compensation of Rs 5 lakhs. The NCDRC has

F modified this order by reducing the compensation from Rs 5 lakhs to Rs 2 lakhs.

I 6. Mr. Ravinder Narain, learned counsel appearing on behalf of the appellant submits that the primary relief which was sought in the consumer complaint was for delivery of possession. According to G the appellant, the completion certificate was received on 29 March 2016, which was intimated to the respondent on 11 April 2016. Moreover, before the SCDRC, in its written submissions, the appellant had offered possession of the Row House to the respondent. It has also been stated that in a complaint which was filed by an association representing

H ¹"NCDRC"
²"SCDRC"

the allottees of 161 Row houses, a settlement was arrived on 11 September 2018 before the NCDRC specifying the date on which possession would be handed over together with interest at 6% per annum instead of 4% as mentioned in the Buyers' Agreement. It was urged that the developer having made a substantial investment in terms of the agreement, a direction for refund is not warranted. It has also been urged that the SCDRC in the course of its decision erroneously observed that the developer was unable to fulfill its obligation to complete the construction within the agreed period and it was not certain when the Row house would be handed over. It was urged that this observation by the SCDRC is contrary to the record since before it, a specific offer of possession was made.

7. It has been urged on behalf of the respondent by Mr. Supriya Bose, learned senior counsel that a consumer complaint was filed in the year 2011. At that stage, the respondent was bonafide ready and willing to accept possession. However, nearly seven years have elapsed after the extended date for the delivery of possession which expired on 30 June 2009. In spite of this, no offer of possession was forthcoming. Learned senior counsel submitted that the letter dated 22 March 2016 of the developer was conditional and despite the subsequent letter dated 11 April 2016, no formal offer of possession was ever made by the appellant. Moreover, it was urged that the interest awarded by the NCDRC at the rate of 12% is just having regard to the economic loss and hardship suffered by the respondent.

8. While considering the rival submissions, we must at the outset advert to the following clause which was contained in the Buyer's Agreement:

"Unless prevented by circumstances beyond the control of the company and subject to Force Majeure, KWIC shall ensure to complete the said unit in all respect within 31st December 2008 only for the Cluster D. Further there will be a grace period of 6 months (up to 30th June, 2009) from the date of completion. In case the possession is not transferred after expiry of the said grace period, KWIC will be liable to pay prevailing saving Bank interest of the State Bank of India for each month of delay on the money given by the allottee as compensation but no compensation will be paid on account of force majeure reasons."

A

B

C

D

E

F

G

H

- A 9. It is the above clause which is pressed in aid by the developer. Under the aforesaid clause, any delay beyond 30 June 2009 would result in the developer being required to pay interest at the prevailing savings bank interest of the State Bank of India. Interestingly, where the buyer is in default, the agreement stipulates that interest at the rate of 18 per cent from the date of default until the date of payment would be charged
- B for a period of two months, failing which the allotment would be cancelled by deducting 5% of the entire value of the property. The agreement was evidently one sided. For a default on the part of the buyer, interest at the rate of 18% was liable to be charged. However, a default on the part of the developer in handing over possession would
- C make him liable to pay interest only at the savings bank rate prescribed by the SBI. There is merit in the submission which has been urged by the buyer that the agreement was one sided. The clause which has been extracted in the earlier part of this order will not preclude the right and remedy available to the buyer to claim reasonable interest or, as the case may be, compensation.
- D 10. The essential aspect of the case which is required to be analysed is whether the buyer was entitled to seek a refund or was estopped from doing so, having claimed compensation as the primary relief in the consumer complaint. The Buyer's Agreement is dated 2 July 2007. In terms of the agreement, the date for handing over possession was 31 December 2008, with a grace period of six months. Even in 2011, when the buyer filed a consumer complaint, he was ready and willing to accept possession. It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date
- E F of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to nonsuit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund.

G 11. In the circumstances, we are of the view that the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified.

H

12. Having regard to all the facts and circumstances of the case, we modify the order of the NCDRC by directing that the appellant shall pay interest at the rate of 9% per annum to the respondent instead and in place of 12% as directed by the NCDRC. Save and except for the above modification, we affirm the directions of the NCDRC. A

13. The amount outstanding in terms of the directions of this Court shall be released out of the moneys which have been deposited by the appellant. The balance, if any, that remains shall be refunded to the appellant. B

14. The appeal is, accordingly, disposed of. There shall be no order as to costs. C

15. Pending application(s), if any, shall stand disposed of.

Nidhi Jain

Appeal disposed of.