

R V PRASANNAKUMAAR & ORS.

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v.

MANTRI CASTLES PVT. LTD & ANR.

(Civil Appeal No. 1232 of 2019)

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FEBRUARY 11, 2019

[DR. DHANANJAYA Y CHANDRACHUD AND

HEMANT GUPTA, JJ.]

Consumer Protection Act, 1986: Interest – Award of – Justification – On facts, breach of flat purchase agreement – Outer date for handing over possession was 31.01.2014, however the buyers received occupation certificate on 10.02.2016 – Consumer complaint – Award of compensation by the National Consumer Disputes Redressal Commission for delayed handing over of possession from 01.02.2014 till 31.07.2016 as per the agreement, at the rate of INR 3 per sq. ft. per month – National Commission also awarded interest at the rate of 6 per cent per annum – Justification of – Held: Compensation at the rate of 3 per sq. ft. per month does not provide just or reasonable recompense to the flat purchaser who has invested money and that too in a city like Bangalore – Jurisdiction of the NCDRC to award just compensation cannot be constrained by the terms of the agreement – There was a delay of at least two years in handing over the possession – Thus, the award of interest at the rate of 6 per cent is reasonable and justified – Liability of the developer to pay interest would continue to operate until the date the respective flat purchasers is offered possession – Furthermore, the flat purchasers who had moved NCDRC in a representative capacity for redressal of their grievances not disentitled to receive possession of the flat.

Allowing C.A. No. 1232 of 2019 and dismissing C.A.Nos. 1443-1444 of 2019, the Court

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HELD: 1.1 The view of the National Consumer Disputes Redressal Commission-NCDRC that the rate which has been stipulated by the developer, of compensation at the rate of 3 per sq. ft. per month does not provide just or reasonable recompense to a flat buyer who has invested money and has not been handed

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- A over possession as on the stipulated date of 31 January 2014, is accepted. This in a city such as Bangalore does not provide just or adequate compensation. The jurisdiction of the NCDRC to award just compensation under the provisions of the Consumer Protection Act, 1986 cannot in the circumstances be constrained by the terms of the agreement. The agreement in its view is one sided and does not provide sufficient recompense to the flat purchasers. [Para 9][825-D-F]
 - 1.2 The outer date for handing over possession was 31 January 2014. The admitted facts indicate that the occupation certificate was received on 10 February 2016. Consequently, there was a delay of at least two years since possession could not have been handed over prior to obtaining the occupation certificate. In the circumstances, the award of interest at the rate of 6 per cent is reasonable and justified. The NCDRC however, came to the conclusion that interest should be awarded only for the period from 1 February 2014 to 31 July 2016. There is merit in the submission of the flat buyers that the liability to pay interest has been inappropriately confined only upto 31 July 2016. The developer, in the affidavit by way of evidence of its representative before the NCDRC, admitted that as many as 43 complainants, who had asked for possession were not given possession for the simple reason that they had moved the NCDRC in a consumer complaint. The fact that the flat purchasers had moved the NCDRC in a representative capacity for the redressal of their grievances is no justification to deny them possession in accordance with the terms of the agreement. [Para 10-13][825-G-H; 826-A-C; F]
 - 1.3 It emerges that even according to the developer, out of 55 flat purchasers, possession had been handed over to 16 and it was stated that possession to 9 more buyers would be offered within a period of one week. As amongst the 55 purchasers, 25 persons have been now offered possession and an additional 2 would be offered possession shortly hereafter. [Paras 15, 16] [827-D-F]
- 1.4 The NCDRC was not justified in proceeding on the basis that the liability to pay interest would cease to operate as on 31 July 2016. Since possession has not been handed over, the developer cannot avoid the liability to pay interest at the rate

awarded by the NCDRC until the date when possession is actually handed over. The liability of the developer to pay interest at the rate of 6 per cent per annum would continue to operate until the date on which each of the respective flat purchasers is offered possession; The order passed by the NCDRC confining the award of interest for the period from 1 February 2014 to 31 July 2016 is modified in terms of the directions issued. [Para 17, 18] [827-F-H; 828-A-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1232 of 2019.

From the Judgment and Order dated 08.06.2018 of the National Consumer Disputes Redressal Commission in Consumer Complaint No. 913 of 2016.

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With

Civil Appeal Nos. 1443-1444 of 2019.

Bishwajit Bhattacharya, P. S. Narasimha, Sr. Advs., Chandrachud Bhattacharya, Abhinav Mukerji, Shekhar G. Devasa, Manish Tiwari, Luv Kumar, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

DR. DHANANJAYA Y. CHANDRACHUD, J.

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1. The National Consumer Disputes Redressal Commission (“NCDRC”) by its impugned order dated 8 June 2018 disposed of the consumer complaint filed in a representative capacity under Section 12(1)(c) of the Consumer Protection Act, 1986. The NCDRC has come to the conclusion that though under the terms of the flat purchase agreement, possession was liable to be handed over to the buyers on 31 January 2014, there was a breach on the part of the developer in complying with its contractual obligations. The NCDRC has noticed that the occupation certificate was received only on 10 February 2016 and it was thereafter that from May 2016, certain letters offering possession were issued by the developer. Based on this, the NCDRC awarded compensation upto 31 July 2016 in the form of interest at the rate of 6 per cent per annum.

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2. There is a finding in the impugned order that though the flat purchase agreement contained a stipulation for the payment of compensation at the rate of INR 3 per sq. ft. per month for delayed

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- A handing over of possession, the amount as stipulated is too meager to fulfil the requirement of just compensation to the purchasers. Accordingly, the following directions have been issued in the impugned order;
- B “i) The OPs are directed to handover the possession to the complainants (if not already handed over) within a period of 60 days from the date of this order and the complainants are also directed to complete all the formalities for taking the possession.
- C ii) The complainants are entitled to get compensation for delayed possession from 01.02.2014 till 31.07.2016 as per the agreement i.e. @ Rs. 3/- per sq. ft. per month. Over and above this amount, the opposite parties shall be liable to pay interest @ 6% p.a. from 01.02.2014 till 31.07.2016 on complainants deposited amounts with the CPs before the due date of possession i.e. 31.01.2014.
- D iii) OPs are directed to complete the common facilities and amenities as per the agreement within a period of six months from the date of this order, failing which the OPs shall pay compensation @ Rs. 1,000/- per month to each of the complainants under the present complaint.
- E iv) The OPs are also directed to pay Rs. 2,000/- (Rupees two thousand only) to each of the complainants towards cost of litigation in the present case.
- F v) All these amounts except compensation for common facilities and amenities shall be adjusted against the amount due on the complainants, if any, at the time of handing over of the possession and if no amount is due on the complainants, then the amount shall be paid by the OPs to the complainants on the date of possession.”
- G 3. Two sets of appeals have been filed against the order of the NCDRC. Civil Appeal No. 1232 of 2019 has been instituted by the flat purchasers while Civil Appeal Nos. 1443-1444 of 2019 is filed by the developer.
- H 4. The flat purchasers are aggrieved by the order of the NCDRC since it grants interest only upto 31 July 2016 and not thereafter.
- H 5. Mr. Bishwajit Bhattacharya, learned senior counsel appearing on behalf of the flat buyers has submitted that the NCDRC was in error

in assuming that all flat buyers had been given letters of offer for possession prior to 31 July 2016 which it has been submitted, is factually incorrect. A

6. Learned senior counsel submitted that as a matter of fact, possession has not been offered to all the purchasers even as on date and hence there was no justification on the part of the NCDRC to fasten the liability to pay interest only upto 31 July 2016 and not thereafter. B

7. On the other hand, Mr. P.S. Narasimha, learned senior counsel appearing on behalf of the developer has submitted that in view of the conditions contained in the flat purchase agreement allowing compensation at the rate of Rs. 3 per sq. ft. per month, the award of interest of 6 per cent per annum was not justified. C

8. We will at the outset deal with the submission of the developer that the NCDRC was not justified in awarding interest at the rate of 6 per cent per annum and that the terms of the flat purchase agreements must prevail. D

9. We are in agreement with the view of the NCDRC that the rate which has been stipulated by the developer, of compensation at the rate of 3 per sq. ft. per month does not provide just or reasonable recompense to a flat buyer who has invested money and has not been handed over possession as on the stipulated date of 31 January 2014. To take a simple illustration, a flat buyer with an agreement of a flat admeasuring a 1000 sq. ft. would receive, under the agreement, not more than Rs 3000 per month. This in a city such as Bangalore does not provide just or adequate compensation. The jurisdiction of the NCDRC to award just compensation under the provisions of the Consumer Protection Act, 1986 cannot in the circumstances be constrained by the terms of the agreement. The agreement in its view is one sided and does not provide sufficient recompense to the flat purchasers. E F

10. The outer date for handing over possession was 31 January 2014. The admitted facts indicate that the occupation certificate was received on 10 February 2016. Consequently, there was a delay of at least two years since possession could not have been handed over prior to obtaining the occupation certificate. G

11. In the circumstances, the award of interest at the rate of 6 per cent is reasonable and justified. The NCDRC however, came to the H

- A conclusion that interest should be awarded only for the period from 1 February 2014 to 31 July 2016.

12. We find merit in the submission of the flat buyers that the liability to pay interest has been inappropriately confined only upto 31 July 2016. We find from the record that the developer, in the affidavit by

- B way of evidence of its representative before the NCDRC, admitted that as many as 43 complainants, who had asked for possession were not given possession for the simple reason that they had moved the NCDRC in a consumer complaint. The relevant part of the affidavit is extracted below:-

- C “I state that rest of the 43 complaints who have asked for possession have not been given possession for the reason that as on 29.06.2016, the Opposite parties had received notice of this Hon’ble Commission in respect of filing of the present case. In the present dispute, the complainants have sought prayer at para A to G under different heads. While they sought the relief of handing over possession of their respective flats in para A, at paras B, C, D, E and F, they have also sought certain reliefs of compensation by making certain allegations of deficiency in service, compensation for delay in possession etc., against the opposite parties. Therefore, during the pendency of present dispute, the complainants were not given possession in view of the reliefs sought in paras B to F and the statement of allegations made in the present complaint.”

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- A to G under different heads. While they sought the relief of handing over possession of their respective flats in para A, at paras B, C, D, E and F, they have also sought certain reliefs of compensation by making certain allegations of deficiency in service, compensation for delay in possession etc., against the opposite parties. Therefore, during the pendency of present dispute, the complainants were not given possession in view of the reliefs sought in paras B to F and the statement of allegations made in the present complaint.”

13. The fact that the flat purchasers had moved the NCDRC in a representative capacity for the redressal of their grievances is in our view, no justification to deny them possession. The fact that the flat purchasers had moved the NCDRC would not disentitle them to receive possession in accordance with the terms of the agreement.

14. When the appeal filed by the developer came up before this Court on 1 February 2019, the following order was passed;

- G “Delay condoned.
- Mr. P.S. Narasimha, learned senior counsel, has stated before the Court that 55 flat purchasers are involved in the building project in question. Learned senior counsel states on instructions that possession has been handed over to sixteen flat buyers and possession to nine flat buyers will be offered and handed over

within a period of one week from today. These 25 persons, it has been submitted, have paid the entirety of their dues under the flat purchase agreement.

In respect of remaining 30 flat buyers, Mr. Narasimha states that there are outstanding payments.

Learned senior counsel appearing on behalf of the respondents disputes this position. Learned senior counsel for the respondents has submitted that 95 per cent of the payment has been made while the balance 5 per cent is payable at the time of possession.

In view of this controversy, we direct the petitioners to place on record an affidavit indicating the amounts which have been received from the remaining 30 flat buyers and the amount which is due and payable in terms of the agreements with them.

List on 11 February 2019.

In the meantime, no coercive steps shall be taken against the petitioners in pursuance of the impugned order of the NCDRC.”

15. From the above order it emerges that even according to the developer, out of 55 flat purchasers, possession had been handed over to 16 and it was stated that possession to 9 more buyers would be offered within a period of one week.

16. Mr. P.S. Narasimha, learned senior counsel has stated that in addition to the above 9 flat buyers, the developer will be handing over possession to 2 more flat buyers immediately. This indicates that as amongst the 55 purchasers, 25 persons have been now offered possession and an additional 2 would be offered possession shortly hereafter.

17. In view of the above position, the NCDRC was not justified in proceeding on the basis that the liability to pay interest would cease to operate as on 31 July 2016. Since possession has not been handed over, the developer cannot avoid the liability to pay interest at the rate awarded by the NCDRC until the date when possession is actually handed over.

18. Hence, while allowing the appeal, we issue the following directions:

(i) The liability of the developer to pay interest at the rate of 6 per cent per annum shall continue to operate until the date on

- A which each of the respective flat purchasers is offered possession;
- (ii) The order passed by the NCDRC confining the award of interest for the period from 1 February 2014 to 31 July 2016 is modified in terms of the directions issued in clause (i) above;
- B (iii) The NCDRC in execution of the impugned order as modified by the present order, shall verify with reference to each flat purchaser the date on which an offer of possession has been made. The liability to pay interest at the rate of 6 per cent per annum shall cease on the date when an offer of possession has been made to each of the flat purchasers.
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19. Accordingly, the appeal filed by the flat purchasers (Civil Appeal No. 1232 of 2019) is allowed and the appeals filed by the developer (Civil Appeal Nos. 1443-1444 of 2019) are dismissed.

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

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Nidhi Jain

Appeals disposed of.