

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB
DAKSHIN MARG, SECTOR 37-A, CHANDIGARH**

First Appeal No. 65 of 2014

Date of institution: 22.1.2014

Date of Decision: 21.1.2015

1. M/s Taneja Developers & Infrastructure Ltd., Registered Office, # 9 Kasturba Gandhi Marg, New Delhi 110 001 through its CEO
2. M/s Taneja Developers & Infrastructure Ltd., Regional Office SCO 51-52, Sector 118, TDI City, Chandigarh Kharar Road (NH 21), Mohali through its Regional Manager.

.....Appellants/Ops

Versus

Mrs. Jaspal Kaur wife of Surjit Singh Walia, resident of H. No. 1011, Sector 43-B, Chandigarh.

.....Respondent/Complainant

**First Appeal against the order dated
26.12.2013 passed by the District Consumer
Disputes Redressal Forum, SAS Nagar,
Mohali.**

Quorum:-

**Shri Gurcharan Singh Saran, Presiding Judicial Member
Shri Jasbir Singh Gill, Member**

Present:-

For the appellants	:	Sh. S.K. Monga, Advocate
For the respondent	:	Sh. Durga Dutt Sharma, Advocate

Gurcharan Singh Saran, Presiding Judicial Member

ORDER

The appellants/opposite parties(hereinafter referred as “OPs”) has filed the present appeal against the order dated 26.12.2013 passed by the District Consumer Disputes Redressal Forum, SAS Nagar (Mohali)(hereinafter referred as “the District Forum”) in consumer complaint No.281 dated 25.7.2013 vide which the complaint filed by the respondent/complainant(hereinafter

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referred as 'the complainant') was allowed with a direction to the Ops to refund to the complainant a sum of Rs. 5,65,656/- alongwith interest @ 9% per annum from the date of deposit i.e. 22.6.2011 till realization, also pay Rs. 50,000/- for harassment and litigation expenses and handover the peaceful, free from all encumbrances possession of the plot in question to the complainant.

3. The complaint was filed by the complainant under the Consumer Protection Act, 1986 (in short 'the Act') against the Ops on the allegations that she was issued provisional letter of allotment of his residential plot at TDI City, Mohali on 30.1.2009. Plot measuring 250 Sq. yds, No. 1155 at TDI City, Mohali with ID No. 1155 with MP2-10514. It was further averred that she had paid a sum of Rs. 8,25,000/- in the month of September, 2008 and at that time, it was stated that any further payment will be taken only when the offer of possession will be given because at that time the land was lying vacant undeveloped land. However, vide communication dated 16.6.2009 a demand was raised for payment of Rs. 13,63,312/- in which schedule of payment was given. On receipt of the same, the complainant visited their Chandigarh Office and inquired as to why this amount was being raised when possession was not being offered. The Company representative stated that the communication was a routine communication and it may not be taken seriously. Again on 19.11.2009, last and final reminder was issued to the complainant raising aforesaid demand. Complainant again visited the Ops office at Chandigarh and protest was lodged with the Ops that in the absence of offer of possession and without their being any

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schedule of payment, which was unfair on the part of the Ops Company to raise the said demand and it was again replied that the letter was sent in routine. Thereafter, the complainant was issued the offer of possession communication and final statement of account was given. It was stated in the said communication dated 25.5.2011 that the possession be taken and payment be made within 30 days. In that schedule, a sum of Rs. 5,65,656/- was charged on account of interest on delayed payment. In order to avoid cancellation, the complainant deposited that amount including the interest on 22.6.2011 vide cheque No. 681128 dated 22.6.2011 drawn on HDFC Bank Ltd., Sector 35-C, Chandigarh and Cheque No. 681128 dated 22.6.2011 drawn on Andhra Bank, Sector 44, Chandigarh. Thereafter on many occasions, the complainant visited the office of the Ops at Chandigarh/Mohali and requested the officials to take up the matter qua refund of the interest as the same was arbitrarily imposed/ wrongly charged without there being any terms and conditions to that effect. As there was no reference of any interest in any letter sending to the complainant and there was no agreement between the parties to charge interest on any delayed payment because no payment schedule was given, which amounts to deficiency in services on the part of the Ops. Hence, the complaint with a direction to the Ops to refund the amount of Rs. 5,65,656/- alongwith interest @ 7% p.a. as well as compensation on account of harassment and litigation expenses.

4. The complaint was contested by the Ops, who filed written reply taking preliminary objections that the complaint in this

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Forum was not being maintainable as it was based upon misrepresentation, wrong facts and concealment of true facts. The scheme was launched with a view to attract new investment under the policy of the Government of Punjab under which Mega Housing Project was launched with the Industrial Policy, 2003 and under that scheme the complainant after specifying herself about the feature of the scheme of the Ops had applied for allotment of a plot and a residential plot of 250 sq. yards was allotted to the complainant on deposit of Rs. 8,25,000/-. As per the terms of application dated 16.9.2008, the amount of registration deposit was required to be adjusted against the booking amount payable at the time of offer of allotment. PLC and EDC and other statutory levies would be payable in addition to the basic sale price. Provisional allotment was issued in favour of the complainant on 30.1.2009. In June, 2009 the complainant was found to be in arrears of Rs. 13,63,312/- and accordingly, a letter dated 16.6.2009 was issued to the complainant make the requisite payment within a period of 10 days but she did not come forward to make the said payment. The reminder was issued on 19.11.2009. In May, 2011, the OP Company by completing the development work and the plot allotted to the complainant remained ready for possession and accordingly, the Company issued a letter dated 25.5.2011 and offered the possession of the plot to the complainant and final statement of account demanding a sum of Rs. 21,26,281/- was issued, which included a sum of Rs. 5,65,656/- towards interest. Whereas after a period of more than two years, the complainant had tried to dispute her liability to make the payment of

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interest over the delayed payments; the complaint was barred by limitation; the complainant was not a potential user and does not come within the definition of the 'consumer' and that it does not fall within the pecuniary jurisdiction of the Hon'ble Forum. On merits also, the same pleas were reiterated, which was raised in the preliminary objections. Ultimately, it was submitted that the complaint was without merit and it be dismissed.

5. The parties were allowed by the learned District Forum to lead their evidence.

6. In support of his allegations, the complainant had tendered into evidence her affidavit Ex. CW-1/1, allotment dt. 30.1.09 Ex. C-1, payment certificate Ex. C-2, letter dt. 21.10.08 Ex. C-3, communication dt. 16.6.09 Ex. C-4, reminder dt. 19.11.09 Ex. C-5, offer of possession Ex. C-6, legal notice dt. 8.8.12 Ex. C-7. On the other hand, the opposite party had tendered into evidence affidavit of Sanyam Dudeja Ex. Op-1/1, application form Ex. Op-1, letter dt. 21.10.08 Ex. Op-2, provisional allotment letter Ex. Op-3, letter dt. 16.6.09 Ex. Op-4, letter dt. 19.11.09 Ex. Op-5, letter dt. 25.5.11 Ex. Op-6.

7. After going through the allegations in the complaint, written statement filed by the OP, evidence and documents brought on the record, the complaint filed by the complainant was allowed as referred above.

8. In the grounds of appeal, it has been stated that the learned District Forum has erred in ordering to refund a sum of Rs. 5,65,656/-, which was charged from the complainant on account of

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delayed payment. The order of the learned District Forum is perverse on the plea that the complainant in his complaint had demanding interest @ 7% whereas the District Forum has allowed the interest @ 9%. The possession was never sought by the complainant but relief of possession has also been given to the complainant. The value of the plot was more than Rs. 20 lacs, therefore, the matter should not have been entertained by the learned District Forum.

9. The first point for consideration is whether the Ops were entitled to interest on delayed payments. If so, whether a sum of Rs. 5,65,656/- has been legally charged by the Ops from the complainant. Ex. C-1 is the allotment letter vide which plot No. 1155 measuring 250 sq. yards was allotted to the complainant by the Ops. Alongwith that their terms and conditions, which does not disclose any payment schedule. Ex. C-2 is the receipt vide which a sum of Rs. 8,25,000/- was received by the Ops. Ex. C-3 is the priority for allotment in which it was said that the plot has been priced as Rs. 27.50 lacs, on the basis of which a sum of Rs. 8,25,000/- was paid on 1.12.2008. Vide letter Ex. C-4 dated 16.6.2009 demand of Rs. 13,63,312/- was raised. Ex. C-5 is a reminder. Ex. C-7 is the notice to the Ops. Apart from affidavit Ex. Op-1/1 filed by Sanyam Dudeja, the Ops have placed on the record Ex. OP-1 the application letter given by the complainant to the ops, which shows a sum of Rs. 8,25,000/- as a booking amount. This amount was paid. Ex. Op-2 is the copy of the Ex. C-3, Ex. Op-3 is allotment letter alongwith terms and conditions, Ex. OP-4 is copy of Ex. C-4, Ex. Op-5 is copy of Ex. C-5, Ex. Op-6 is the offer of possession alongwith final statement of

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account in which interest part as a sum of Rs. 5,65,656/- has been shown. No payment schedule was given to the complainants. In case there was no payment schedule then how there can be delay in making the payment. Moreover, in the terms and conditions there is no clause under what circumstances, the payment of interest shall be charged. Therefore, the demand and receipt of Rs. 5,65,656/- by the Ops from the complainant on account of interest is wholly unjustified.

10. However, a plea has been taken by the Ops that the payment was made by the complainant on 23.6.2011. It is part of Ex. C-6 whereas the complaint was filed on 25.7.2013, it is clearly time barred. However, it has been contended by the counsel for the complainant that when the payment was made on 23.6.2011 a clear recital was made in the receipt that a sum of Rs. 5,65,656/- has been made under protest. Then legal notice was issued to the Ops on 8.10.2012 that this amount has been illegally charged by the Ops, therefore, the amount be refunded and it was not replied by the Ops. In case amount has been illegally taken and it was not being refunded despite demand then it will be a continuous cause of action, therefore, we do not subscribe to the plea taken by the counsel for the appellant that the complaint filed by the complainant was barred by limitation.

11. The next point raised by the counsel for the appellant is that he is not a potential user because so far as he has not taken the possession. The possession was offered vide letter dated 25.5.2011 whereas the counsel for the complainant has referred to the letter Ex. C-6 vide which the remaining payment was made and a sum of Rs.

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5,65,656/- was paid under protest; alongwith that it was requested to deliver the possession. In case the complainant has made the full payment, certainly, she will take over the possession. A plea has been taken by the counsel for the Ops that in fact she is not interested for the construction and wanted to sell the plot, therefore, she is not a potential user. However, this plea is only on surmises and conjectures because they have not placed on the record any document, which may give indication that she wanted to sell the plot otherwise there can be many reasons for not raising the construction. In case the full facilities have been provided by the Ops at the site otherwise in case she does not raise the construction at the site within three years then certainly, she will require to pay non-construction charges, therefore, only on this ground she cannot be said to be not a potential user.

12. With regard to the rate of interest. In case we go through the complaint filed by the complainant, the complainant had demanded interest @ 7% whereas the learned District Forum has allowed the interest @ 9%, which is certainly more than demanded and it requires modification. Similarly the relief of possession was not asked for and this relief of possession granted by the District Forum is also beyond the pleadings.

13. So far as pecuniary jurisdiction is concerned, we have to go by the relief sought for in the complaint. In the complaint, he has sought refund of a sum of Rs. 5,65,656/-, which has been illegally charged by the Ops from the complainant alongwith interest. Interest amount is not calculated while determining the pecuniary value.

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Otherwise, the relief of possession has not been sought for that the value of the plot will be taken while determining the pecuniary jurisdiction. Therefore, we are of the opinion that the complaint squarely fall within the pecuniary jurisdiction of the learned District Forum. We do not agree with the plea taken by the counsel for the appellant that it exceeded from the pecuniary jurisdiction of the District Forum.

14. No other point has been raised at the time of arguments.

15. In view of the above discussion, we partly accept the appeal with the modification in the impugned order of the District Forum that instead of 9% p.a., the complainant will be entitled to interest @ 7% per annum as observed in the impugned order. The relief with regard to the direction to hand over the possession is also deleted from the impugned order as this relief was never asked for by the complainant. Other terms of the impugned order will remain the same; with a direction to the parties to bear their own cost of appeal.

16. The appellants had deposited an amount of Rs. 25,000/- with this Commission at the time of filing the appeal and Rs. 5,00,000/- in compliance with the order dated 24.2.2014. These amounts with interest accrued thereon, if any, be remitted by the registry to the respondent by way of a crossed cheque/demand draft after the expiry of 45 days, subject to stay, if any, by the higher Fora/Court.

17. Remaining amount shall be paid by the appellants to the respondent within 30 days from the receipt of the copy of the order.

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18. The arguments in this appeal were heard on 16.1.2015 and the order was reserved. Now the order be communicated to the parties as per rules.

19. The appeal could not be decided within the statutory period due to heavy pendency of Court cases.

(Gurcharan Singh Saran)
Presiding Judicial Member

January 21, 2015.
as

(Jasbir Singh Gill)
Member