

Dlf Homes Panchkula Pvt. Ltd. vs D.S. Dhanda Etc. Etc. on 10 May, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3218, 2019 (4) AIR KANT HCR 402, (2019) 4 ALLMR 402 (SC), (2019) 204 ALLINDCAS 103, (2019) 2 CLR 50 (SC), (2019) 2 CURCC 376, (2019) 2 WLC(SC)CVL 309, (2019) 3 ICC 795, (2019) 3 RECCIVR 181, (2019) 4 ALLMR 402, (2019) 4 CIVLJ 727, 2019 (4) KCCR SN 259 (SC), (2019) 5 ANDHLD 50, (2019) 7 SCALE 670, (2020) 138 ALL LR 710, AIRONLINE 2019 SC 448

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Bench: Hemant Gupta, Dhananjaya Y. Chandrachud

REPORT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4910-4941 / 2019
(@ SLP(C) Nos. 3623-3654 OF 2019)

DLF HOMES PANCHKULA PVT. LTD

..... APPELLANT

vs.

D.S. DHANDA, ETC.ETC.
WITH

.....RESPONDENTS

CIVIL APPEAL NOS. 4942-4945 2019
(@ SLP(C) Nos. 4363-4366 OF 2019)

DLF HOMES PANCHKULA PVT. LTD. & ANR.

..... APPELLANTS

vs.

SUDESH GOYAL, ETC.

.....RESPONDENTS

JUDGMENT

Hemant Gupta, J.

CIVIL APPEAL NOS.4910-4941 OF 2019 (@ SLP(C) Nos. 3623-3654 OF 2019) Leave granted.

2. The present appeals are directed against orders dated 24.10.2018 & 12.12.2018 passed by the National Consumer Disputes Redressal Commission¹ disposing 16 First Appeals wherein the appeals filed by the Appellant were decided by partially modifying the order passed by the State Consumer Disputes Redressal Commission 2 on 02.06.2016 wherein SCDRC directed the Appellant to hand over the physical possession of the units allotted to the respondents (Complainants), complete in all respects within a period of four months. However, for facility of reference, facts are taken from the complaint filed by Shri D.S. Dhanda. The SCDRC issued the following directions:

“Consumer Complaint bearing No. 94 of 2016, titled as D.S. Dhanda Vs DLF Homes Panchkula Private Limited and anr. The opposite parties are jointly and severally directed as under:-

1. To hand over physical possession of the unit, allotted in favour of the complainant, complete in all respects, as per the terms and conditions of the Agreement, to the complainant, within a period of four months, from the date of receipt of a certified copy of this order, on payment of the amount, legally due against him.
2. To execute and get registered the sale deed, in respect of the unit, in question, within one month from the date of handing over possession, as indicated in Clause (i) above, on payment of registration charges and stamp duty, by the complainant, directly to the Registering Authorities concerned.
3. To pay compensation, by way of interest @ 12% p.a., on the deposited amount, to the complainant, from 10.02.2014 (promised date in view of the extension sought vide letter dated 05.06.2013 i.e. 12 months after the stipulated date as per Agreement i.e. from 10.02.2013) to 31.05.2016, within 2 months, from the date of 1 NCDRC 2 SCDRC receipt of a certified copy of this order, failing which, the said amount shall carry penal interest @ 15% p.a. instead of 12% p.a., till realization.
4. To pay compensation by way of interest @12% p.a. on the deposited amount, due to the complainant w.e.f. 01.06.2016, onwards (per month) by the 10th of the following month, failing which, the same shall also carry penal interest @ 15% p.a., instead of 12% p.a., from the date of default, till the delivery of possession.
5. To pay compensation by way of interest @12% p.a. on the deposited amount, due to the complainant w.e.f. 01.06.2016, onwards (per month) by the 10th of the following month, failing which, the same shall also carry penal interest @ 15% p.a., instead of 12% p.a., from the date of default, till the delivery of possession.
6. To pay cost of litigation, to the tune of Rs.

50,000/-, to the complainant, within two months from the date of receipt of a certified copy of this order, failing which, the same shall also carry interest @12% p.a., from the date of filing the complaint till realization.”

3. The Appellant preferred appeal against such order passed by SCDRC before the NCDRC. The NCDRC issued inter-alia the following directions:

“(C) Compensation:

The compensation for loss and injury, for mental agony and physical harassment, hardship and difficulty, uncertainty and helplessness, can be neither meagre nor exorbitant, but has to be just and equitable, commensurate with the loss and injury (note: it could be less than or more than what the complainant asked for or what the State Commission determined, at the considered wisdom of the adjudicating authority/court in the facts and specificities of the case).

And it is always desirable and preferable, to the extent feasible and appropriate in the facts and specificities of a case, that some objective logical criteria be identified and adopted to determine the compensation. The compensation cannot be arbitrary or whimsical, some reasonable and acceptable rationale has to be evident subjectivity has to be minimized.

We note that the State Commission has given compensation in two parts, one, by way of interest on the deposited amount from the ‘promised’/ assured date after taking in view the extension sought vide letter dated 05.06.2013 i.e. 12 months after the 24 months’ conveyed and understood time period for completing construction and handing over possession, and, two, a lumpsum amount.

If compensation comprises of two parts, (i) by way of interest on the deposited amount from the assured date (milestone date) of completing construction and handing over possession to the actual date of handing over possession, and, (ii) lumpsum amount, we find nothing wrong in it.

We do not agree with the builder co.’s contentions that interest on the deposited amount should not be provided since it is not a case of refund but a case of delay in possession. The interest on the deposited amount has to be viewed in the light of the purpose for which it is intended. It is but a way of computing compensation for delay in possession that is commensurate with the amount deposited by the complainant, and here it has been computed after adopting a milestone date as per the builder co.’s own (unfair and deceptive) letter of 05.06.2013. There can be and is no question of not agreeing to an endorsing the award of interest from the said milestone date.

Here we may however add that the rate of interest also cannot be arbitrary or whimsical, some reasonable and acceptable rationale has to be evident, subjectivity

has to be minimized, a logical correlation has to be established. Albeit detailed arithmetic or algebra is not required. Logical (to the extent feasible) objective parameters should be adopted. Rounding off simplification etc. to make the computation doable could be adopted.

We feel it appropriate that, considering that the subject units in question are dwelling units, in a residential housing project, the rate of interest for house building loan for the corresponding period in a scheduled nationalized bank (take, State Bank of India) would be appropriate and logical, and , if 'floating'/ varying/different rates of interest were/ are prescribed, the higher rate of interest should be taken for this instant computation.

We also feel it appropriate and logical that the lumpsum amount awarded should be commensurate with the period for which there has been delay in possession beyond the milestone date, and be objectively and logically computed so.

In our considered view, a sum of Rs. 1 lakh per year from the assured date of handing over possession to the actual date of possession (pro- rata to the nearest whole month, with part month to be taken as one month) would be objective, logical, just and equitable in the facts and specificities of the case.

(D) Cost of litigation:

In respect of cost of litigation, too, just and equitable cost is necessary (this, by its very nature needs no elaboration).

In our considered view, cost of litigation of Rs. 1 lakh is just and appropriate in the facts and specificities of the case.”

4. The Complainant book a built up flat for purchase in pursuance of a brochure on 30.03.2010 in a project known as “DLF Valley” in Sector 3, Kalka-Pinjore Urban Complex, Panchkula, Haryana. The Buyer’s Agreement was executed on 11.02.2011. The possession of the unit was contemplated to be delivered within 24 months from the date of execution of the agreement i.e. up to 10.2.2013 failing which the Appellant was liable to pay Rs. 10/- per sq. ft. per month for the period of delay. The complaints were filed before the SCDRC alleging delay in delivery of possession of the escalation free flats and compensation on account of delay in handing over possession including mental agony and litigation expenses etc.

5. In the return, the stand of the Appellant was, construction could not be completed on account of stay granted on construction activities by this Court which operated from 19.04.2012 to 12.12.2012. Thereafter, the Appellant sought consent from the Complainant to extend the period of handing over possession by one year vide letter dated 05.06.2013. In the alternative, option was given to get back the money deposited by the Complainant along with simple interest at the rate of 9 per cent per annum. It is also pointed out that on the day reply was filed, construction of 258 independent floors

was complete and another 1517 built-up units were near completion. Even occupation certificate has been received for the units for which construction was complete.

6. The similar dispute in respect of same project came up for decision before this Court in DLF Homes Panchkula Pvt. Ltd. and Another Etc. v. Himanshu Arora and Another, Etc.³. The said set of appeals were decided on consent granting interest at the rate of 9% C.A No. 11097/2018 with C.A. Nos. 11098-11138 of 2018 decided on 19.11.2018 per cent per annum.

7. Subsequently, another set of appeals, Civil Appeal Nos. 2285- 2330 of 2019 titled DLF Homes Panchkula (P.) Ltd. vs. Sushila Devi and Another came up for decision before this Court including appeals filed by the Appellants as well as by the Complainants. Such appeals were also decided by consent. The agreed terms are as under:

“(a) In all Refund cases, the award of interest @ 9% would be payable in respect of deposits from the day they were made till the date of refund.

(b) In cases where, upon transfer, a subsequent purchaser had stepped into the shoes of the original allottee and had prayed for Refund, the reckoning date for computing the interest be from the date of his transfer in respect of all the amounts that were deposited by the original allottee and if any subsequent deposits were made by the transferee, from the dates of such deposits;

(c) In cases where Possession was sought, the period available to the Developer under the agreement being three years (that is to say original period of two years which was extendable, at the option of the Developer, by further period of one year) ought not to be computed while calculating compensation in the form of interest.

Therefore, the period to be reckoned shall be after expiry of three years from the date of agreement and in respect of such period the compensation shall be at the same rate of 9%.

(d) In Possession cases, if there was any transfer and the transferee had stepped into the shoes of the original allottee, the compensation shall be paid from the date of expiry of three years from the agreement as aforesaid or from the date of transfer, whichever is later.”

8. Learned Senior Counsel for the Appellant submitted that in terms of the consent orders passed by this Court, the consumer complaints be decided in terms of the Court orders passed in two sets of appeals that is the cases of delay in handing over possession as well the cases, where the complainants have sought refund of the amount deposited. However, it is contended that certain allottees are not taking possession so as to earn interest at the rate of 9 per cent per annum which is more than a contractual compensation of Rs.10/- per sq. ft. per month for the delayed possession as well as the loss of rent per month pleaded by the allottees such as D.S. Dhanda (F.A. No. 853/2016), Sandeep Malik (F.A. No. 1312/2016), Bijender Singh Sangwan (F.A. No. 1314/2016), Kanwal Mohan (F.A. No. 1356/2016).

9. It is contended that since the rental value is not more than the compensation awarded by this Court in the consent order referred to above, therefore, some of the allottees are intentionally not taking possession so as to continue to earn interest under the guise that it is the Appellant who is not handing over the possession. It is contended that in terms of the chart produced in Sushila Devi's case (supra), 9 per cent interest is payable till two months after offer of possession though such clause does not find specifically mentioned in the order passed by this Court.

10. It is argued that the Appellant will hand over possession only after obtaining occupancy certificate from the Town and Country Planning Department of the State of Haryana and after ensuring that the maintenance works are taken care of by Jones Lang LaSalle - the international real estate maintenance agency.

11. On the other hand, learned counsel for the allottees argued that the possession is being offered of incomplete building and that allottees are entitled to compensation on account of the mental agony and litigation expenses awarded by SCDRC and as modified by NCDRC.

12. We have heard learned counsel for the parties and find that the appellant offered for built up 1775 flats in its project the DLF Valley in Sector 3, Kalka-Pinjore Urban Complex, Panchkula, Haryana. Some of the disputes settled in earlier two rounds of appeals, whereas, many complaints are still pending before different fora.

13. There is no surviving dispute in respect of extended period of handing over possession available to the Appellant i.e. 36 months. By virtue of such extended period, the possession was required to be handed over on or about 11.02.2014. The present set of appeals relates to the Complainants claiming possession of the flats allotted to them in the DLF Valley. It is categorical stand of the Appellant that the flats have been completed and occupation certificate obtained from the Office of Director, Town and Country Planning Department of State of Haryana.

14. The learned NCDRC rightly held that compensation for loss, mental agony, litigation expenses and hardship, uncertainty and helplessness can neither be meagre nor exorbitant but has to be just and commensurate with the loss and injury. After holding so, the learned NCDRC found that the Complainants are not entitled to stipulated amount on account of delay in handing over possession but damages on the amount deposited apart from interest on the amount so deposited.

15. A perusal of the order passed by NCDRC shows that it approved the directions of the SCDRC granting interest on the amount deposited from the assured date and a lumpsum compensation on the deposited amount from the assured date of completing construction and handing over possession to the actual date of handing over possession. The NCDRC thereafter awarded interest on the amount deposited by the complainants at the maximum rate of interest on which the House Building Loans are granted by nationalized Bank such as the State Bank of India; awarded a sum of Rs. 1,00,000/- per year from the assured date of handing over possession to the actual date of compensation and another sum of Rs. 1,00,000/- as cost of litigation.

16. The District Forum under the Consumer Protection Act, 1986⁴ is empowered inter-alia to order the opposite party to pay such amount as may be awarded as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party including to grant punitive damages. But the forums under the Act cannot award interest and/or compensation by applying rule of thumb. The order to grant interest at the maximum of rate of interest charged by nationalised bank for advancing home loan is arbitrary and no nexus with the default committed. The appellant has agreed to deliver constructed flats. For delay in handing over possession, the consumer is entitled to the consequences agreed at the time of 4 1986 Act executing buyer's agreement. There cannot be multiple heads to grant of damages and interest when the parties have agreed for payment of damages at the rate of Rs.10/- per sq. ft. per month. Once the parties agreed for a particular consequence of delay in handing over of possession then, there has to be exceptional and strong reasons for the SCDRC/NCDRC to award compensation at more than the agreed rate.

17. Though the 1986 Act empowers the authorities to award compensation for any loss or injury including building damages but the order of NCDRC or that of SCDRC of awarding compensation is without any foundation being laid down by the complainant on judicially recognised principles and is by rule of thumb. Therefore, we find that grant of compensation under various heads granted by the NCDRC cannot be sustained.

18. This Court in a judgment reported as Secretary, Irrigation Department, Government of Orissa & Others vs. G.C. Roy⁵ examined the question as to whether an arbitrator has the power to award interest pendente lite. It was held that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation which may be called interest, compensation or damages. Thus, keeping in view the said principle laid down in the aforesaid judgment, the amount of the interest is the compensation to the beneficiary deprived of the use of the investment made by the complainant. Therefore, such interest will 5 (1992) 1 SCC 508 take into its ambit, the consequences of delay in not handing over his possession. In fact, we find that the learned SCDRC as well as NCDRC has awarded compensation under different heads on account of singular default of not handing over possession. Such award under various heads in respect of the same default is not sustainable.

19. Thus, we find that the complainant is entitled to interest from the Appellant for not handing over possession as projected as is offered by it but it is not a case to award special punitive damages as the one of the causes for late delivery of possession was beyond the control of the Appellant. Therefore, in view of the settlement proposal submitted by the Appellant in earlier two set of appeals in respect of same project, and to settle any further controversy, the Appellant is directed as follows:

- i) To send a copy of the occupation certificate to the Complainants along with offer of possession. The Appellant shall also direct the Jones Lang LaSalle - the real estate maintenance agency, engaged by the Appellant to undertake such maintenance works as is necessary on account of damage due to non-occupation of the flats after construction etc.

ii) It shall be open to the Complainants to seek the assistance of the maintenance agency to attend to the maintenance work which may arise on account of non-occupation or on account of natural vagaries.

iii) Such maintenance work shall be completed by the Appellant within two months of the offer of possession but the payment of interest at the rate of 9 per cent per annum will be for a period of two months from the date of offer of possession in all situations.

v) Since the Complainants have been forced to invoke jurisdiction of the consumer forums, they shall be entitled to consolidated amount of Rs. 50,000/- in each complaint on all accounts such as mental agony and litigation expenses etc. The complainant shall not be entitled to any other amount over and above the amount mentioned above.

vi) In case, the original allottee has transferred the flat, the transferee shall be entitled to interest at the rate of 9 per cent per annum from the date of expiry of three years from the agreement or from the date of transfer, whichever is later.

CIVIL APPEAL NOS.4942-4945 OF 2019 (@SLP (C) Nos. 4363-4366 of 2019)

20. Leave granted.

21. The Complainant in these cases have sought refund of the amount deposited by them with the Appellant. The learned SCDRC passed an order on 04.08.2017 directing the Appellant as under:-

“i. To refund the amounts of Rs. 49,25,461/- alongwith simple interest @ 15% per annum, to the complainant, from the respective dates of deposits, till realization, within 45 days, from the date of receipt of a certified copy of this order, failing which, the Opposite Parties shall pay the aforesaid amounts alongwith simple interest @ 18% per annum, instead of 15% per annum, from the date of default till actual payments;

ii. To pay an amount of Rs. 35,000/- as litigation costs, to the complainant, within a period of 45 days from the date of receipt of a certified copy of the order, failing which, the Opposite Parties shall pay the aforesaid amount alongwith simple interest @ 15% per annum from the date of filing the complaint till actual payment.”

22. The appeal filed by the Appellant before NCDRC was dismissed for non-compliance of an order in an application of condonation of delay. Still aggrieved, the Appellants are before this Court.

23. We find that the grant of interest at the rate of 15% by SCDRC is highly excessive. Since in other two set of appeals decided earlier, this Court has awarded interest at the rate of 9% per annum on the amount of refund, therefore, the order of SCDRC stand modified so as to pay interest at the rate

of 9% per annum from the date of deposit till the date of refund.

24. However, in case any transfer of the flat, such interest will be payable from the date of expiry of three years from the date of agreement or from the date of transfer whichever is later.

25. The Costs of Rs. 35,000/- imposed by the SCDRC is maintained.

26. The amount of refund be paid to the Complainants within two months along with the costs.

.....J. (Dr. Dhananjaya Y. Chandrachud)
.....J. (Hemant Gupta) New Delhi May 10, 2019