

Dlf Homes Panchkula (P) Ltd. Through Its ... vs Sushila Devi on 26 February, 2019

Equivalent citations: AIR ONLINE 2019 SC 1919, (2019) 2 RECCIVR 317 (2019) 7 SCALE 625, (2019) 7 SCALE 625

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Bench: Hemant Gupta, Uday Umesh Lalit

CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976
DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2285-2330 OF 2019
(Arising out of Special Leave Petition (Civil) Nos.928-930, 932 TO 938, 940
TO 967 AND 969 TO 976 of 2019)

DLF HOMES PANCHKULA (P) LTD. THROUGH
ITS AUTHORISED SIGNATORY MR. SHIV KUMAR

VERSUS

SUSHILA DEVI AND ANR. ETC.

WITH

SPECIAL LEAVE PETITION (CIVIL) NOS.931, 939 AND 968 OF 2019

DLF HOMES PANCHKULA (P) LTD. THROUGH
ITS AUTHORISED SIGNATORY MR. SHIV KUMAR

VERSUS

MRIDULA SOOD ETC..

WITH

CIVIL APPEAL NO.2354 OF 2019
(Arising out of Special Leave Petition (Civil) No.26519 of 2018)

RAVI DATT AGGARWAL AND ORS.

Appellants

VERSUS

DLF HOMES PANCHKULA PVT. LTD. AND ORS.
CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976
DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA

JUDGMENT

Uday Umesh Lalit, J.

1. Leave granted in all matters, except Special Leave Petition (Civil) Nos.931 of 2019, 939 of 2019 and 968 of 2019.

Re: Appeals arising out of Special Leave Petition (Civil) Nos.928-976 of 2019¹ (DLF Homes Panchkula (P) Ltd. Through its Authorised Signatory Mr. Shiv Kumar v. Sushila Devi and another² [Except Special Leave Petition (Civil) Nos.931 of 2019, 939 of 2019 and 968 of 2019]

2. These appeals are directed against the final judgment and order dated 07.09.2018 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as ‘the National Commission’) in First Appeal Nos.382/2016, 447/2016, 453/2017, 648/2016, 649/2016, 650/2016, 651/2016, 767/2016, 879/2016, 881/2016, 1145/2016, 1146/2016, 1147/2016, 1158/2016, 1315/2016, 1347/2016, 1348/2016, 1349/2016, 1351/2016, 1352/2016, 1576/2016, 1577/2016, 1578/2016, 1579/2016, 1580/2016, 1581/2016, 1582/2016, 1583/2016, 1584/2016, 1586/2016, 1587/2016, 1589/2016, 1590/2016, 1591/2016, 1592/2016, (Appeals by the Developer) CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976 OF 2019) DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA DEVI AND ANR.

1593/2016, 1594/2016, 1595/2016, 1598/2016, 1599/2016, 1600/2016, 1601/2016, 1622/2016, 1623/2016, 1625/2016 and 1643/2017.

3. The original complainants had booked apartments in a project titled “DLF Valley, Panchkula” situated in Panchkula, Haryana, which was to be developed by the Developer. The Developer had promised to handover possession within 24 months from the date of signing of the agreement. Various complaints came to be filed by the Complainants submitting that despite period of two years being over there was no substantial progress and as such, the Developer was deficient in rendering service. Some of the Complainants prayed for refund of all the moneys they had deposited from time to time along with interest and compensation while others sought relief in the nature of compensation for delayed delivery of possession but insisted that the possession of the apartments be handed over to them.

4. The State Consumer Disputes Redressal Commission, UT, Chandigarh (hereinafter referred to as 'the State Commission') by its various orders allowed the complaints and directed refund of the amounts deposited by the concerned Complainants with interest @ 15% per annum in some cases and with lesser rate in others and compensation. Similar directions were passed in cases of delayed delivery of possession. These orders passed by the CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976 OF 2019) DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA DEVI AND ANR.

State Commission were challenged by the Developer by filing aforementioned First Appeals in the National Commission which were disposed of by the National Commission vide its common order dated 07.09.2018. The National Commission affirmed the view taken by the State Commission and dismissed all the appeals. Aggrieved thereby the present appeals by special leave were filed by the Developer. Re: Appeal arising out of Special Leave Petition (Civil) No.26519 of 2018 (Ravi Datt Aggarwal and others v. DLF Homes Panchkula Pvt. Ltd. and others)

5. While the appeals as aforesaid were pending before the National Commission, it was submitted by the Developer that there had to be at least one Judicial Member on the Bench and in cases where there was not even one Judicial Member on the Bench, the appeals could not and ought not to be proceeded with. After hearing all submissions, the National Commission by its order dated 01.08.2018 reserved the matters for orders. Thereafter, Review Petitions were filed by the Developer which were rejected on 08.08.2018. The Developer then filed a petition under Article 227 of the Constitution being CM(M)No.951 of 2018 in the High Court of Delhi questioning said orders dated 01.08.2018 and 08.08.2018. While issuing Appeals by original Complainants CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976 OF 2019) DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA DEVI AND ANR.

notice, the High Court by its order dated 20.08.2018 stayed the operation of the order dated 08.08.2018 passed by the National Commission. The National Commission, thereafter, passed a reasoned judgment on 07.09.2018 rejecting all the submissions. However, in view of the fact that the order dated 08.08.2018 was stayed by the High Court, it observed that the operation of the Judgment dated 07.09.2018 would remain stayed till further orders by the High Court.

6. Some of the Complainants, being aggrieved, approached this Court by filing Special Leave Petition (c)No.26519 of 2018 in which, while issuing notice on 22.10.2018, this Court stayed the operation of the order dated 20.08.2018 passed by the High Court.

7. Thereafter, the appeals filed by the Developer and the Complainants were taken-up together.

8. It may be mentioned that matters where the Developer had challenged similar directions issued in other cases namely Civil Appeal Nos. 11097- 11138 of 2018, were disposed of by this Court on 19.11.2018. In those cases, (Himanshu Arora case, for short) the State Commission had awarded interest CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and

969-976 OF 2019) DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA DEVI AND ANR.

@ 12% which was reduced by the National Commission to 9%. After hearing learned counsel for both sides, this Court had passed following directions: -

“8. Having regard to the above submission, we indicated to the learned counsel appearing on behalf of the flat purchasers that it would be appropriate if the interest as ordered by NCDRC at 9% per annum is made payable over the period which was determined by the Order of the SCDRC. There is no objection by the flat purchasers to the aforesaid modification being made. Even otherwise, we are of the view that such a modification would be required in the interests of justice since it was the appellants who had questioned the Order of the SCDRC before the NCDRC.

9. In the above facts and circumstances, we confirm the direction of the NCDRC that the appellants shall pay interest @ 9 per cent per annum. However, the period over which interest shall be payable will be in conformity with the order passed by the SCDRC.

10. We also direct that in computing the interest payable in terms of the Order of the NCDRC to the extent modified above, the appellants would be entitled to credit for the compensation, if any, which has been paid to any flat buyer in terms of Clause 15 of the flat purchase agreements. In other words, the amount of interest payable shall be computed after deducting any amount that has been paid to the concerned flat buyer under Clause 15 of the agreement.

11. The amount which has been deposited in this Court in pursuance of the order dated 18.5.2018, shall be transferred by the Registry to the Registrar of the SCDRC, Chandigarh. The appellants shall, within a period of two weeks from today, file a detailed computation with reference to each of the flat buyers and the amount which is due and payable in pursuance CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976 OF 2019) DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA DEVI AND ANR.

of the above directions. The amount shall be duly verified before disbursal, on proper identification, to each of the flat buyers. After completing the above exercise, in the event, that any amount (inclusive of the accrued interest) remains surplus, it shall be refunded to the appellants.

12. Upon the transfer of the amount, the SCDRC shall keep the amount in a short term fixed deposit until the stage of disbursement is reached.

The civil appeals are disposed of.”

9. When the present appeals were taken up, all the parties agreed that these appeals be disposed of in terms with the directions issued by this Court in Himanshu Arora’s case. We, therefore, directed the Developer to file a Chart in consultation with all the complainants and indicate what modalities

be adopted. After such Chart was filed, it was agreed that wherever compensation was to be awarded, it should be in the form of interest @ 9% and the governing principles be 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 CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976 OF 2019) DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA DEVI AND ANR.

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.

10. The matter was, thereafter, adjourned so that the parties could check and reconcile all the concerned amounts and present a mutually acceptable statement of figures. Accordingly, the Chart has been presented which is appended to this Judgment as Annexure-A. CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976 OF 2019) DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA DEVI AND ANR.

11. Column No.13 of the tabulated chart denotes element of interest @ 9% while Column No.16 denotes the amount that had been received by the Developer. Column No.14 shows the amounts of FDRs deposited by the Developer in respect of every Complainant, while Column No.17 shows amount payable to every Complainant or recoverable from such Complainant wherever excess amount was deposited. According to the Chart, Serial Nos.1 to 17 are Refund cases where Possession was not prayed for. Out of these 17 cases, those at serial nos. 9 and 16 were already settled and as such their cases shall not form part of this group of appeals. Case at serial no.17 was a transfer case in the category of Refund cases and as such would be governed by principle (b) as stated hereabove. Rest of the cases in the Refund category will be governed by principle (a) stated hereinabove except the case of Colonel Naresh Kumar Kohli, whose name is at Serial No.14 which will be subject to

modification as stated hereafter.

12. According to Colonel Kohli, the fact that he had deposited Rs.62,04,014/- was not disputed at any juncture either before the State Commission or the National Commission and in fact FDR in that sum already stood deposited by the Developer. However, in his case Column No.16 wrongly mentioned figure of Rs.60,54,812/- and consequently the amount SLP (C) No.931 and 939 of 2019 CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976 OF 2019) DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA DEVI AND ANR.

payable in Column No.17 was wrongly shown as Rs.24,60,356/-. We heard learned counsel for the Developer and Colonel Kohli on this issue and find that the submission made by Colonel Kohli deserves acceptance. We, therefore, correct the figures in Column Nos.16 and 17 to be Rs.62,04,014/- and Rs.26,09,558/- respectively. He shall be entitled, over and above the amount deposited in FD namely Rs.62,04,014/-, an amount of Rs.26,09,558/- as well.

13. We now turn to Possession cases which are tabulated from serial nos. 18 to 48 (except case at serial no. 32). Let the case of Mr. Gautam Kashyup at Serial No.32, namely Special Leave Petition (Civil)No. 968 of 2019 be listed before a regular Court. All other matters in Possession category stand disposed of in terms of the directions (c) and (d) as issued above.

14. Except to the extent any exception or modification stated in this Judgment every person in Refund and Possession categories is aggregable to the disposal of their matters in terms of the understanding as above and the governing principles set out earlier.

15. It is directed that, on the strength of this order and upon proper identification to the satisfaction of the State Commission, the amounts standing in Fixed Deposit Receipts against each of the Complainant along CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976 OF 2019) DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA DEVI AND ANR.

with interest, if any, accrued thereon be made over to said complainant within six weeks from today. We also direct the Developer to make over to each complainant the amount in Column No.17 marked as "Amount Recoverable/Payable" within six weeks. In two cases i.e. in appeals arising out of Special Leave Petition (Civil)Nos.928 of 2019 and 936 of 2019 where the excess amount has been deposited, the Developer will be entitled to have such excess amount recovered from the amounts presently lying in deposit.

16. In respect of the matter at serial No.8 relating to original allottee named Arun Yadav, certain additional directions are called for. Said original allottee is no more. While making the booking he had mentioned the name of his wife as a nominee. He has left behind his widow, two children and mother. The widow and the mother are individually claiming refund of the amount deposited by him. At this stage, the entitlement of either side cannot be gone into and the parties must be left to agitate this issue in a properly instituted matter before a competent court. However, considering the

fact that the mother, the widow and two children, going by normal law relating to intestate succession for Hindus, would share the property of the deceased person equally, we direct $\frac{3}{4}$ of the sum to be made over to the widow who shall take said sum for herself and on behalf of two children while the remaining $\frac{1}{4}$ of the sum shall be made over to the mother. They must however execute CIVIL APPEAL NOS. 2285-2330 OF 2019 (@ SLP(C) NOS.928-930, 932-938, 940-967 and 969-976 OF 2019) DLF HOMES PANCHKULA (P) LTD. THROUGH ITS AUTHORISED SIGNATORY MR. SHIV KUMAR VS. SUSHILA DEVI AND ANR.

indemnity bonds agreeing to return the sum that they had received in whole or in part, in case a declaration as to their entitlement by a competent court were to go against them.

17. Since, the matters are being disposed of on an agreed understanding and since no order of compensation was passed in Himanshu Arora, no compensation other than what has been dealt with earlier, need be paid to the Complainants.

18. Finally, we direct:-

(a) SLP(C) Nos.931 and 939 of 2019 stand disposed of as having been settled by the parties.

(b) SLP(C) No.968 of 2019 be listed for consideration before appropriate Bench in due course.

(c) All the appeals stand disposed of in terms indicated above.

(d) No costs.

.....J. (Uday Umesh Lalit)J. (Hemant Gupta) New Delhi, February 26, 2019.