

U.C. Mittal Alias Uttam Chand Mittal & ... vs M/S. Gaur Sons India Ltd. on 20 December, 2023

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

FIRST APPEAL

BEFORE: HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING MEMBER
FOR THE APPELLANT : FOR THE APPELLANTS : MR.ABHAY GUPTA, ADVOCATE
Dated : 20 December 2023 ORDER

1. The present First Appeal has been filed under Section 51 of the Consumer Protection Act, 2019 (hereinafter referred to as "the Act") against the Order dated 20.10.2010 passed by the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred as "the State Commission"), in Consumer Complaint No.14 of 2010, wherein the Complaint filed by the Complainants (Appellants herein) was partly allowed.

2. For the sake of Convenience, the parties in present matter as referred as mentioned in the Complaint before the State Commission. Shri UC Mittal & Anr are identified as the Complainants. "M/s. Gaur Sons India Ltd." is referred to as the Opposite Party/Builder (OP in short).

3. Briefly, the facts of the case, as per the Complainant, are that, lured by the advertisements of OP wrt their residential project, the Complainant booked Flat No. 346 with super covered area of 2205 Sq Ft with 3-parking space in Gaur Green Avenue at Abhay Khand-II, Indirapuram Ghaziabad for a total consideration of Rs.65,25,000. The cost of parking space was in addition to the cost of the flat. The Allotment Letter was issued on 24.02.2006 and the flat was to be delivered by 31.03.2007.

4. The OP agreed to ensure the following:

(a) Raise construction of 'A' category;

(b) Complete the project by 31.03.2007;

(c) Provide flooring, walls, ceiling, finish, modern kitchen, bathrooms, woodwork, electrical fittings and gas supply etc as per specifications provided in the brochure;

(d) Give one year warranty of the apartment i.e. in manufacturing defect of the fittings installed in the apartment and construction defects in the apartment. OP also agreed to execute a separate warranty agreement to this effect at the time of possession of the flat/apartment.

(e) Complete township loaded with all amenities and facilities including shopping centre attached to the project.

(f) To provide 1 KVA power back up to each apartment without installation charges.

(g) To provide a swimming pool with children pool and in house club with Gymnasium steam and sauna bath, Jacuzzi Common Room, table tennis, billiards etc. in the residential complex. It is submitted that these facilities were in the form of community centre for and in the interest and welfare of residents only.

5. The Complainants obtained Rs.50,00,000 housing loan from Punjab National Bank and the OP had also entered into a Tripartite Agreement with the Complainants and the PNB agreeing inter alia to deliver the original sale deed directly to the bank as soon as the same is executed and registered in favour of the Complainants to create mortgage of the said property in favour of the bank. The payment of each and every instalment was made on due date. Last instalment of Rs. 3,26,250 due to be paid on the delivery of possession of the said property remained.

6. When the Complainants visited the site during March, 2007, to his shock, he found much the project was incomplete. They sought clarification from Mr. Vipin Modi, Project Manager and other concerned officials, but no satisfactory reply was furnished by the OPs. By 31.07.2007, the Complainants paid Rs.61,98,750 to the OP out of the total sale consideration of Rs. 65,25,000 and only Rs.3,26,250 was due to be paid on the date of possession. In view of continuous threats and apprehension to the complainants regarding cancellation of the allotment, they made full and final payment on 26.12.2007, despite the project being incomplete. Possession was handed over and the sale deed was executed, though number of discrepancies were found in the flat which was not ready for occupation. All efforts by them to persuade the OPs to complete the work proved futile. They claimed that the OP is liable to pay interest and other charges accruing since 01.04.2007 up to the date of delivery of actual physical possession. In the absence of any response, the Complainants served a legal notice upon the OP on 17.07.2008 demanding payment of:

(a) Rs.25,000 towards the expenses incurred in removal of discrepancies;

(b) Rs. 8,57,009 interest accruing thereon @ 18% p.a. since 19.05.2008 till the date of payment; and

(c) Rs. 20,00,000 towards the deficiency in service, mental agony and harassment caused to the complainants.

7. The Complainants contended that OP is liable to make payment of amount of interest as per the details indicated below:

Amount paid up to 31.03.2007 Rs.61,98,750 Interest accrued @ 12% p.a. with monthly rests since 01.04.2007 to 26.12.2007 when balance payment of Rs. 3,26,250 was made (Total payment as on 26.12.2007 was Rs.65,25,000) Rs. 5,50,245 Interest accrued on Rs. 65,25,000 since 27.12.2007 to 18.05.2008 @ 12% p.a. Rs. 3,06,764 Total amount due as on 18.05.2008 Rs. 8,57,009 Amount received on 07.11.2008 Rs. 66,150 Amount due as on 18.05.2008 Rs. 7,99,859 Interest accrued @ 12% p.a. from 18.05.2008 to 10.12.2009 i.e. Rs. 262.96 per day.

Rs. 1,55,414 Total Rs. 9,55,273

8. The Complainants have filed a consumer complaint before the State Commission with the following prayers:

(i) Pass an order directing the OP to pay compensation towards interest accrued to the complainant amounting Rs.9,55,273 along with pendent elite and future interest @ 12% p.a. until date of payment;

(ii) Pass an order directing the Opposite Party to pay to the complainants an amount of Rs 20,00,000 towards mental agony and harassment and deficiency in service by Opposite Party and

(iii) Pass an order issuing directions to the respondent or its nominated agency to grant access and use of all facilities of Community Centre including Swimming Pool with children pool and in-house Club with Gymnasium steam and sauna bath, Jacuzzi, common room, table tennis, billiards and all other facilities in the society to the complainants and their family members; and

(iv) Pass any other or further order(s) which this Hon'ble commission deems fit and proper in the facts and circumstances of the case and in the interest of justice.

9. The OP resisted the complaint both on technical ground and on merits stating that the Complainant has not approached the State Commission with clean hands and concealed the true and correct facts. The Complainant at the time of entering into the agreement for purchase of the flat was well aware with all the terms mentioned in the agreement wherein a clause was specifically mentioned with regard to delay in possession @ of Rs.5 per sq. ft. on the super area for the delayed period which builder has already paid by cheque. The Respondent regularly informed them to take the possession and get the sale deed executed. They also contended that Consumer Forum has no jurisdiction as both parties are bound by the agreement and in case of any violation of terms of agreement, the remedy available to them is to file a civil suit having original jurisdiction. Also, no cause of action arose in Delhi, since the Complainant is resident of Ghaziabad and the property is situated in Ghaziabad.

10. In Rejoinder, the Complainants rebutted the contentions raised in the reply and reiterated the averments made in the complaint.

11. The State Commission vide the Impugned Order dated 20.10.2020 passed the following relevant order:

"24. Keeping in view the facts and circumstances of the case and noting that the OPs had agreed to hand over the possession of the flat as also keeping the legal position as discussed above, particularly the point that awarding the interest or the compensation for the delayed period is left to the discretion of the court deliberating upon the issue, OPs are directed to Pay to the complainant compensation for the delayed period in the form of compensation at the rate of 9% for the period from the date of possession of the flat was due to be delivered till the delivery of the possession, which possession would mean the date from which the flat came to be in a living condition. Secondly they are also directed to pay Rs. 50,000/- as litigation charges.

25. The OPs are directed to comply with the directions contained in this order within two months from the date of receipt of this order failing which the complainants would be free to move this Commission under Section 25 and 27 of the Consumer Protection Act 1986.

12. Aggrieved by the impugned order, the Appellant filed this present Appeal no. 908 of 2020 with the following prayer:

(i) Pass an order setting aside/modifying the impugned order 20/10/2020 passed by SCDRC Delhi at New Delhi in Complaint No. 14 of 2010 titled as UC Mittal and Anr VS M/S Gaursons India Ltd qua the undernoted reliefs.

(ii) Pass an order awarding pendent elite and future interest @ 12% p.a. since the date of possession till full and final recovery on the amount awarded by SCDRC.

(iii) Pass an order awarding Rs, 20 Lacs with interest @ 12% p.a. accruing thereon since the date of filing of complaint till full and final recovery in favour of appellants and against respondent towards unfair trade of practice, mental agony and harassment caused.

(iv) Pass an order awarding that no TDS is deductible over the amount awarded in the form of compensation.

(v) Pass an order allowing the cost of appeal; and Pass any other or further order(s) which this Commission may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

13. In the Appeal, the Appellant raised the following key issues:

(a) The impugned order is bad on facts as well as on law qua the undernoted issues:

(i) Whether appellants are entitled for pendent elite and future interest since the date of possession till full and final recovery on the amount awarded for delay in possession? If yes then at what rate?

(ii) Whether respondent obtained a completion/ occupancy certificate from Ghaziabad Development Authority in respect of the project in question?

(iii) Whether respondent offered/delivered possession of the flat in question without obtaining completion/occupancy certificate from Ghaziabad Development Authority?

(iv) If answer to the issue no. (iii) is yes then to what relief.

(v) Whether any TDS is deductible over the amount awarded in the form of compensation?

(b) The Appellant is entitled pendent elite and future interest over the said amount from the date of possession i.e. 18.05.2008 to the date of actual payment.

(c) Till date no completion/occupancy certificate as mandated under Regulation 17, 18 and 19 of GDA Area Building Regulations 2002 has been obtained by the Respondent.

(d) The Appellants were persuaded to take possession and get sale deed executed without occupancy certificate.

(e) In compliance of order dated 18.01.2019, the Respondent filed a partial completion certificate dated 16.07.2008 in respect of ground floor of the project, while the flat in question is on 3rd Floor of the D Block. The project has six Blocks with A,B,C & D Blocks having 13 floors and E & K Blocks having 4 Floors. The project has a the total 448 units.

(f) As per law settled by Hon'ble Apex Court and NCDRC in a catena of judgment, no legal possession can be offered by the builder without a completion/occupancy certificate. The said act of the Respondent constitutes unfair trade of practice and caused them mental agony harassment as they were compelled to take possession without competition/occupancy certificate from the competent authority.

(g) As the amount awarded by the State Commission was compensation, no TDS is deductible.

14. Upon notice on memo of Appeal, the Respondent filed a Reply stating that the physical possession was delivered to them on 18.05.2018 and the same has been admitted. The OP had already paid Rs.66,150 to the Appellants by cheque towards delay in possession penalty (as per the Clause 6 of the allotment letter). This cheque was cleared and credited on 07.11.2008. In the impugned order, the State Commission justly compensated the Appellants. It is admitted position that the Appellants have already been benefitted by receiving delay penalty as per allotment letter and also as per the directions of the State Commission vide the impugned order. Hence, the present Appeal is devoid of any merit and is based on erroneous and baseless grounds.

15. In his arguments, the learned Counsel for the Appellants reiterated the issues/grounds raised in the Appeal and relied on the following judgments:

- (a) Union of India (UOI) and Ors. Vs. Seil Ltd. (Unit Mawana Sugar Works) and Ors., MANU/DE/2956/2005;
- (b) Sovintorg (India) Ltd. Vs. State Bank of India, New Delhi, MANU/SC/0464/1999;
- (c) Thakur Umed Singh Vs. Amolakchand, MANU/RH/ 0030/1963;
- (d) Jaiswal Grain Agency and Ors. Vs. State of U.P. and Ors., MANU/UP/1050/2005;
- (e) Laxmichand and Ors. Vs. Indore Improvement Trust, Indore and Ors., MANU/SC/0529/1975;
- (f) Samruddhi Co-operative Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction Pvt. Ltd., MANU/SC/ 0026/2022;
- (g) Beacon Projects Pvt. Ltd. Vs. The Commissioner of Income Tax, MANU/KE/0836/2015;
- (h) G.D.A. vs. N.K. Gupta, MANU/CF/0295/2002;
- (i) Haryana Urban Development Authority Vs. Ashok Kumar Aggarwal, MANU/SC/0817/2004;

16. The learned counsel for the Respondent argued in support of the impugned Order of the learned State Commission and asserted that they paid Rs.66,150 to the Appellants towards the delay possession penalty (as per the Clause 6 of the allotment letter) by cheque which was duly encashed by the Appellants on 07.11.2008. The impugned order justly compensated the Appellants. He has relied upon the following judgments:

- (a) Divisional Controller, KSRTC vs. Mahadeva Shetty and Anr., (2003) 7 SCC 197;
- (b) DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda, (2018) SCC OnLine NCDRC 464.

17. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

18. It is an admitted position that the possession of the flat was to be delivered to Appellants on 31.03.2007. However, the same was handed over on 18.05.2018. The Opposite Party had already paid Rs.66,150 to the Appellants towards delay possession penalty (as per the Clause 6 of the allotment letter), which was received by them on 07.11.2008. The impugned order of the State Commission has justly compensated the Appellants. It is clear that the delay compensation in form of interest @ 9% per annum as granted by the State Commission has already been compensated.

19. With regard to the other compensation like mental agony, TDS and higher rate of interest etc. the Hon'ble Supreme Court in DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda, in CA Nos. 4910-4941 of 2019 decided on 10.05.2019 has held that multiple compensations for singular deficiency is not justifiable.

20. In view of the foregoing discussion, I do not find any infirmity and irregularity in the impugned order dated 20.10.2020 passed by the learned State Commission. Thus, the First Appeal No.908 of 2020 is dismissed.

21. There shall be no order as to costs. All the pending Applications, if any, stand disposed of accordingly.

..... AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER