

IN THE STATE COMMISSION: DELHI

(Constituted under section 9 of the Consumer Protection Act, 1986)

Date of Hearing: 02.07.2020

Date of Decision: 06.07.2020

CONSUMER COMPLAINT No. 1349/2017

IN THE MATTER OF

Sh. ARVIND KUMAR

S/o Late Sh. Bhopal Singh

R/o 7, Sai Lok Colony

PHASE- II, GMS ROAD

DEHRADUN

..... COMPLAINANT

VERSUS

GSS PROCON PVT. LTD.

702-704, D-MALL,

NETAJI SUBHAS PLACE

PITAMPURA

DELHI - 110034

..... OPPOSITE PARTY

HON'BLE DR. JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)

HON'BLE SH. ANIL SRIVASTAVA, (MEMBER)

Present: Mohd. Anas, Counsel for the Complainant.

None for the Respondent.

PER: Hon'ble Dr. Justice Sangita Dhingra Sehgal, President

JUDGMENT

[Via video conferencing.]

1. Present Consumer Complaint has been filed under Section 17 of the Consumer Protection Act, 1986 by one Sh. Arvind Kumar (hereinafter the "Complainant") against GSS Procon Pvt. Ltd. (hereinafter the "Opposite Party") seeking the following reliefs:

- a) Direct the opposite party to execute the sale/transfer deed and hand over the actual physical possession of the Flat bearing No. 903, 9th Floor having super Area of approximately 1895 sq. feet in Lumax Tower of the "Victory Crossroads" No. GH-01/C, along with Project named situated at Plot Sector-143B, Noida, U.P., facilities and amenities as stipulated in the allotment letter dated 30.03.2012, to the complainant, in the interest of justice
- b) Direct the opposite party pay compensation to the complainant at the rate of 2% per month for the delayed period till the actual physical possession of the Flat is handed over, or in the alternative
- c) Direct the opposite party to pay a sum of Rs.70,00,000/- along with a further Rs.23,00,000/- as interest paid by the complainant against the credit facility availed for purchasing the Flat along with the interest @24% p.a., till the realization of the amount, justice.
- d) Award in the interest of compensation amount Rs.5,00,000/- in favour of complainant and against of the opposite party for the mental agony, harassment etc., suffered by the complainant.
- e) award cost of litigation of Rs.75,000/ in favour the complainant and against the opposite party.

2. The facts of the case for the disposal of the case are that the Complainant is a consumer under Section 2(1)(d) of the Consumer Protection Act, 1986 and had booked a flat in the Opposite Party's project called "Victory Cross-roads", situated at plot No. GH-01/C, Sector 143-B, Noida, UP. The basic cost price of the project was stipulated to be Rs. 71,04,355/- and the Complainant deposited a booking amount of Rs.6,82,000/- on 22.01.2012 vide receipt no. 1346. Subsequently, the Complainant was allotted a flat bearing no. 903 (hereinafter "said flat") through an allotment letter dated 30.03.2012 and the total price reserved by the Opposite Party was 73,22,280/- which included basic sale price, lease rent, IFMS and other charges. The Complainant over the course of payments has



paid a total of Rs. 69,52,272/-, with the last payment/instalment dated on 01.08.2013.

3. It is the case of the Complainant, that despite paying almost 95% of the basic sale price of the allotted flat in the Opposite Party's project, he has still not been provided actual possession of the said flat.
4. The Complaint exceeded the pecuniary jurisdiction of this Commission but vide order dated 01.09.2017, the Complainant was granted liberty to restrict his compensation claim to 15% for the delayed period.
5. During the course of the proceedings, the Opposite Party had failed to file the written statement within the stipulated period of 30 days and the extended period of 15 days. Thereafter, vide order dated 20.08.2018, the right of the Opposite Party to file a Written Statement was closed. The Opposite Party was given liberty to file written arguments within 8 weeks vide order dated 29.03.2019, however, the opportunity granted has still not been availed. The matter was listed for final arguments. None have appeared on behalf of the Opposite Party. Clearly, multiple opportunities were given to the Opposite Party time and again, however, the Opposite Party has failed to avail all the opportunities granted to it by this Commission. Without causing any further delay we will be proceeding with this Consumer Complaint ex-parte.



6. We have gone through the Complaint and the necessary documents which are important for the adjudication of this Consumer Complaint. The short question which needs to be adjudicated upon is, whether the Opposite Party as alleged by the Complainant committed deficiency of service. In order to determine whether there was deficiency of service on part of

the Opposite Party or not, we need to examine if the Opposite Party had failed in granting possession in time to the Complainant.

7. As per the allotment letter dated 30.03.2012, the Opposite Party had to hand over the possession of the said flat to the Complainant within 36 months, which includes the 6 month extended period. The relevant clause of the allotment letter which enumerates the date of possession to be granted by the Opposite Party is clause 15 and has been reproduced below:

"15 (a) That the Owner / Developer shall complete the development construction of the Flat by 30 months and within an extended period of 6 months thereof. The completion date is subject to force majeure conditions and/or subject to any other reasons beyond the control of the Owner/Developer. No claim by way of damages/compensation shall lie against the Owner/Developer in case of delay in handing over the possession on account of any of the aforesaid reasons and the Owner/Developer shall be entitled to reasonable extension of time for delivery of possession of the said flat to the Allottee."

8. A perusal of the clause clearly proves that the Opposite Party had to give actual possession of the said flat to the Complainant within 36 months which includes the extended period as per the allotment letter. Considering the date of allotment letter was 30.03.2012, the last date of possession which was to be granted by the Opposite Party was 30.03.2015.
9. In the course of the arguments, learned counsel for the Complainant submitted that said flat had still not be completed and the actual possession of the flat had not been granted by the Opposite Party.
10. Having perused through the payment schedule as presented in the Complaint as well as the relevant clause for grant of



possession we are of the considered view that the complaint deserves to be accepted. The possession of the flat has yet not been granted within the time as agreed upon, despite the payment having been made as per the demand of the Opposite Party.

11. Having arrived at the said conclusion, the point for consideration is as to how the Complainant is to be compensated for the monetary loss, mental and physical harassment he has suffered at the hands of Opposite Party on account of non-delivery of the allotted flat.
12. The provisions of the Act enable a consumer to claim and empower the Commission/Forum to redress any injustice done to a consumer. The Commission or the Forum is entitled to award not only value of goods or services but also to compensate a consumer for injustice suffered by him. The word compensation is of very wide connotation. It may constitute actual loss or expected loss and may extend the compensation for physical, mental or even emotional suffering, insult or injury or loss. Therefore, for the purpose of determining the amount of compensation, the Commission/Forum must determine the extent of sufferance by the consumer due to action or inaction on the part of the Opposite Party. In **Ghaziabad Development Authority Vs. Balbir Singh - (2004) 5 SCC 65**, while observing that the power and duty to award compensation does not mean that irrespective of facts of the case, compensation can be awarded in all matters on a uniform basis, the Hon'ble Supreme Court gave certain instances and indicated the factors, which could be kept in view while determining adequate compensation. One of the illustrations given in the said



decision was between the cases, where possession of a booked/allotted property was directed to be delivered and the cases where only monies paid as sale consideration, are directed to be refunded. The Hon'ble Court observed, in this behalf, that in cases where possession is directed to be delivered to the Complainant, the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply refunded, then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is not only deprived of the flat/plot, he has been deprived of the benefit of escalation of the price of the flat/plot. Additionally, in our view, in such a situation, he also suffers substantial monetary loss on account of payment of interest on the loans raised; depreciation in the money value and escalation in the cost of construction etc.

13. From the above it is apparent that this Commission can pass orders regarding the refund of the amount deposited to the company by the complainants, notwithstanding the proceedings pending in any other forum. But the rate of interest to be awarded while issuing directions to the OPs for the refund of the amount, they having been found deficient in rendering service to the complainant as per agreement, cannot be on uniform basis, keeping in view the law laid down in the matter of **Ghaziabad Development Authority versus Balbir Singh (2004) 5 SCC 65 (Supra)**. Awarding of compensation would depend on the facts of each case to be assessed and adjudicated by the Court.



14. The Hon'ble NCDRC in the matter of **Anil Shantilal Gandhi versus Sahara Prime City Ltd. as reported in IV [2019] CPJ 24 (NC)** directed the refund of the amount deposited with interest @ 10%, the Opposite Party having failed to offer the possession of the allotted unit to complainant even after more than eight years time.
15. The Hon'ble NCDRC in the matter of **Universal Infrastructure and Anr versus Binay Pal Singh and Anr. as reported in IV [2019] CPJ 437 (NC)**, while relying on **Kolkata West International City Pvt. Ltd. versus Devasis Rūdra, Civil Appeal 3182/2019, decided on 25.03.2019**, passed by the Hon'ble Supreme Court noted that since more than seven years had expired the complainant cannot be expected to wait indefinitely for possession of the allotted flat and thus entitled for compensation.
16. The Hon'ble NCDRC in the matter of **STUC Awasiya Grahak Kalyaan Association and ors versus Supertech as reported in III [2019] CPJ 226 (NC)** held that the allottee cannot be compelled to accept possession at the belated stage and thus refund of the deposited amount alongwith compensation in the form of Simple Interest at the rate of 10% was ordered. The Hon'ble Supreme Court of India has taken the same view in the matter of **Pioneer Urban Land and Infrastructure Ltd. versus Govindan Raghavan** as reported in **II [2019] CPJ 34 (SC)**.
17. Moreover, the Apex Court in the matter of **Fortune Infrastructure and Anr versus Trevor D'lima and Ors.** as reported in **II[2018] CPJ 1 (SC)** held as under:

"Person cannot be made to wait indefinitely for possession of flats allotted to them. They are entitled



to seek refund of amount paid by them, alongwith compensation.”

18. The Hon'ble NCDRC in the matter of **Parasvath Buildwell Pvt. Ltd. and Anr versus Varun Dev**, as reported in **II[2018] CPJ 212 (NC)** is pleased to direct as under:

“Flat booked was never constructed. Allottee cannot be made to wait indefinitely for possession. They are entitled for refund. Refund allowed with 12% interest.”

19. Keeping in mind the settled law on the position, the fact that on 20.07.2015, the Opposite Party had informed the Complainant that the flat in question was ready for permissive possession as it was awaiting occupation certificate the ends of justice would be met if Opposite Party is directed to hand over the actual possession of the flat bearing No. 903 in Lumax Towers of the Opposite Party's project called "Victory Cross-roads", situated at plot No. GH-01/C, Sector 143-B, Noida, UP. However, this is subject to the occupation certificate having been obtained by the Opposite Party and subject to payment of remaining amount, along with relevant taxes and charges to be paid by the Complainant. It is further directed that the possession of the flat shall be handed over by the Opposite Party to the Complainant within a period of one month along with interest @ 7% for the delayed period of handing over the possession.

20. However, in the alternate, if the Opposite Party is unable to handover possession of the flat in question or the Complainant does not wish to take the possession of the flat for any reason a direction is issued to the Opposite Party to refund the deposited amount with compensation in the form of simple interest at the rate of 7% on the deposit amount along with cost of litigation of



Rs.75,000/-. This payment be made by the Opposite Party to the Complainant within a period of three months from the date of this order.

21. Ordered accordingly.
22. Registrar of this Commission is requested to place on record the certified copy of this order in C/1349/2017 also for records.
23. A copy of this order be forwarded to the parties to the case free of cost as statutorily required.
24. File be consigned to records.

Delhi State Consumer Disputes Redressal Commission



(DR. JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

— Sd —
(ANIL SRIVASTAVA)
MEMBER

Pronounced today
06.07.2020



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