

IN THE STATE COMMISSION: DELHI

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

Date of Hearing:17.07.2020

Date of Decision:21.07.2020

Complaint No.971/2018

IN THE MATTER OF

MEGHANA SINGH

W/o Dr. Sanjeev Kumar,
R/o Pacific-702, BT-11,
Omaxe Heights, Sector-86
Faridabad-121002

....Complainant

VERSUS

FERROUS INFRASTRUCTURE PVT. LTD.

Seth Farms, Khasra No. 41,42,44,45
Mehrauli, Gurgaon Road, Ghitorni,
Vasant Kunj, New Delhi-110030

SURENDER SETH (DIRECTOR)

Seth Farms, Khasra No. 41,42,44,45
Mehrauli, Gurgaon Road, Ghitorni,
Vasant Kunj, New Delhi-110030

ASHISH SETH (DIRECTOR)

Seth Farms, Khasra No. 41,42,44,45
Mehrauli, Gurgaon Road, Ghitorni,
Vasant Kunj, New Delhi-110030

....Opposite

Party

HON'BLE SMT. JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE SH. ANIL SRIVASTAVA, (MEMBER)

1. Whether reporters of local newspaper be allowed to see the judgment?

Yes

2. To be referred to the reporter or not?

Yes

Present: Sh. Kuldeep Mansukhani, Counsel for the Complainant

Sh. Sachin Sharma, Counsel for the Opposite Parties

PER ANIL SRIVASTAVA, MEMBER

JUDGEMENT

1. The complaint filed by Ms. Meghana Singh, for short complainant, before the District Forum, Sheikh Sarai, Phase-II, under Section 12 of the Consumer Protection Act 1986, the Act, against the Ferrous Infrastructure Pvt. Ltd., hereinafter referred to as OPs, having been returned by the District Forum vide their order dated 01.06.2018 on the ground that they do not have pecuniary jurisdiction to hear and to dispose of the case, relying on the judgement of the Hon'ble National Consumer Disputes Redressal Commission in CO-97/2016 in the matter of Ambrish Shukla versus Ferrous Infrastructure as reported in I [2017] CPJ 1 (NC) with a direction to present it before this Commission, following the procedure laid down by the Hon'ble NCDRC in the matter of Tushar Batra versus Unitech Limited [2017 SCC Online NCDRC 154], this Commission took up this matter for final hearing since the pleadings were complete.

2. Facts of the case necessary for the adjudication of the complaint are these.

The complainant had entered into an agreement with the OPs on 23rd September 2008 for purchase of a flat. The complainant was allotted the flat bearing no. 503 Tower D Floor No. 5th having built up area of approximately 1194 sq. ft. The total cost of the unit as agreed to was Rs. 18,50,700/- plus additional charges of Rs. 8,79,083/ paid at the time of execution of agreement. The complainant made payments through LIC Housing Finance Ltd. on the basis of



construction linked plan vide her loan account no. 15752, and the payments were released on the basis of demands made by the OPs from time to time.

4. In terms of the agreement executed on 23.09.2008 the possession of the flat was agreed to be handed over within 36 months from the date the construction started or from the date of the execution of the agreement, whichever is later. The relevant extracts of the agreement are indicated below:-

That the possession of the said residential unit is likely to be delivered by the company to the apartment/residential unit allottee within 36 months from the date of the start of the construction of the tower in which the said premises is located or from the execution of this agreement whichever is later, subject to force majeure circumstances, and on receipt of all payments punctually as per agreed terms and on receipt of complete payment of the basic sale price and other charges due and payable up to last payment according to the payment plan applicable to him.

5. The complainant has alleged that despite agreed period for handing over possession having elapsed and despite entire amount as agreed to having been paid, the OPs did not hand over the possession of the flat. Their misery was further aggravated when the OPs demanded additional sum of Rs. 4,85,780/-. Besides as against the contracted chargeable area of 1194 sq. ft. in the aforesaid flat, the new chargeable area of 1260 sq. ft. was done without the consent of the complainant, causing financial burden to her for no reason or rhyme.

The construction was not complete within the time as agreed to. The completion certificate or occupancy certificate was not issued by the Authority Concerned. This led to filing of the complaint for the redressal of her grievances.



7. OPs to whom the notices were issued have resisted the complaint on various grounds both on technical and on merit but specifically taking the plea that the delay in completion of the construction in the Tower is owing to factors beyond their control, force majeure, relying on clause 15 of the agreement. The said clause is reproduced below:

"That if the construction of the premises is delayed due to force majeure circumstances, which inter alia include delay on account of non-availability of steel and/or cement or other building materials or water supply or electric power or strike or slow down strike or due to a dispute with the construction agency or civil commotion, or by reason of water or enemy action or earthquake or any act of God, delay in certain decisions/clearances from any notice, order, rules or notification of the government and/or any other public or competent authority or for any other reason beyond the control of the company and in any of the aforesaid event, the company shall be entitled to a reasonable corresponding extension of the time of completion of construction of the tower where the said premises is to be located on account of the Force Majeure circumstances."

8. We have read and re-read the reply furnished by the OPs justifying the delay in construction of the dwelling unit on the ground that there existed circumstances beyond their control leading to the delay but no specific explanation has been assigned for taking reliance of clause 15. Besides the company of the repute as OPs claim, they should have anticipated the reasons that would cause delay and take remedial steps to ensure that the construction was complete within the prescribed and agreed period. No cogent and tangible ground having been taken, we hold that the OP has failed to establish any force majeure circumstances for the delay in offering possession of the allotted flat to the complainant. We are fortified in our view by the judgement of the Hon'ble NCDRC in the matter of Capital Greens Flat Buyer Association & ors versus DLF Universal Limited & anr as



reported in I [2020] CPJ 297 (NC) holding that in the absence of any evidence reliance of force majeure cannot be taken.

9. Having reached to this conclusion the grounds taken by the OPs resisting the complaint are sequentially rejected. In these circumstances the complaint deserves to be allowed. Now the point for determination is as to how the complainant is to be compensated for the monetary loss, mental and physical harassment she has suffered at the hands of OPs on account of non-delivery of the allotted flat.

10. 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 my 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.

11. 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.

12. The Hon'ble NCDRC in the matter of Anil Shantilal Gandhi versus Sahara Prime City Ltd. as reported in IV [2019] CPJ 24 (NC) is pleased to direct refund of the amount deposited with interest @ 10%, the OP having failed to offer the possession of the allotted unit to complainant even after more than eight years time.

13. The Hon'ble NCDRC in yet another matter, in the matter of Universal Infrastructure and Anr versus Binay Pal Singh and Anr. as reported in IV [2019] CPJ 437 (NC) relying on a judgement of the Hon'ble Supreme Court of India in the matter of Kolkata West International City Pvt. Ltd. versus Devasis Rudra, Civil Appeal 3182/2019, decided on 25.03.2019, noting that more than seven years have already expired held that the complainant cannot be expected to wait indefinitely for possession of the allotted flat and thus entitled for compensation.

14. 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) is pleased to hold that 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).

15. Besides, their Lordships in Apex Court in the matter of Fortune Infrastructure and Anr versus Trevor D'lima and ors as reported in II[2018] CPJ 1 (SC) are pleased to hold 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.

16. 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.

17. The Hon'ble NCDRC has taken similar view in the following matters also, namely:

a.

Emaar MGF Land Ltd. and Anr versus Amit Puri- II[2015] CPJ 568 (NC)

E

b.

Parasvath Exotica Residents Association versus Parasvath Developers Ltd. and ors-IV[2016] CPJ 328 (NC).

P

18. Having regard to these facts and legal position explained, we are of the considered view that ends of justice would be met if a direction is issued to the OPs to refund the deposited amount with simple interest at the rate of 7% from the date of deposit till realisation within



a period of two months from the date of this order. Besides compensation of Rs. 50,000/- and litigation cost of Rs. 20,000/- in the facts and circumstances of the case are also ordered.

19. Ordered accordingly.
20. A copy of this order be forwarded to the parties to the case free of cost as is statutorily required. File be consigned to records.

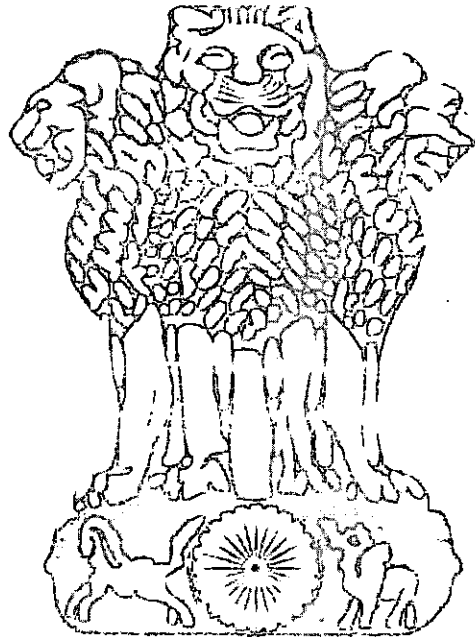
-Sd-

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

Delhi State Consumer Disputes Redressal Commission

-Sd-

(ANIL SRIVASTAVA)
MEMBER



sl



First/ Free Copy Issued
on.../2/3/21.....by Regd. Post
Certified to be a True Copy

[Signature]
Registrar
Delhi State Consumer Dispute
Redressed Commission
New Delhi-110002