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2024 SCC OnLine SC 1823

In the Supreme Court of India

(BEFORE B.R. GAVAI AND SANDEEP MEHTA, JJ.)

Vidya and Others ... Appellant(s);

Versus

Parsvnath Developers Ltd. ... Respondent(s).

Civil Appeal No. 8985 of 2022

Decided on July 29, 2024

The Judgment of the Court was delivered by

B.R. GAVAI, J.:— This appeal challenges the order dated 29th September, 2022 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'Commission') in Consumer Case No. 1557 of 2016 wherein the Commission partly allowed the complaint preferred by the complainants-appellants herein and directed the sole respondent herein, to refund the entire sum deposited by the complainants-appellants with interest at the rate of 9% per annum from the date of respective deposit till the date of refund, within a period of two months from the date of the said order.

2. The facts, in brief, giving rise to the present appeal are as under:

2.1. M/s. Parsvnath Developers Limited (hereinafter referred to as the 'Developer'), a company registered under the Companies Act, 1956, and engaged in the business of development and construction of *inter alia* residential projects as well as projects for the Delhi Metro Rail Corporation, launched a group housing project (hereinafter referred to as 'the project') titled 'Parsvnath Paramount' at Subhash Nagar (near Subhash Nagar Metro Station), New Delhi in the year 2008 and widely publicized the same.

2.2. Upon gaining knowledge of the project, the complainants-appellants booked a 3BHK flat in the said project and to that end, deposited a sum of Rs. 16,03,066/- on 15th July, 2008. Subsequently, the complainants-appellants paid second instalment of an identical sum on 14th August, 2008.

2.3. Subsequently, the complainants-appellants and the respondent-Developer entered into a Flat Buyer Agreement (hereinafter referred to as 'the Agreement') on 10th October, 2008 and in furtherance of the same, the complainants-appellants were allotted Flat No. 301 situated in Tower 3 of the project, which had an approximate area of 1805 sq. ft. The total payable price of the flat was determined to be Rs.

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1,28,24,525/- calculated at the rate of Rs. 7105/- per sq. ft. of the saleable/super built-up area. An additional sum of Rs. 3,00,000/- was to be paid for the mandatory covered car parking space in the concerned tower. Clause 11(a) of the Agreement clarified that the construction of the flat would be completed within a period of 30 months of commencement of construction of the particular Tower in which the flat was located, with a further grace period of 6 months.

2.4. The complainants-appellants opted for a 'Construction Linked Payment Plan' under which 25% of the sale price was payable within 30 days of booking, 60% of the sale price and the additional sum for the covered car parking space was payable in 6 installments and 15% of the sale price was payable in another 3 installments. In pursuance of the same, the complainants-appellants paid a total sum of Rs. 1,30,62,971/- in the intervening period between 15th July, 2008 and 21st December, 2013, as per the demand of the respondent-Developer. The aforesaid amount deposited by the complainants-appellants amounted to about 95% of the total sale price of the flat.

2.5. In the meanwhile, the respondent-Developer unilaterally transferred the said Flat No. 301 situated in Tower 3, which had been initially allotted to the complainants-appellants, to Flat No. 702 situated in Tower 2, admeasuring 1942 sq. ft., in April, 2011.

2.6. Subsequently, the respondent-Developer raised a demand for the payment of VAT amounting to Rs. 60,141/- which was duly paid by the complainants-appellants on 29th January, 2014. A second payment of an identical sum was made on 13th March, 2014.

2.7. In the interregnum, the period of 36 months set out in the Agreement, including the grace period of 6 months, had expired.

2.8. On failure of the respondent-Developer to handover the possession of the flat within the expected deadline, despite timely payments, the complainants-appellants made several attempts to contact the respondent-Developer to enquire about the progress of the project but received no substantial update. Thereafter, the complainants-appellants visited the site in June, 2015 and discovered that no construction work was ongoing.

2.9. Aggrieved by the halt in construction, the complainants-appellants in a letter dated 15th June, 2015, addressed to the respondent-Developer, enquired about the time-frame within which the construction would be completed and possession would be handed over to them. Further, the complainants-appellants enquired about the manner in which they would be compensated on account of the delay in delivery of possession.

2.10. The respondent-Developer in subsequent letters dated 29th

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June, 2015 and 5th July, 2015 informed the complainants-appellants that the delay in construction was on account of technical issues and recession in the realestate sector owing to which construction for the project had suffered. However, the respondent-Developer, assured the complainants-appellants that they had persisted with the construction and the same would be completed at the earliest and the complainants-appellants would be informed about the tentative date for making an offer of possession, thereafter. So far as the compensation claimed for was concerned, the same was to be governed by the terms and conditions laid down in the Agreement. However, the respondent-Developer failed to directly address the specific queries that had been raised by the complainants-appellants.

2.11. Subsequently, the complainants-appellants addressed two further letters to the respondent-Developer on 28th October, 2015 and 6th January, 2016, respectively, once again raising queries as to when the construction would be completed and the possession would be handed over to them, whether the construction would be completed at all and the manner in which the complainants-appellants would be compensated for the delay in conclusion of the project. However, the respondent-Developer did not respond to the said letters.

2.12. Aggrieved thereby, the complainants-appellants filed a complaint before the Commission being Consumer Case No. 1557 of 2016 praying for a refund of the entire amount paid by them as per the current market value along with interest at the rate of 24% per annum, thereon, from the date of booking the flat till the date of payment as well as compensation amounting to Rs. 1,37,36,350/- along with interest at the rate of 24% per annum thereon, among other reliefs.

2.13. The learned Commission, by the impugned order, partly allowed the said Consumer Case No. 1557 of 2016 in the afore-stated terms, with costs of Rs. 1 lakh.

3. Being aggrieved thereby, the present appeal.

4. We have heard Shri Sanjay Jain, learned counsel appearing on behalf of the complainants-appellants and Shri Jayant Muth Raj, learned Senior Counsel appearing on behalf of the respondent-Developer.

5. Shri Jain, learned counsel appearing for the complainants-appellants submitted that the learned Commission erred in awarding the interest only at the rate of 9% per annum. He submitted that the Agreement provided that, in case there is delay in payment by the flat purchaser, the respondent-Developer was entitled to condone the same by charging interest at the rate of 24% per annum of the amount in default. He further submitted that the proforma agreement was fully tilted in favour of the respondent-Developer. The Agreement provided

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that, in case of delay in completion of the project by the respondent-Developer, it was liable to pay interest only at the rate of 12% per annum. It is submitted that there is no logic in making the flat purchaser liable for payment of interest at the rate of 24% per annum whereas the respondent-Developer was liable to pay interest only at the rate of 12% per annum.

6. Shri Jain therefore submitted that, applying the principle of parity, the learned Commission ought to have awarded the interest at the rate of 24% per annum. It is submitted that, in any case the interest at the rate of only 9% per annum is not sustainable in law.

7. Per contra, Shri Jayant Muth Raj, learned Senior Counsel appearing on behalf of the respondent-Developer submitted that the delay in completion of the project was not deliberate. He submitted that, since there was a delay in sanctioning of the plans by the Delhi Development Authority, the project could not be completed. It is therefore submitted that the case was duly covered under the *force majeure* clause and as such, interest even at the rate of 9% was not liable to be imposed upon the respondent-Developer.

8. We have perused the order passed by the learned Commission. Insofar as the contention of the respondent-Developer that since there was a delay in sanctioning the layout plans, it was covered under *force majeure* clause is concerned, this Court, in the case of *DLF Home Developers Limited (earlier known as DLF Universal Limited)* v. *Capital Greens Flat Buyers Association*[1] has held to the contrary. Therefore, the contention in that regard is without substance. We find that the learned Commission has rightly directed the respondent-Developer to refund the entire amount deposited by the complainants-appellants. However, we find that, insofar as award of interest at the rate of 9% per annum is concerned, the learned Commission was not justified in the facts of the case to award a lesser interest than even the one agreed upon in the Agreement. Undisputedly, the facts of the case show that the project was delayed inordinately. The complainants-appellants were made to suffer for long, for no fault of them. In spite of making the entire payment, they were deprived of the possession within the stipulated time.

9. In our view, the learned Commission, at least, ought to have awarded interest at the rate of 12% per annum in view of clause 7(b) of the Agreement.

10. In the result, the appeal is partly allowed. The direction made by the learned Commission for refund of the entire amount deposited by the complainants-appellants is upheld. However, the direction with regard to interest is modified to the extent that it shall be paid at the rate of 12% per annum from the date of respective deposit till the date of refund. The unpaid amount in terms of the aforesaid shall be paid

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within a period of three months from the date of this judgment.

11. Pending application(s), if any, shall stand disposed of.

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[1] (2021) 5 SCC 537

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