

(2017) 01 NCDRC CK 0103

In the National Consumer Disputes Redressal Commission

Case No : 198 of 2015

DUSHYANT KUMAR GUPTA & ORS.

APPELLANT

Vs

TODAY HOMES & INFRASTRUCTURE PRIVATE LIMITED &
ORS.

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Consumer Protection Act, 1986, Section 21 - Jurisdiction of the National Commission

Citation : 2017 1 CPR 509

Hon'ble Judges : V.K. Jain

Advocate : Sushil Kaushik, Himanshi Singh, Sumesh Dhawan, Tannya Baranwal

Judgement

1. The complainants in these matters are the allottees of residential flats in a project, namely Canary Greens, which the opposite party is developing in Sector 73 of Gurgaon. All of them were allotted one residential flat each in the aforesaid project and all of them entered into individual but identical agreements with the opposite party on different dates. As per clause 21 of the Agreements to Sell, the possession of the flats was to be delivered within 36 months of the execution of the agreement but the opposite party was also entitled to a grace period of six months for unforeseen delays beyond its control, including though not limited to delays in obtaining the Occupancy Certificate/Completion Certificate. The possession of the flats having not been offered to them, the complainants have approached this Commission by way of these individual complaints. All the complainants have sought possession of the flats allotted to them or in the alternative a ready to move apartment of identical size in a similar locality or payment of the current market rate of similar houses which is alleged to be Rs.10,000/- per sq.ft. as the second alternative. They are also seeking payment of rental value of the apartment and compensation in the form of interest @ 18% p.a. They are further seeking compensation for the delay in delivery of the possession, @ Rs.5/- per sq.ft. per month as per the agreements to sell executed with the opposite party. They are also seeking separate compensation for the

mental agony and harassment alleged to have been caused to them on account of the deficiency on the part of the opposite party in rendering services to them, by not giving possession of the flats within the time stipulated in the agreements to sell. 2. The complaints have been opposed on identical grounds. The opposite party has taken a preliminary objection that since the agreed sale consideration was not more than Rs.1 crore, this Commission lacks pecuniary jurisdiction to entertain the complaints. It is also alleged that the complainants having delayed the payment of the sale consideration, they are not entitled to seek specific performance of the agreement by claiming possession of the residential flats allotted to them. It is also alleged that the construction of the flats has been delayed on account of reasons beyond the control of the opposite party including the failure of the allottees to make timely payment of the sale consideration. 3. The table appended herein below, according to the complainants, shows the agreed sale consideration inclusive of service tax and VAT, agreed sale consideration exclusive of service tax and VAT and the committed date of possession as per the agreement to sell.

Sl. No. CC No. Name of Complainants Sale consideration inclusive of S.T. & VAT Sale consideration exclusive of S.T. & VAT Committed date of possession including the grace period

1.	198/15	Dushyant Kumar Gupta	7134607	6858360	27.6.2014
2.	793/2015	Rajesh Kumar Gupta	7408222	7112150	13.6.2014
3.	794/2015	Shashikant Rattanpal	8943172	8579920	10.6.2014
4.	795/2015	Sunil Puri	7350654	7060080	29.6.2014
5.	796/2015	Vipin Aggarwal	7256346	6978080	07.6.2014
6.	797/2015	Aseem Sachdeva	7475249	7179800	12.6.2014
7.	798/2015	Satish Kumar Verma	7316956	7030150	12.6.2014
8.	799/2015	Sanjay Ahuja	6623678	6379480	22.8.2014
9.	800/2015	Ankur Narang	9207262	8826300	29.6.2014
10.	801/2015	Ravindra Kumar Mehrotra	8588680	8244300	22.3.2015
11.	802/2015	Ankit Agarwal	8702394	8341300	29.6.2014
12.	803/2015	Tarun Kumar Bindal	5891622	5648625	05.6.2014
13.	804/2015	Deepesh Sachdev	5823292	5584875	14.6.2014
14.	805/2015	Shailendra Singh Shekhawat	5723878	5491800	07.2.2015
15.	806/2015	Adish Kapoor	7310481	7000220	17.6.2014

16.	807/2015	Achal Sangal	7507265	7179800	17.8.2014
17.	808/2015	Charan Singh	11362152	10888400	29.1.2015
18.	809/2015	Rukmani Gupta	8606355	8252060	24.8.2014
19.	810/2015	Hemant Kumar	5812415	5572703	11.09.2014
20.	811/2015	Sachin Malhotra	7477880	7153150	28.8.2014
21.	812/2015	Tribhawan Nath Bhan	8588390	8244300	14.4.2015
22.	813/2015	Sumit Kumar Somani	5820012	5584875	22.6.2014
23.	814/2015	Suresh Chander Sharma	8654575	8296680	15.6.2014
24.	815/2015	Ashutosh Kumar Jain	5723046	5491800	23.9.2014
25.	816/2015	Parveen Kumar Agarwal	5697345	5462475	15.8.2014
26.	817/2015	Ranjeet Passi	7331452	7041220	29.6.2014
27.	818/2015	Bharat Madan	7214187	6918220	09.6.2014
28.	819/2015	Pranab Kumar Bal	7381365	7097800	14.6.2014
29.	820/2015	Naresh Kumar Sharma	5727450	5491800	29.6.2014
30.	821/2015	Manju Gupta	7485969	7179800	15.05.2016
31.	822/2015	Manasi Gupta	7474891	7179800	17.6.2014
32.	823/2015	Richa Rathi	5819907	5584875	01.7.2014
33.	824/2015	Ashish Sethi	7269840	6939380	09.6.2014
34.	825/2015	Sunil Kumar Singhvi	8589673	8225870	19.07.2014
35.	826/2015	Manoj Kumar Khera	5726261	5491800	16.6.2015
36.	827/2015	Ruchi Sharma	5726261	5491800	12.6.2014
37.	828/2015	Amit Khanna	7401973	7097800	28.6.2014
38.	829/2015	Ramesh Chandra Sharma	5927428	5680500	17.6.2014
39.	830/2015	Navdeep Sachdeva	8585777	8244300	27.12.2014
40.	831/2015	Bibhuti Ranjan Pradhan	7371918	7060080	23.05.2015
41.	832/2015	Anand Tewari	7245804	6948150	04.9.2014
42.	833/2015	Pratip Francis	7405670	7097800	27.12.2014

43. 834/2015	Ankit Ahuja	5629132	5398725	09.4.2015
44. 835/2015	Vivek Gupta	5674566	5445263	31.8.2014
45. 836/2015	Pradeep Agrawal	7136425	6858360	28.8.2014
46. 837/2015	Sangeeta Sunil Lahoti	8506788	8155060	23.9.2014
47. 838/2015	Supreet Bhalla	5746176	5509013	15.6.2014
48. 839/2015	Rajat Mehta	7256913	6970290	21.6.2014
49. 840/2015	Sajjan Kumar Gupta	5830460	5587425	29.3.2015
50. 841/2015	Rajesh Kumar	8593313	8244300	12.3.2015
51. 842/2015	Vijay Pal Singh Rathore	7736620	7245800	15.6.2014
52. 843/2015	Sumit Anand	8631584	8274370	19.10.2014
53. 844/2015	Rahul Kumar Tiwari	5891622	5648625	11.9.2014
54. 845/2015	Sonam Tshering	6065192	5796390	26.9.2014
55. 846/2015	Rajat Gupta	5674362	5439206	27.12.2014
56. 847/2015	Vishal Singh	5820441	5584875	21.6.2014
57. 848/2015	Aurbind Pal Singh	5892866	5648625	10.2.2015
58. 849/2015	Raghunath Lal Mehndiratta	6051827	5784510	11.4.2015
59. 850/2015	Ashish Raizada	7196862	6918220	25.6.2014
60. 1245/2015	Nihar Ranjan Sahoo	7424014	7138800	26.09.2014

4. The main question which arises for consideration in these complaints is as to whether this Commission possess the requisite pecuniary jurisdiction to entertain these complaints. As provided in section 21 of the Consumer Protection Act this Commission has jurisdiction to entertain the complaints where the value of the goods or services and compensation if any claimed exceeds Rs.1 crore. Though most of the complainants have claimed refund @ Rs.10,000/- per sq.ft. of the area of the flat, no credible evidence has been led by them to prove that the market value of a flat similar to the flat allotted to them and in the same or a comparable locality was Rs.10,000/- or more on the date these complaints were instituted. No price list of any developer in respect of residential flats in the same or a comparable locality with identical or comparable specifications has been produced by them, in the absence of a credible evidence, it would be difficult to accept the bald statements of the complainants as regards the market value of a similar flat in the same or a comparable locality, on the dates these complaints were instituted. Therefore, invocation of the pecuniary jurisdiction of this Commission on the basis of the aforesaid alleged market value of the similar flats

is highly misplaced and cannot be entertained. Though ordinarily the pecuniary jurisdiction is to be determined on the basis of the averments made in the complaint, this Commission will not be justified in entertaining the complaints based upon the allegations which are ex-facie untenable and where the claim is found to be highly inflated, fanciful and exaggerated, made only with a view to bring the matter within the pecuniary jurisdiction of a particular consumer forum. The scheme of the Consumer Protection Act, which requires a consumer complaint with pecuniary value of upto Rs.20 lakhs to be instituted before a District Forum and the complaints with a pecuniary value of more than Rs.20 lakhs and upto Rs.1 crore before the State Commission, cannot be allowed to be bypassed, by entertaining highly exaggerated and wholly unfounded claims. 5. This Commission has in the past granted compensation in the form of interest paid Rs.18% per annum in the cases where refund has been allowed and compensation in the form of interest @ 12% per annum in the cases where possession of the house/plot has been directed. Therefore, a claim for refund by adding the agreed sale consideration to compensation in the form of simple interest @ 18% per annum from the date of each payment till the date of filing of the complaint cannot be said to be highly exaggerated or fanciful and made only with a view to invoke the jurisdiction of this Commission, even if this Commission eventually grants a lesser compensation to the complainant. Similarly, where the complainant seeking only the possession of the house but there is no prayer for refund of the payment made by him to the builder, the value arrived at by adding the agreed sale consideration to the compensation in the form of interest @ 12% p.a. from the committed date of possession till the date of filing of the complaint would be maintainable before this Commission if the said claim comes to more than Rs.1 crore. 6. In a complaint where the complainant makes alternative prayers, one for possession of the house allotted/plot to him and the other for refund of the amount paid by him to the developer along with compensation, this Commission would have pecuniary jurisdiction to entertain the complaint where either the relief of possession or the relief of refund, along with the compensation as calculated in terms of para-5 herein above falls within the pecuniary jurisdiction of this Commission. Since in such a case, the State Commission will not have the requisite pecuniary jurisdiction to grant one of the alternative reliefs claimed in the complaint, the complainant cannot be asked to approach the said Commission. 7. The learned counsel for the parties state on instructions that if the purchase price, service tax and VAT are taken as the value of the service and compensation in the form of 18% interest on the amount paid by the allottee from the date of each payment till the date on which the complaints were filed is added to the said value, the aggregate would come to more than Rs.1.00 crore each in the following 37 consumer complaints:

Sl. No.	Consumer Complaint No.	Name of the complainant
1.	198/2015	Dushyant Kumar Gupta
2.	793/2015	Rajesh Kumar Gupta

3. 794/2015	Shashikant Rattanpal
4. 795/2015	Sunil Puri
5. 796/2015	Vipin Aggarwal
6. 797/2015	Aseem Sachdeva
7. 798/2015	Satish Kumar Verma
8. 800/2015	Ankur Narang
9. 801/2015	Ravindra Kumar Mehrotra
10. 802/2015	Ankit Agarwal
11. 806/2015	Adhish Kapoor
12. 807/2015	Achal Sangal
13. 808/2015	Charan Singh
14. 809/2015	Rukmani Gupta
15. 811/2015	Sachin Malhotra
16. 812/2015	Tribhawan Nath Bhan
17. 8014/2015	Suresh Chander Sharma
18. 817/2015	Ranjeet Passi
19. 818/2015	Bharat Madan
20. 819/2015	Pranab Kumar Bal
21. 821/2015	Manju Gupta
22. 822/2015	Manasi Gupta
23. 824/2015	Ashish Sethi
24. 825/2015	Sunil Kumar Singhvi
25. 828/2015	Amit Khanna
26. 830/2015	Navdeep Sachdeva
27. 831/2015	Bibhuti Ranjan Pradhan
28. 832/2015	Anand Tewari
29. 833/2015	Pratip Francis
30. 836/2015	Pradeep Agrawal
31. 837/2015	Sangeeta Sunil Lahoti
32. 839/2015	Rajat Mehta

33. 841/2015 Rajesh Kumar
34. 842/2015 Vijay Pal Singh Rathore
35. 843/2015 Sumit Anand
36. 850/2015 Ashish Raizada
37. 1245/2015 Nihar Ranjan Sahoo

They also state that applying the same criteria, the aggregate does not come to more than Rs.1.00 crore in the remaining 23 complaints mentioned herein below:

Sl. No.	Consumer Complaints No.	Name of the complainant
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| 1. 799/2015 | Sanjay Ahuja |
| 2. 803/2015 | Tarun Kumar Bindal |
| 3. 804/2015 | Deepesh Sachdev |
| 4. 805/2015 | Shailendra Singh Shekhawat |
| 5. 810/2015 | Hemant Kumar |
| 6. 813/2015 | Sumit Kumar Somani |
| 7. 815/2015 | Ashutosh Kumar Jain |
| 8. 816/2015 | Parveen Kumar Agarwal |
| 9. 820/2015 | Naresh Kumar Sharma |
| 10. 823/2015 | Richa Rathi |
| 11. 826/2015 | Manoj Kumar Khera |
| 12. 827/2015 | Ruchi Sharma |
| 13. 829/2015 | Ramesh Chandra Sharma |
| 14. 834/2015 | Ankit Ahuja |
| 15. 835/2015 | Vivek Gupta |
| 16. 838/2015 | Supreet Bhalla |
| 17. 840/2015 | Sajjan Kumar Gupta |
| 18. 844/2015 | Rahul Kumar Tiwari |
| 19. 845/2015 | Sonam Tshering |
| 20. 846/2015 | Rajat Gupta |
| 21. 847/2015 | Vishal Singh |
| 22. 848/2015 | Aurbind Pal Singh |

8. The contention of the learned senior counsel for the opposite party was that the service tax and VAT cannot be added to the sale price in order to determine the value of the service in terms of Section 21 of the Consumer Protection Act. I however, find no merit in this contention since, as per the agreement between the parties, the flat buyers were required to pay the aforesaid taxes to the opposite party, and not pay them directly to the concerned Government. It would be immaterial that the opposite party, in turn would have to deposit the said taxes with the concerned Government, the material fact being that without payment of the agreed purchase price and these taxes, the opposite party would be under no obligation to deliver possession of the flat to the buyers. Therefore, the aforesaid taxes, in my opinion, cannot be excluded while determining the value of the service, in terms of Section 21 of the consumer Protection Act. 9. No material has been produced by the opposite party to prove that the completion of construction and offer of possession has been delayed on account of reasons beyond its control. Thus, no justification for the said delay has been made out. The learned counsel for the complainants in 37 complaints in which the pecuniary jurisdiction vests with this Commission states on instruction from the said complainants that in order to avoid further litigation in the matter, such complainants who want to take refund instead of waiting for the possession of the flats are restricting their claim to refund of the entire principal amount paid by them, including service tax and VAT along with compensation in the form of simple interest @ 10% per annum from the date of each payment till the date on which the entire amount, along with interest, in terms of this order, is refunded to them. He further states on instructions that such flat buyers out of the above referred 37 complainant, who want to wait for possession of the flats, with a view to avoid further litigation, are restricting their claim for compensation to simple interest @ 8% per annum on the entire amount including VAT and Service Tax paid by them from the committed date of possession till the date on which the possession of the flat is offered to them after obtaining all the requisite clearances, including the Occupancy Certificate. 10. In view of the aforesaid statement the Consumer Complaints Nos. CC/198/2015, CC/793/2015, CC/795/2015, CC/796/2015, CC/797/2015, CC/798/2015, CC/800/2015, CC/801/2015, CC/802/2015, CC/806/2015, CC/807/2015, CC/809/2015, CC/812/2015, CC/814/2015, CC/818/2015, CC/821/2015, CC/822/2015, CC/824/2015, CC/828/2015, CC/831/2015, CC/832/2015, CC/836/2015, CC/837/2015, CC/839/2015, CC/841/2015, CC/847/2017, CC/850/2015, are disposed of with the following directions: (i) The opposite party shall refund the entire amount received from the complainants, including the payment, if any, made by their predecessor in interest, including service tax and VAT, along with compensation in the form of simple interest @ 10% per annum from the date of each payment till the date on which the entire amount, in terms of this order along with compensation in the form of interest is actually refunded to them, by way of a Demand Draft/Pay Order; (ii) The opposite party shall pay Rs.10,000/-

as the cost of litigation in each complaint; (iii) The payment, in terms of this order shall be made within three months from today. 11. The Consumer Complaints Nos. CC/794/2015, CC/808/2015, CC/811/2015, CC/817/2015, CC/819/2015, CC/825/2015, CC/830/2015, CC/833/2015, CC/843/2015, CC/1245/2015 are disposed of with the following directions: (i) The opposite party shall complete the construction of the flats allotted to the complainants in all respects, obtain all the requisite clearances, including the Occupancy Certificate and offer possession to the complainants on or before 30.04.2018; (ii) The opposite party shall pay compensation to the aforesaid complainants in the form of simple interest @ 8% per annum on the entire amount paid by them including VAT and Service Tax from the committed date of possession i.e. the date by which the possession of the flat was agreed/expected to be offered as per the Agreement to Sell, till the date on which the possession in terms of this order is offered to them after obtaining all the requisite clearances, including the Occupancy Certificate. The grace period as per the Agreement to Sell will be included, while determining the committed date of possession; (iii) The opposite party shall pay Rs.10,000/- as the cost of litigation in each complaint; (iv) The compensation in terms of this order shall be paid on or before 30.4.2018, unless the possession in terms of this order is offered at an earlier date in which case it shall be paid while offering the possession of the flat. If any balance amount, as per the Agreement to Sell, remains payable to the opposite party, that amount can be adjusted while computing the compensation. 12. Now I am coming to the complaints which do not come within the pecuniary jurisdiction of this Commission. The question which arises for consideration as to what course of action should be adopted in respect of these complaints which have been pending with this Commission for the last about $1\frac{1}{2}$ years. One course can be to dismiss these complaints with liberty to such complainants to institute fresh complaints before the concerned State Commission. The aforesaid course of action, in my view, would not be fair and reasonable, considering that the complaints are pending for about $1\frac{1}{2}$ years and at one point of time, this Commission held the view that the market value of the flat as on the date of filing of the complaint could be treated as the value of the service in such matters. In my view, the appropriate course of action in such matters would be to follow the procedure prescribed in Order 7, Rule 10 A of the Code of Civil Procedure. Though, the aforesaid provision has not been expressly extended to this Commission by Section 13 (4) of the Consumer Protection Act, the principle underlying the said provision can in appropriate cases, be adopted by this Commission, in order to protect the interest of the consumers, while simultaneously ensuring that no prejudice is caused to the service provider by adopting such a course of action. The opposite party in these cases has filed its written version on the merits of the complaints. It has also led evidence on merits. No prejudice would be caused to the opposite party if the complaints are returned for being presented before the concerned State Commission, with a direction to the State Commission to decide them afresh, taking into consideration, the pleadings, affidavits and the evidence including documentary

evidence filed by the parties before this Commission provided an opportunity is given to the parties to lead additional evidence and if filed, such additional evidence is also considered along with the evidence, which was filed before this Commission. The aforesaid course of action besides ensuring a prompt and expeditious disposal of the complaints by a competent Consumer Forum will also ensure that no prejudice is caused to either party in any manner. 13. The learned counsel for the aforesaid complainants states that they will present the complaints before Delhi State Consumer Disputes Redressal Commission within two weeks of receiving the same from the Registry, and requests that a date may be fixed for the appearance of the parties before the said Commission. The following directions are therefore issued in CC/799/2015, CC/803/2015, CC/804/2015, CC/805/2015, CC/810/2015, CC/813/2015, CC/815/2015, CC/816/2015, CC/820/2015, CC/823/2015, CC/826/2015, CC/827/2015, CC/829/2015, CC/834/2015, CC/835/2015, CC/838/2015, CC/840/2015, CC/844/2015, CC/845/2015, CC/846/2015, CC/847/2015, CC/848/2015, CC/849/2015 (i) The complaint be returned to the complainant (s), along with an endorsement containing the date of presentation and return of the complaint, the name of the complainant(s) presenting the complaint and a brief statement of reasons for returning the complaint; (ii) The complaint shall be returned within one week from today, along with the requisite endorsement and can be presented before Delhi State Consumer Disputes Redressal Commission within two weeks thereafter; (iii) The parties shall appear before the Delhi State Consumer Disputes Redressal Commission at 10.30 a.m. on 03.03.2017; (iv) The State Commission need not issue a fresh notice requiring the parties to appear before it on the aforesaid date. (v) The State Commission shall decide the complaints in terms of Para 12 of this Order. (vi) There shall be no order as to costs in the aforesaid matters. Considering that the complaints have been pending with this Commission for the last about 1½ years, the State Commission is requested to hear and decide the complaints expeditiously, if presented before it, in terms of this order. Complaints disposed of.