

(2015) 04 NCDRC CK 0138

In the National Consumer Disputes Redressal Commission

Emaar Mgf Land Limited

APPELLANT

Vs

Punita Singh And Anr , Harvinder Pal Singh

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Citation : 2015 2 CPR 384

Hon'ble Judges : K.S.CHAUDHARI J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal has been filed by the appellant against the order dated 4.4.2014 passed by the State Consumer Disputes Redressal Commission, UT, Chandigarh (in short, "the State Commission") in Complaint Case No. 07/2014 Punita Singh and Anr. Vs. Emaar MGF Land Ltd. by which, complaint was allowed.

2. BRIEF facts of the case are that Complainants/Respondents applied for booking of an apartment vide application dated 15.11.2007 to OP/appellants and they were allotted Apartment No.K1 -F04 -404 measuring 1750 sq. ft. along with car parking on payment of additional charges for preferential location, etc. Provisional letter was issued by OP on 12.12.2007 and total sale consideration was Rs.51,18,516/- . Complainants paid total Rs.49,90,807/- . It was further submitted that Apartment Buyer's Agreement was executed between the parties on 27.2.2008 and possession of apartment was to be given by OPs within a period of 36 months with grace period of 3 months, but OP did not deliver possession inspite of lapse of 6 years. Alleging deficiency on the part of OPs, complainants filed complaint before State Commission. OPs resisted complaint and submitted that State Commission has no territorial jurisdiction and complaint was barred by limitation and time was not the essence of contract. It was further submitted that there was already penalty clause for delayed possession. OP admitted receipt of Rs.49,90,807/- and further admitted that possession could not be handed over to complainants as complainants made default in making payment of Rs.1,50,000/- . It was further submitted that construction activity is in full swing and it will be completed by November, 2014 and prayed for dismissal

of complaint. Learned State Commission after hearing both the parties allowed complaint and directed OPs to refund Rs.49,90,807/- with 12% p.a. interest from date of receipt and further directed to pay Rs.2,00,000/- as compensation for harassment and Rs.20,000/- as cost of litigation against which, this appeal has been filed by OPs.

3. HEARD learned Counsel for the parties finally at admission stage and perused record. Learned Counsel for the appellant submitted that inspite of the fact that complaint was barred by limitation and stipulation for payment on delayed possession, learned State Commission committed error in allowing complaint and directing refund of payment; hence, appeal be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law and similar order passed by Coordinate Bench has been upheld by Hon'ble Apex Court; hence, appeal be dismissed.

4. IT is not disputed that complainants booked apartment with OPs for a total consideration of Rs.51,18,516/- and made payment of Rs.49,90,807/-. It is also not disputed that as per Apartment Buyer's Agreement dated 27.2.2008, possession of apartment was to be given within 36 months with grace period of 3 months and till filing of complaint possession was not given by OPs and as per written statement construction was likely to be completed by November, 2014, meaning thereby, instead of 36 months for handing over possession, construction was not complete till 80 months.

5. LEARNED Counsel for the appellant submitted that complaint was barred by limitation, but this argument is devoid of force because till money is refunded or possession is given, cause of action continues and learned State Commission rightly observed that complaint filed by complainants was not barred by limitation.

6. LEARNED Counsel for the appellants further submitted that as there was stipulation for payment @ Rs.5/- per sq. ft. per month for delayed possession, refund could not have been allowed by learned State Commission and appellants are ready to adjust penalty for delayed possession. No doubt, there is stipulation for making payment @ Rs.5/- per sq. ft. for delayed possession, but only on the basis of this clause, complainants cannot be deprived from getting refund of the money if project is not completed for a long period. Admittedly, possession was to be handed over within 36 months with 3 months grace period, but it was not completed till filing of complaint and as per written statement it was likely to be completed by November, 2014, meaning thereby, another 31/2 years period was required by OPs for completing construction. The builder cannot be permitted to retain huge amount of around Rs.50,00,000/- on payment of Rs.7750/- per month as penalty for delayed possession. Clause inserted for benefit of allottee cannot be used as weapon against him. For instance, if a builder does not complete construction for 10 years, by no stretch of imagination, he can be permitted to retain money on payment of meager sum about 1 to 11/2% p.a.

and in such circumstances, learned State Commission rightly allowed complaint and directed OP to refund money deposited along with interest.

7. LEARNED Counsel for the respondent also placed reliance on judgment of Coordinate Bench in F.A. No. 342 of 2014 Emaar MGF Land Ltd. and Anr. Vs. Karnail Singh and Anr. in which on similar facts complaint was allowed by State Commission and appeal was dismissed with cost of Rs.5,00,000/- and SLP (C) No.29392/2014 Emaar MGF Land Ltd. and Anr. Vs. Karnail Singh and Anr. filed by Builder was dismissed by Hon'ble Apex Court vide order dated 14.11.2014.

8. IN the light of aforesaid discussion, I do not find any illegality in the impugned order and appeal is liable to be dismissed.

9. CONSEQUENTLY , appeal filed by appellants is dismissed at admission stage with no order as to costs.