
(2019) 12 SC CK 0097

In the Supreme Court Of India

Case No : Civil Appeal No. 155 Of 2015

M/S Lanco Hills Technology Park Pvt Ltd

APPELLANT

Vs

Manisha Balkrishna Kulkarni & Anr

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Citation : (2019) 12 SC CK 0097

Hon'ble Judges : Dr. Dhananjaya Y Chandrachud, J;Hrishikesh Roy, J

Bench : Division Bench

Advocate : Deepak Khurana, Tejasv Anand, Umesh Kumar Khaitan, D. Bharathi Reddy, D. Tejaswi Reddy

Final Decision : Partly Allowed

Judgement

Dr. Dhananjaya Y Chandrachud, J

1 Admit.

2 This appeal arises from a judgment of the National Consumer Disputes Redressal Commission [NCDRC] dated 9 October 2014 in Consumer Complaint No 112 of 2014.

3 An agreement to sell was executed between the appellant and the respondents on 21 March 2011 under which the respondents agreed to purchase an apartment in a complex which was developed by the appellant in Hyderabad. The total consideration was Rs 1,55,50,826. Subsequently, an amount of Rs 6,00,000 was paid towards an additional parking space. Under Clause 5.1(iii) of the agreement, possession of the apartment was to be handed over to the respondents by 28 March 2011, with a grace period of three months. Clause 8 of the agreement contemplated that the period of possession would be extended during the operation of a force majeure event. The appellant received a no-objection certificate from the State Disaster Response and Fire Services Department on 4 July 2011. The final occupancy certificate for the residential tower in which the apartment was situated was issued by the Andhra Pradesh

Industrial Infrastructure Corporation Limited on 22 August 2011.

4 Though the agreement contemplated that possession would be handed over on 28 March 2011 with a grace period of three months, it appears that on 28 March 2011 a restraining order was issued by the State Waqf Tribunal as a result of a dispute in relation to a part of the land on which the project was being developed. The order of the Waqf Tribunal was upheld by the High Court on 3 April 2012. However, on 8 May 2012, the order of injunction was vacated by this Court. On 15 October 2012, the appellant informed the respondents that the apartment would be ready for occupation on 3 November 2012 and followed this up with communications dated 5 November 2012, 20 December 2012 and 7 February 2013. By the communication dated 20 December 2012, the appellant recorded that all the deficiencies which had been noticed by the respondents had been cleared. Eventually, a sale deed was executed on 11 February 2013 and the sale transaction was completed and registered. The total consideration inclusive of the cost of the parking space was Rs 1,61,50,826. The respondents had paid 85% of the total agreed consideration under the agreement to sell while the balance was paid, together with the execution of the sale deed.

5 The dispute between the parties relates to the claim of the respondents that despite the execution of the sale deed, possession was not handed over. The respondents moved a consumer complaint before the NCDRC seeking a direction for the handing over of physical possession, together with interest and damages for delayed delivery.

6 During the pendency of the proceedings, possession of the apartment was handed over to the respondents on 28 August 2014. A document which is styled as "the Keys Hand Over Form" records that all three sets of keys were handed over to the representative of the respondents.

7 The NCDRC disposed of the consumer complaint by its judgment and order dated 8 October 2014. The NCDRC directed the appellant to pay compensation at the rate of Rs 5 per sq ft for the delay of six months, at the agreed contractual rate. There is a direction to pay compensation at the rate of 18% per annum for the delay beyond six months for which no specific provision was contained in the agreement between the parties.

8 Learned counsel appearing on behalf of the appellant placed reliance on the provisions contained in the sale deed which was executed on 11 February 2013. Clause 3 of the sale deed contains a stipulation of possession being handed over in the following terms:

"3. Possession

Simultaneously, upon the execution of this Sale Deed and the full receipt of the total consideration, the Vendor has and the Purchasers acknowledge that the Vendor has handed over the physical, vacant, lawful and peaceful possession of the Scheduled Property."

Hence, it has been submitted that upon handing over of possession, the appellant was not liable to pay compensation to the respondents.

9 On the other hand, it has been submitted on behalf of the respondents that despite the above stipulation in the sale deed, the fact of the matter is that there were numerous deficiencies in the apartment which was agreed to be sold even at the stage when the sale deed was executed. Hence, it has been submitted that it was only on 28 August 2014 that possession was handed over, as is evidenced by the document which was executed between the parties.

10 The agreement to sell contained a stipulation in Clause 5.1(iii) to the effect that the appellant would hand over the possession of the apartment by 28 March 2011 and, in any event, within a grace period of three months thereafter. The grace period expired on 28 June 2011. The agreement contained a stipulation to the effect that:

"In the event of occurrence of a Force Majeure Event in terms of Clause 8 of this Agreement, the period of possession will be automatically extended for such period that the Force Majeure Event subsists. In the event of any delay beyond the time stated above the Developer shall pay the Purchaser an amount of Rs.5 (Rupees Five Only) per square foot of the Super built up area of the Residential Unit for every month of delay up to a maximum of 6 months".

11 The record indicates that between 28 March 2011, when the restraining order was passed by the Waqf Tribunal, and 8 May 2012, when the injunction was vacated by this Court, the appellant was prohibited from handing over of possession or alienating any part of the property. One of the force majeure events stipulated in Clause 8 of the agreement is to the following effect:

"(iv) any notice, order, rules, notification of the Government and/or other public or competent authority, including any prohibitory order of any court against development of property;"

Hence, in terms of the stipulation contained in Clause 5.1(iii), the period for handing over of the possession stood extended during the prevalence of the force majeure event. After the injunction was vacated by this Court on 8 May 2012, the appellant had, in terms of the grace period of three months, time until 8 August 2012. Thereafter, for a period of six months ending on 8 February 2013, the appellant was subject to the requirement of paying compensation at Rs 5 per sq ft. The agreement stipulated that this would be for a delay of up to a maximum of six months. The period of six months ended on 8 February 2013. The agreement did not make any specific provision for the period thereafter.

12 The respondents had paid 85% of the agreed consideration, together with the agreement to sell, and even the balance at the time when the sale deed was executed on 11 February 2013. Having paid the consideration, it was evidently not in their interest to delay the receipt of possession. Though the sale deed records that possession was handed over, it is clear from the contemporaneous

record that it was only on 28 August 2014 that all the sets of keys of the apartment were handed over to the respondents. Consequently, the appellant would be liable to pay reasonable compensation to the respondents for the period between 9 February 2013 and 28 August 2014, in addition to the contractual payment due for the period between 8 August 2012 and 8 February 2013.

13 However, we are of the view that the direction to pay interest at the rate of 18% per annum is excessive and accordingly has to be scaled down. Adopting a rate of 6% as a broad guideline, we have computed the compensation at a lump sum of Rs 10 lakhs to obviate any dispute on computation.

14 We accordingly issue the following directions:

(i) For the period between 8 February 2012 and 8 February 2013, the appellant shall pay compensation in terms of Clause 5.1(iii) of the agreement to sell at the rate of Rs 5 per sq ft;

(ii) For the period between 9 February 2013 and 28 August 2014, the compensation which is payable by the appellant to the respondents is computed at a lump sum of Rupees Ten Lakhs.

The aforesaid amount shall be paid within a period of one month from the receipt of a certified copy of this order.

15 The appeal is partly allowed in the above terms. There shall be no order as to costs.