
(2016) 02 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

Case No : 235 of 2016

M/S. ORCHID INFRASTRUCTURE DEVELOPERS PVT. LTD.

APPELLANT

Vs

SHANKAR BANSAL

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Citation : 2016 2 CPR 81

Hon'ble Judges : V.K. Jain

Advocate : Dheeraj Malhotra

Judgement

1. The respondent/complainant entered into an agreement to purchase a residential flat from the petitioner company and the parties entered into a Flat Buyers Agreement dated 16.05.2005 in respect of Flat No.104, Tower 4. As per the aforesaid agreement, the petitioner was required to deliver possession of the flat to the complainant within 36 months from the date of the agreement subject to an extension of 90 days for applying and obtaining the occupancy certificate.

2. The petitioner applied for the occupancy certificate on 14.07.2008 but the said certificate was issued only on 16.09.2009. The flat was handed over for limited purpose of fitting due on 24.02.2009. The sale deed in respect of the flat however was executed only on 13.11.2009. Being aggrieved from the delay, the complainant approached the concerned District Forum by way of a complaint.

3. The complaint was opposed by the petitioner primarily on the ground that they having applied for the occupancy certificate on 14.07.2008 within the grace period stipulated in the Buyers Agreement and the authorities having taken almost 14 months in issuing the said

certificate, they cannot be said to be responsible for the delay in delivering possession to the complainant. The petitioner company in this regard placed reliance upon clause 46 of the buyers agreement.

4. The District Forum vide its order dated 25.10.2012 awarded compensation to

the complainant @ Rs.9,045/- per month for the period from 16.08.2008 to 16.02.2009 amounting to Rs.54,270/- along with interest @ 9% p.a. and compensation for harassment and litigation charges quantified at Rs.50,000/-.

5. Being aggrieved from the order of the District Forum, the petitioner company approached the concerned State Commission by way of an appeal. Vide impugned order dated 23.09.2015, the State Commission while maintaining compensation quantified at Rs.54,270/- for the delay in delivering possession, reduced the lump sum compensation and cost of litigation from Rs.50,000/- to Rs.25,000/-. Being still dissatisfied, the petitioner is before this Commission by way of this revision petition.

6. Clause 28 and 46 of the Buyers Agreement read as under:-

28. Possession

a) Time of handing over the possession

That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with all provisions, formalities, documentation etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six (36) months from the date of signing of this Agreement. The FLOAT ALLOTTEE(S) agrees and understands that the DEVELOPER shall be entitled to a grace period of 90 days, after the expiry of thirty six (36) months, for applying and obtaining the Occupation Certificate in respect of the GROUP HOUSING COMPLEX.

b) Subject to Clause 46, in the following circumstances, the date of possession shall get extended accordingly:

i) The completion of the said GROUP HOUSING COMPLEX including the FLAT is delayed by reason of non-availability of steel and / or cement or other building materials, or water supply or electric power or slow down strike or, lock-out or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or due to any Act, Notice, Order, Rule or Notification of the Government and / or any other Public or Competent Authority or due to delay in sanction of any revised building/zoning plans or for any other reasons beyond the control of the DEVELOPER, then the FLAT ALLOTTEE(S) agree that the DEVELOPER shall be entitled to the extension of time for handing over of the possession of the said FLAT. The DEVELOPER as a result of such a contingency arising reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the construction of the GROUP HOUSING COMPLEX and this Agreement for such period as it may consider expedient and the FLAT ALLOTTEE(S) agrees not to claim compensation of any nature whatsoever of this Agreement for the period of suspension of the construction of

the GROUP HOUSING COMPLEX and this Agreement.

ii) If as a result of any law that may be passed by any legislature of Rules, Regulation or Order on notification that may be made and / or issued by the Government or any other Authority including a Municipal Authority or on account of delay in sanctioning of plans or any other sanctions or approval for development or issuance of occupation certificate by appropriate Authorities, the DEVELOPER is not in a position to hand over the possession of the FLAT, then the DEVELOPER may, if so advised, though not bound to do so, at its sole discretion challenge the validity, applicability and / or efficacy of such Legislation, Rule, Order or Notification by moving the appropriate Courts, Tribunal (s) and / or Authority. In such a situation, the money(ies) paid by the FLAT ALLOTTEE(S) in pursuance of this Agreement, shall continue to remain with the DEVELOPER and the FLAT ALLOTTEE(S) agrees not to move for or to obtain specific performance of the terms of this Agreement, it being specifically agreed that this Agreement shall remain in abeyance till final determination by the Court(s)/Tribunal(S)/ Authority(ies). However, the FLAT ALLOTTEE (S) may, if he/she so desires, become a party along with the DEVELOPER in such litigation to protest FLAT ALLOTTEE(S) rights arising under this Agreement.

Further, in the event of the DEVELOPER succeeding in its challenge to the impugned legislation or Rule, Regulation or Order, as the case may be, it is hereby agreed that this Agreement shall stand revived and the FLAT ALLOTTEE(S) and the DEVELOPER shall be liable to fulfil all obligations as provided in this Agreement. It is further agreed that in the event of the aforesaid challenge of the DEVELOPER to the impugned Legislation / Order/Rule/Regulation not succeeding and the said legislation/order/rule/regulation becoming final absolute and binding, the DEVELOPER will appoint a Receiver who shall have all the rights and authority to sell the entire property and disburse the sale proceeds among the Flat holders, for the amount attributable to the said FLAT, after making payment of the statutory dues and secured creditors and after deducting interest on delayed payments, processing fee etc., and any other expenses attributable to the said FLAT. The receiver will disburse the payments within a reasonable time in such manner as may be decided by the Receiver and the FLAT ALLOTTEE(S) agrees to accept the Receiver's decision in this regard to be final and binding. Save as otherwise provided herein the FLAT ALLOTTEE(S) shall not have any other right or claim of whatsoever nature against the DEVELOPER under or in relation to this Agreement.

i. That the FLAT ALLOTTEE(S) agrees and accepts that in case of any default/delay in payment as per the Schedule of Payments as provided in Annexure II, the date of handing over of the possession shall be extended accordingly solely on DEVELOPERS'S discretion till the payment of all outstanding amounts to the satisfaction of the DEVELOPER.

46. Force Majeure

The DEVELOPER shall not be held responsible or liable for not performing any obligation or undertaking provided for in this Agreement if such performance is prevented, delayed or hindered by an act of God, fire, flood, explosion, war, riot, terrorist acts, sabotage, inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes, lock outs action of labour unions or any other cause (whether similar or dissimilar to the foregoing) not within the reasonable control of the DEVELOPER.

It would thus be seen that the parties expressly agreed for a grace period of 90 days, for the purpose of the petitioner company not only applying but also obtaining the occupancy certificate in respect of the group housing complex in which the flat was purchased by the complainant. The aforesaid grace period of 90 days commenced from the expiry of 36 months from the date of the buyers agreement. Having expressly agreed to a grace period of 90 days for obtaining the completion certificate, the petitioner, in my opinion, cannot escape its liability to pay compensation for any delay beyond the aforesaid grace period of 90 days. Even if it is assumed for the sake of arguments that the petitioner company was not responsible for the delay in issuing of the occupancy certificate and it was the concerned party which despite having completed all the formalities and having not made any deviation etc . , took time in issuing the said occupancy certificate.

7. The reliance upon clause 46 of the Buyers Agreement in my opinion would be wholly misplaced in view of the specific time period agreed between the parties in clause 28, for applying and obtaining the occupancy certificate.

8. For the reasons stated hereinabove, I find no ground to interfere with the view taken by the State Commission. The revision petition is accordingly dismissed.