
(2015) 08 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

Case No : 47 of 2009

SAHARA GRACE CONSUMERS GRIEVANCE ASSOCIATION

APPELLANT

Vs

SAHARA INDIA COMMERCIAL CO LTD

RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:

Citation : (2015) 08 NCDRC CK 0037

Hon'ble Judges : V K Jain, B C Gupta

Advocate : Rohan Thawani, H L Tiku, Neha Gupta, Sonali Dhir, Shubhankar Sen, Simranjeet Singh, Tanay Hazari

Judgement

V. K. Jain, Presiding Member

[1] The complainant is a Voluntary Consumer Organization, registered under the provisions of Societies' Registration Act. In the year 2003, the opposite party announced a project known as "Sahara Grace", sought to be developed by it in Gurgaon. Pursuant to the brochure issued by the opposite party for the aforesaid project, the persons on whose behalf the complainant has approached this Commission booked residential flats with the opposite party. All the purchasers entered into identical Buyer Agreement with the opposite party. Under Clause 24 of the said agreement, the opposite party agreed to pay compensation @ Rs.10/- per sq.ft. per month of delay in case there was delay in handing over possession of the apartments to the allottees. In terms of the said agreement the possession was to be delivered between April, 2006 to March, 2007. The opposite party allegedly failed to complete the project and deliver possession of the apartments to the flat buyers. The occupancy certificate for the flats was received by the opposite party only on 28.1.2008. According to the complainant, the possession was eventually offered on 15.4.2008, except in case of two allottees, one of whom was offered possession on 15.8.2008 and the other on 15.1.2009. This is also the case of the complainant that the conveyance deed drafted by the opposite party was wholly one-sided and sought to defeat inter-alia right of the flat buyer to claim compensation for the delay in handing over possession.

However, since the opposite party refused to amend the draft conveyance deed, they were left with no option but to execute the same so that the possession of the apartments could be taken at the earliest. According to the complainants, the circle rate for registration were also increased by the State Government with effect from June, 2008, as a result of which they had to pay increased stamp duty, which they would not have been liable to pay, had the possession been handed over to them on or before the scheduled date. Being aggrieved, the complainants are before this Commission, seeking a direction to the opposite party to hand over the original conveyance deeds which the said opposite party is retaining. They are also seeking compensation aggregating to Rs.2,67,56,997/- for the delayed payment, along with interest @ 18% per annum and compensation for mental agony and harassment quantified at Rs.2,00,000/- per flat buyer, thereby making a total claim of Rs.3,36,06,997/-, along with interest on the amount of Rs.2,67,56,997/- with effect from 15.4.2008.

[2] In its written version, the opposite party has taken a preliminary objection that the complainant has no locus-standi to file the present complaint. On merits it is alleged that the Block A and B-1 were completed by January, 2006 and occupancy certificate was applied on 18.3.2006 after a completion certificate dated 02.2.2006 was issued by the Architect. The possession was offered to the buyers in August, 2006. It is further stated in the reply that the opposite party had given contract for supply, installation and commissioning etc. of internal plumbing, drainage and fire-fighting installation to S. Soni & Company, which was also required to take NOC from the concerned authorities. The completion of the construction work of the project was completed on 28.10.2006 and fit out possession was offered to individual customers as per their request. Thereafter, NOC of Fire Department was obtained on 12.1.2007. The occupancy certificate came to be issued by the Director, Department of Town & Country Planning, Government of Haryana on 28.1.2008. The deed of declaration was got registered on 27.3.2008. It was further alleged in the reply that since the delay in handing over possession of the flats took place due to reasons beyond control of the opposite party, no compensation is payable to the flat buyers. It is also alleged that the allottees who were required to pay one time interest free maintenance security deposit @ Rs.75/- per sq.ft. for maintenance and upkeep of the plant and machinery etc., had failed to do so. It is also claimed that the allottees failed to pay proportionate share of monthly maintenance charges for various services.

[3] The first question, which arises for consideration in this case is as to whether the complaint by the petitioner Association is maintainable on behalf of the flat buyers or not. Section 12 (1) of the Consumer Protection Act, 1986, to the extent it is relevant, provides that a complaint in relation to any services provide or agreed to be provided may be filed by any recognized Consumer Association, whether the consumer to whom the services are provided or agreed to be provided is a member of such Association or not. The explanation attached below

Section 12 provides that for the purpose of the said Section recognized Consumer Association means any Voluntary Consumer Association, registered under the Companies Act, 1956 or in law for the time being in force. Since the complainant is registered under the provisions of Societies Registration Act, it is a recognized Consumer Association in terms of Section 12 of the Act and consequently competent to file this complaint, even if it is presumed that the flat buyers are not its members. Therefore, we find no merit in the objection as regards the maintainability of the complaint.

[4] Clause 17 and 24 of the Buyers Agreement reads as under: "17. The Allottee agrees that the sale of the unit is subject to force majeure clause which, inter alia, include delay on account of non-availability of construction material for road and other purposes or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the Company. Civil commotion or by reason of war or enemy action or earthquake or any act of God, delay in decision/clearances from statutory body or if non delivery of possession is as a result of any notice, orders rules or notification of the Government and / or any other public or Competent Authority or for any other reason beyond the control of the company and in any of the aforesaid event the company shall be entitled to a reasonable corresponding extension of time of delivery of possession of the said unit on account of force majeure circumstances.

24. That the possession of the said unit is to be delivered by the company to the allottee within stipulated time as mentioned in the registration letter. However, in case all the payments are made timely by the allottee and if there is any delay in handing over of the possession of the floor by the company, the company shall pay penalty charges calculated @ Rs.10/- sq.ft/month for delay period".

It would thus been seen that in the event of failing the delivery of possession within the time stipulated in the registration letter issued to the allottees, the opposite party is under contractual obligation to pay the compensation @ Rs.10/- per sq.ft/month for the delayed period, though in view of Clause 17, no compensation would be payable, for the period possession is delayed on account of reasons beyond the control of the opposite party, such as non-availability of construction material, water supply or electric supply or on account of slow down strike or dispute of the complainant with a construction agency employed for carrying out construction. No compensation would be payable for the period possession is delayed due to civil commotion or reason of war, enemy action, earthquake or an act of God. No compensation would be payable for the delay in decision / clearances from the statutory body or if non-delivery of possession is on account of any notice, order, rules or notification of the Government / or any other public or competent authority. In fact all such plea have been expressly rejected by us in CC 427 of 2014 Satish Kumar Pandey & Anr. Vs. M/s. Unitech Ltd. with connected matter decided on 08.06.2015.

[5] It is an admitted position that the occupancy certificate was issued to the opposite party only on 28.01.2008. A copy of the said certificate is available on

our paper book. The opposite party could not, in law, have offered possession to the flat buyers before obtaining the occupancy certificate issued by the Town & Country Planning Department, Government of Haryana nor could the flat buyers have occupied their respective flats before issue of the said certificate. Occupation of the building by them, before issue of the occupancy certificate to the opposite party, would have been illegal. It was on 30.1.2008, that the opposite party informed the flat buyers about receipt of the occupancy certificate by it. The possession however, was not offered and could not have been offered on account of immediately receipt of the occupancy certificate dated 28.01.2008. The deed of declaration was got registered by the opposite party only on 27.03.2008. As would be seen from the letter dated 09.02.2008, sent by some of the allottees to the opposite party, the site office personnel advised them that they were not in a state of readiness with respect to the immediate execution of the Sale Deed, which would take atleast a month and formal possession could be had by April, 2008. The site office informed them that the possession could be given only after project completion, including (1) Acquisition of the Electricity Connection from Dakshin Haryana Bijlee Vitran Nigam Limited and commissioning of the onsite backup generator; currently you are still drawing power from the Sahara Mall on a temporary basis, (2) obtaining the municipal water supply connection; currently only onsite tubewell water is available, (3) obtaining the Sewage Connection including the joining of the Sahara Grace's own sewage pipes to the main municipal sewage line, (4) obtaining permissions and commissioning the piped cooling gas facility for which you have charged us, whether we wanted it or not, (5) testing and Commissioning of the Muti-tier CCTV Security System, (6) allocation of Car Parks available with each Flat as well as the ones additionally paid for, (7) appointment of an agency to manage and maintain the Club and to make it functional.

[6] A perusal of the letter dated 15.4.2008 sent by the opposite party to one of the flat buyer viz. Lalit Lamba would show that the execution of the Conveyance Deed / Sale Deed commenced only with effect from 28.3.2008. He was asked to deposit the registration charges, charges for execution of the Deed of Apartments and Lawyer's professional fee in order to Conveyance Deed / Sale Deed executed. This clearly shows that the opposite party was in a position to execute the sale deed only with effect from 28.03.2008. The possession was to follow execution of the sale deed / conveyance deed. Even the maintenance charges were demanded from the allottees with effect from 01.4.2008 as would be seen from the letter dated 14.5.2008 sent by the opposite party to Mr. Lalit Lamba. We therefore, conclude that the opposite party was in a position to offer possession only with effect from 28.3.2008.

[7] According to the complainant, the purchasers on whose behalf this complaint is filed were committed possession on various dates between 03.4.2006 to 27.3.2007. There is no dispute between the parties as regards the dates by which possession was committed by the opposite party in terms of the registration letters issued to the flat buyers. Since, the opposite party was not in

a position to offer possession prior to 28.03.2008, there is delay in offering possession of the flats to them.

[8] The next question which comes up for consideration is as to whether the delay in offering possession to the allottees was for the reasons stated in Clause-17 of the Buyers Agreement. There is no allegation in the complaint that the construction material required for road and other purposes was not available in the market. There is no evidence of water supply or electricity not being available for the said project. There is no allegation or evidence of workers employed by the construction agency engaged by the opposite party having gone on strike or having resorted to slow down the work at the aforesaid project. There is no allegation or evidence of civil commotion, war or enemy action, earthquake or any act of God delaying the completion of the construction. There is no evidence of Government or any other public or Competent Authority having issued any notice or order to the opposite party and such notice or order having delayed the possession of the flats. There is no evidence of the construction or handing over of the possession to the flat buyers having been delayed on account of reasons beyond the control of the opposite party. As far as the alleged delay in issue of the occupancy certificate by Town & Country Planning Department of Haryana is concerned, there is no evidence that the opposite party had completed all the requirements and formalities required for the issue of the occupancy certificate and despite compliance of such formalities and requirements, the issuance of occupancy certificate was unreasonably delayed by the Town & Country Planning Department of Haryana. Therefore, it cannot be said that the handing over of the possession to the flat buyers was delayed for the reasons stated in Clause-17 of the Buyers Agreement.

[9] In our opinion, considering that the flats could not have been occupied by the buyers without issue of occupancy certificate by Town & Country Planning Department of Gurgaon, the opposite party was under an obligation not only to complete the construction and provide all the services, but also to obtain the occupancy certificate within the time it had committed for offering possession to the flat buyers. Since, there was delay on the part of the opposite party in offering possession to the flat buyers, it is under a contractual obligation to pay compensation to them @ Rs.10/- per sq. ft. per month of the super area, for the period there was delay in offering possession of the flats to them.

[10] It was submitted by the learned counsel for the opposite party that since the flat buyers agreed in the conveyance deed that they will have no claim, including the claim for delayed possession against the opposite party, they are precluded from seeking any compensation on account of such a delay. The case of the complainants in this regard is that since the opposite party refused to execute the conveyance deed and handing over possession to them unless they execute the conveyance deed in the format provided by it, they had no option but to sign on the dotted lines. In other words, according to them they were coerced into executing the said conveyance deeds, giving up their contractual

rights under the Buyers Agreement and the conveyance deed therefor got vitiated to the aforesaid extent.

[11] Clause 2 of the Conveyance Deed reads as under: "That the VENDOR has handed over the vacant and physical possession of the property mentioned above to the VENDEE with all its rights, and privileges so far held and enjoyed by the VENDOR to hold and enjoy the same forever free from all encumbrances whatsoever. The VENDEE acknowledges the taking over of possession and has checked all the fixtures, fittings and the construction to the entire satisfaction of the VENDEE and thereafter agreed that the VENDEE shall not raise any claim whatsoever against the VENDOR in respect of any defects or deficiency in construction, quality of the material used or on account of any delay, etc."

[12] A perusal of the letter dated 17.3.2008, written by a number of allottees to the opposite with copy to its Advisor Mr. Sundar Lal as well as other officers of the company would show that in the collective meeting held at the site office on 31.3.2008, with the senior management of the opposite party, including Mr. Sushanto Roy and J.P. Roy with Sundar Lal in attendance, the flat buyers pointed out that the project was still incomplete, as they had not heard from the company with respect to obtaining electricity connection, water supply connection, sewage connection as well as the permissions and commissions of the cooking gas facility, testing and commissioning of CCTV systems, allocation of car parks and appointment of maintenance agency. Vide letter dated 15.4.2008, the President of the Sahara Grace Owners Association brought it to the notice of Mr. Sundar Lal of the opposite party that he had stated that the Management had all along been ready to pay compensation/penalty for the period of delay in handing over flats. This letter clearly shows that even on 15.4.2008, flat buyers were insisting on payment of compensation for the delayed period in handing over possession of the flats to them. Vide letter dated 12.5.2008, the allottees wrote to Mr. Sundar Lal of the opposite party, objecting to Clause-2 of the Transfer Deed whereby the right to seek compensation, inter-alia for the delay in completing and handing over of the possession was sought to be taken away and stated that this was unacceptable to them. A number of other shortcomings in the conveyance deed were pointed out in the aforesaid letter and the opposite party was requested to cooperate in amending the said deed. The aforesaid letter dated 12.5.2008 was signed by a number of allottees. However, the opposite party vide its letter dated 14.5.2008, insisted upon execution and registration of the conveyance deed and also stated that holding charges as per Clause 25 of the Agreement would be applicable due to non-execution and registration of the said deed. Vide letter dated 15.5.2008, one of the allottee viz. Namrata Khandelwal, referring to Clause-2 of the proposed Conveyance Deed, clearly stated that the aforesaid Clause was not acceptable and the opposite party must indemnify them for defects and delays. Vide letter dated 21.5.2008, another allottee Mrs. Dolly Khanna wrote to Mr. Sundar Lal of the opposite party that since there was urgency on their part to sign the conveyance deed and the opposite party was not willing to change the

conveyance deed as regards their right to receive compensation from the company, they had no option but to sign the conveyance deed in its present form, even though detrimental to their interest. She further stated that despite signing the conveyance deed, they continued to maintain claim on the company as regards penal charges / compensation / damages etc., was concerned.

[13] In view of the aforesaid correspondence between the parties, we have no doubt that the flat buyers did not voluntarily give up their right to receive compensation for the delayed possession and they were compelled to do so on account of the refusal of the opposite party to amend the conveyance deed and its claiming holding charges, in case the execution of the deed was delayed. Clause-2 of the conveyance deed therefore, does not constitute a valid and binding contract between the parties as far as the payment of the compensation for delayed possession is concerned.

[14] It was contended by the learned counsel for the opposite party that some of the allottees delayed payment of the sale consideration and having defaulted in their contractual obligation, they cannot insist upon the opposite party performing its part of the contract by paying compensation for delayed possession to them. Clause-9.1 of the Buyers Agreement, which permits the opposite party to cancel the allotment reads as under: "The allottee also agrees to make all payments through demand drafts/cheque drawn and payable at New Delhi / Delhi as per payment plans attached herewith in favour of Sahara India Commercial Corporation Ltd. Punctual payment on time is the essence of this contract. It shall be incumbent on the allottee to comply with the terms of payment and other conditions of sale, failing which the allottee shall have to pay the interest on the delayed payments @ 18% per annum maximum upto three months and beyond that the allotment shall stand cancelled and 10% of the total sale price of the unit (hereinafter referred to as the Earnest Money) will be forfeited and the balance amount, if any, will be refunded without any interest".

It would thus be seen that the agreements itself permits the allottees to make delayed payment upto three months subject, of course, to payment of interest @ 18% per annum. There is no material on record to show that any of the allottees delayed payment beyond three months. In any case, it is not in dispute that the alleged delayed payments were accepted by the opposite party, along with interest for the period the payment was delayed. Having accepted the delayed payment with interest and not resorted to cancellation of the allotment, the opposite party, in our view is precluded from taking any advantage of the Clause 9.1 of the Buyers Agreement at this stage, in order to deny the genuine contractual right of the flat buyers.

[15] It was also submitted by the learned counsel for the opposite party that the allottees did not pay one time interest free maintenance security in terms of Clause 13 of the Buyers Agreement, which they were required to pay for maintenance and upkeep of the plant and machinery and other installation, provided in the project. The aforesaid amount, in our view, became payable only

after possession was delivered to the flat buyers. Therefore, the alleged non-payment of interest free maintenance security does not entitle the opposite party to deny compensation to them on account of the delay in offering possession of the flats. If such a default persists on the part of any allottee, nothing prevents the opposite party from taking such action against them as is open under the provisions of the contract and in accordance with law.

[16] In addition to the contractual compensation, the complainant in CC 47 of 2009 has also claimed compensation to each member of the complainant for the mental agony and harassment caused to them on account of delay in offering possession of the flats. Under the agreement executed between the parties, the flat buyers were to pay interest to the opposite party @ 18% per annum in case of delayed payment. The opposite party on the other hand agreed to pay compensation to them only @ Rs.10/- per sq. ft. per month. The flats were sold at a price of about Rs.2000/- per sq. ft. of the super area. The contractual compensation payable to the flat buyers therefore comes to only about 6% per annum. In *Satish Kumar Pandey & Anr.*, this Commission granted interest @ 12% per annum to the flat buyers for the delay in offering possession even though the agreement between the parties envisaged payment of compensation only @ Rs.5/- per sq. ft. per month. Since the complainant in CC 47 of 2009 has restricted its claim to the contractual compensation and considering the mental agony and harassment the flat buyers have suffered on account of the persistent delay in offering of possession, we are of the considered view that the opposite party, in addition to the contractual compensation, should also pay to them damages / compensation @ Rs.2,00,000/- per flat buyer.

[17] In CC 77 of 2008, the complainants who are identically situated to the flat buyers in CC 47 of 2009 have claimed compensation in the form of interest @ 18% per annum compounded monthly. For the detailed reasons recorded by us in *Satish Kumar Pandey & Anr.*, and connected matters decided on 08.6.2015, we hold that they are entitled to interest @ 12% per annum for the period there was delay in handing over possession to them. However, they shall not be entitled to any additional compensation / damage on account of the mental agony and harassment, if any, suffered by them on account of the said delay.

[18] For the reasons stated hereinabove, we direct the opposite party to pay to the members of the complainant in CC 47 of 2009, whose names are given in Annexure-2 to the complaint, compensation @ Rs.10/- per sq. ft. per month for the period there was delay in offering possession to them. For the purpose of calculating the said delay, 28.03.2008 shall be taken as the date on which possession was offered to them, except in case of two allottees, namely Shri Ajay Kumar Sahai, who was offered possession on 15.08.2008 and Sudha & Brij Bhushan, who were offered possession on 15.01.2009. We also accept the committed dates of possession given in Annexure-2, with respect to the members of the complainant in CC 47 of 2009. We also direct the opposite party to pay Rs.2,00,000/- to each of the aforesaid flat buyers as compensation /

damages for the mental agony and harassment suffered by them on account of the said delay. We further direct the opposite party to pay a lump sum amount of Rs.50,000/- as the cost of litigation to the complainant in CC 47 of 2009.

[19] For the detailed reasons recorded in Satish Kumar Pandey & Ors. , we direct the opposite party to pay interest by way of compensation to the complainants in CC 77 of 2008 @ 12% per annum for the period the offer of possession was delayed. In their case also, 28.03.2008 will be taken as the date on which the possession was offered to them, whereas the committed date of possession will be 30.06.2006 as is mentioned in the letter dated 11.03.2006 issued to them by the opposite party.

[20] We also direct the opposite party to hand over the original conveyance deed to the flat buyers who are the members of the complainant in CC 47 of 2009, as well as to the complainant in CC 77 of 2008, unless already delivered. All our directions shall be complied within six weeks.