
(2018) 03 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

Case No : Consumer Case No. 40 Of 2017

Sanjay Kumar Chowdhar

APPELLANT

Vs

Super Tech Limited

RESPONDENT

Date of Decision : 01-03-2018

Acts Referred:

Consumer Protection Act, 1986 — Section 21

Citation : (2018) 03 NCDRC CK 0090

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Preetika Dwivedi, Gyan Prakash Tiwari

Final Decision : Disposed Off

Judgement

V.K. Jain, J.

1. The complainant Sanjay Kumar Chowdhary and his wife Sangeeta Chowdhary booked a residential flat in a project namely "Capetown" which the opposite party is developing in Sector 74 of Noida. Vide allotment letter dated 13.9.2011, Unit No.10201 (R 026 CGD 10201 Flat No. 0201 in Block CGD1 having super area of 1945 sq. ft. was allotted to them for a consideration of Rs.66,33,819/-. In terms of the aforesaid allotment letter, the possession was to be delivered by the opposite party to the complainant in February, 2014 though, the said period could be extended upto six months due to unforeseen circumstances. The grievance of the complainant is that the possession of the flat has not been delivered to him despite they having already paid Rs.63,29,596/- to the opposite party. The complainant is therefore before this Commission, seeking refund of the amount paid by them along with compensation in the form of interest etc.

2. The complaint has been resisted by the opposite party which has admitted the allotment made to the complainants but has disputed the pecuniary

jurisdiction of this Commission. On merits, it is stated that the possession of the flat in the tower in which the unit of the complainant is booked has

already commenced. It is also claimed that in the event of delay, compensation @ Rs.5/- per sq. ft. is payable to the complainant in terms of Clause

19 of the allotment letter. It is also claimed that in the present case delay was caused due to unavailability of cement, sand and water in the year 2013

and there was shortage of labour during the relevant period. It is also alleged in para-8 of the written version that the complainant was informed vide

Email dated 24.9.2016 that the possession was expected to be handed over in the last quarter of 2016.

3. As far as pecuniary jurisdiction of this Commission is concerned, in terms of Section 21 of the Consumer Protection Act, this Commission

possesses the requisite jurisdiction where the value of the goods purchased or the services hired or availed along with compensation, if any, claimed by

the complainant exceeds Rs.1.00 crores. As held by a Three-Members Bench of this Commission in Ambrish Kumar Shukla Vs. Ferrous

Infrastructure Pvt. Ltd. CC No. 97 of 2016, decided on 07.10.2016 , the value of the services in such cases means the sale consideration agreed to be

paid by the flat buyer to the builder. In the present case, the agreed sale consideration was more than Rs.66.00 lacs. The complainant has claimed

compensation in the form of simple interest @ 18% per annum. If compensation in the form of simple interest @ 18% per annum from the date of

each payment is added to the agreed sale consideration, the aggregate come to much more than Rs.1.00 crores. Therefore, this Commission does

possess the requisite jurisdiction to entertain the complaint.

4. Coming to the merits of the case, it is not in dispute that in terms of the allotment letter issued by the opposite party, the possession of the flat was

to be delivered by February, 2014. The learned counsel for the opposite party submits that they have obtained the requisite occupancy certificate in

respect of the tower in which the flat allotted to the complainant is situated, way back on 02.12.2015. However, no letter soon after December, 2015

was sent to the complainant offering possession of the flat allotted to him. In fact, the opposite party itself has stated in its written version that vide

Email dated 24.9.2016, it had informed the complainant that the possession was expected to be handed over in the last quarter of 2016. The aforesaid statement contained in the written version of the opposite party clearly shows that despite the opposite party having obtained the requisite occupancy certificate, the construction of the flat was not complete at that time and that is why the opposite party had informed the complainant that the possession was expected to be handed over in the last quarter of 2016. The possession according to the learned counsel for the opposite party was offered to the complainant vide letter dated 11.4.2017, much after filing of this consumer complaint. However, the said letter was filed before this Commission only in January, 2018, alongwith an additional affidavit. More importantly, the complainant denies having received any such letter from the opposite party and learned counsel for the opposite party is unable to furnish any proof of having actually delivered the aforesaid letter dated 11.4.2017 to the complainant. Therefore, I am satisfied that the construction of the flat was not complete prior to 11.4.2017 and that is why no letter offering possession of the flat was actually sent to the complainant.

5. As far as the alleged justification in the delay in completion of the construction is concerned, no evidence has been led by the opposite party to prove that the cement, sand and water were not available at all in the year 2013. There is no evidence of shortage of labour during the aforesaid period.

6. The learned counsel for the opposite party submits that the NGT had prohibited construction activities within a radius of 10 Kms. from Okhla Birds Sanctuary vide its letter dated August 14, 2013 passed in OA No. 158 of 2013. I have perused the said order. The aforesaid aspect came to be considered by this Commission in Shri Pradeep Narula & Anr. Vs. Granite Gate Properties Pvt. Ltd. Anr. in CC 315 of 2014 decided on 23.8.2016 and following view was taken:

8. The opposite party has filed, alongwith its affidavit by way of evidence, a copy of an order dated 28.10.2013 passed by the National Green Tribunal in M.A. No. 890 of 2013 and connected matters. The said order contains reference to an earlier order dated 14.08.2013, whereby NOIDA was directed to stop the construction work going on within a radius of 10 kms from Okhla Bird Sanctuary, without prior environmental clearance or in

contravention of the same. The order dated 28.10.2013 shows that the aforesaid order applied to 49 projects out of which, 15 had already been completed and 7 had not begun. The Tribunal made it clear that its intention on 17.09.2013 was to extend the interim order dated 14.09.2013 to the persons or builders carrying on construction activity without environmental clearance or against the provisions of the environmental clearance. This is not the case of the opposite party that no environmental clearance was required or that it had not obtained such a clearance before it started the construction in this project. In such a case, the order passed by the National Green Tribunal would not apply to this project since the scope of the said order was limited to the construction activity being carried out without requisite environmental clearance or in contravention of the environmental clearance. If the opposite party had commenced construction of the project in question without obtaining the requisite environmental clearance or the said construction was in contravention of the environmental clearance, it has only itself to blame for the said construction being stopped by the National Green Tribunal.

9. Vide above referred order dated 28.10.2013, National Green Tribunal directed that all the projects within an area of 10 kms radius of the Okhla Bird Sanctuary be examined by National Board for Wild Life. The Ministry of Environment & Forests was directed to refer all the aforesaid projects to National Board for Wild Life, within four weeks. The Government of U.P. was directed to send the particulars relating to the environmental clearance given to the aforesaid projects to the Ministry of Environment & Forests within four weeks from the order. Within four weeks thereafter, Ministry of Environment & Forests was to refer the same to the standing Committee of National Board for Wild Life, which was to verify the correctness of the statement made by the project proponent. The order passed by the aforesaid Board was to indicate whether the project should be permitted or not. It was made clear that the building construction within 10 kms radius of Okhla Bird Sanctuary or within distance of Eco-Sensitive Zone to be prescribed by Ministry of Environment & Forests shall be subject to decision of National Board for Wild Life and till clearance from the said Board, the Authority shall not issue completion certificate to the project. Thus, in the aforesaid order dated 28.10.2013, the National Green

Tribunal did not stay further construction of the projects where requisite environmental clearance had been obtained, and only completion certificate was withheld till clearance from the National Board for Wild Life.

The order of the Tribunal to the extent the issue of completion certificate was withheld till the clearance from NBWL could not have contributed to

the delay in offering possession to the complainants since the construction not being complete, the stage to obtain the requisite completion certificate

had not reached, by the time the aforesaid order dated 28.10.2013 came to be passed by the National Green Tribunal. In fact, even in the cases where

the construction was complete and the completion certificate had been applied, the builder could obtain the completion certificate on the project being

cleared by NBWL. If there was a delay on the part of the Government of U.P. in sending the particulars relating to the environmental clearance given

to the project, to the Ministry of Environment & Forests, there was delay on the part of Ministry of Environment & Forests in forwarding the matter to

National Board for Wild Life or there was delay on the part of the National Board for Wild Life in completing its enquiry in terms of the order of the

National Green Tribunal, the builder could always approach the said Tribunal for giving appropriate directions to the Government of U.P. or Ministry

of Environment & Forests or National Board for Wild Life as the case might be.â??

7. The learned counsel for the opposite party refers to the order of the NGT dated August 14, 2013. The aforesaid order clearly applied to the

construction work which was going on within 10 km. radius of Okhla Birds Sanctuary without proper environmental clearance or in contravention of

the same. If the OP had obtained the requisite environmental clearance before starting work on the project, the project was clearly outside the

purview of the aforesaid order of the NGT. The learned counsel also draws my attention to the order dated 17.9.2013 passed by NGT and submits

that this was one of the 49 projects referred in the order of the NGT where the environment clearance had already been obtained. I find no averment

in the written version or even in the additional affidavit that the opposite party had obtained the requisite environmental clearance before starting the

work on this project. If the opposite party chose to start the work without obtaining the environmental clearance, it is only itself to blame for the

situation which got to be created on account of the construction having been

started without such clearance. In any case, NGT itself had clarified vide order dated 28.10.2013 that its order dated 17.9.2013 was applicable only to construction activities which were going on without environmental clearance or against the provisions of the environmental clearance. Therefore, vide order dated 28.10.2013, NGT issued several directions but did not stop construction in the projects which had been started after obtaining the requisite environment clearance and in which there was no violation of the conditions, subject to which the said clearance had been granted. If the opposite party had started the construction, without obtaining the requisite environmental clearance or in contravention of the terms of the said clearance, it is only itself to blame for being stopped from raising further construction in terms of the order of the NGT dated 17.9.2013. Therefore, I am unable to accept the contention that the construction was delayed partly on account of the above referred orders passed by the NGT.

8. I therefore, hold that the opposite party has failed to justify the delay in offering possession of the flat allotted to the complainant.

9. The complainant who is present in the Court states that he is ready to take possession of the flat which according to the opposite party is complete in all respects but wants compensation for the period the possession has been delayed. The case of the opposite party as noted earlier, is that the construction of the flat is complete in all respects though the complainant still maintains that it is far from complete.

10. For the reasons stated hereinabove, the complaint is disposed of with the following directions:

(i) The OP shall deliver possession of the flat allotted to the complainant, complete in all respects within a period of one month.

(ii) The OP shall pay compensation in the form of simple interest @ 8% per annum to the complainant with effect from 01.3.2014 till 21.2.2018, when

the letter offering possession of the flat was actually filed before this Commission.

(iii) The balance amount if any payable by the complainant for the above referred flat shall be adjusted out of the compensation payable to him in

terms of this order.

(iv) The balance compensation, if any, shall be paid to the complainant at the time of possession of the flat is delivered to him.

(v) The opposite party shall pay a sum of Rs.25,000/- as cost of litigation to the

complainant.