

(2017) 02 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Case No : 109 of 2016

SOMYA AHUJA & ANR.

APPELLANT

Vs

TODAY HOMES & INFRASTRUCTURE PVT. LTD.

RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 7 Rule 10A](#) -
[Consumer Protection Act, 1986](#), [Section 13\(4\)](#) - Procedure on admission of complaint

Citation : 2017 1 CPR 357

Hon'ble Judges : V.K. Jain

Advocate : Kapil Kher, Namita Sharma, Sumesh Dhawan, Vatsala Kak

Judgement

The complainant No.2, namely, Mr. Vipin Kumar Ahuja is present in the court and he states that he wants possession of the flat along with compensation booked by the complainants.

1. The complainants who are father and daughter booked a residential flat in a project, namely, "Today Canary Greens" which the opposite party is developing in Sector 73 of Gurgaon. Pursuant to the application submitted by the complainants, Unit No.T4/0201 on the 2 nd Floor of Tower-T4 in the aforesaid project was allotted to the complainants, for a total consideration of Rs.75,80,810/-. The parties then entered into an Agreement to Sell dated 23.7.2011 which interalia incorporated their respective blocks. As per clause 21 of the agreement, subject to force majeure as defined in the agreement, the possession of the unit was proposed to be delivered to the complainants within 36 months from the date of execution of the agreement though the builder was entitled to additional period of six months as a grace period. The grievance of the complainants is that despite they having paid a sum of Rs.73,67,757/- to the opposite party the possession of the flat has not even been offered to them, though the period of 36 months computed from the date of the agreement expired on 23.7.2014 and even the grace period of six months expired on

23.1.2015. The complainants are, therefore, before this Commission with the following prayers:-

1. Declare that the business practices being followed by the respondent are unfair trade practices and accordingly declare relevant clauses of the Agreement to Sell dated 23.7.2011, signed in respect of the Unit No.1, Second Floor, Tower No.4, situated in the Project Canary Greens, Sector 73, Gurgaon are null and void and not binding on the complainants;

2. Declare that the respondent is guilty of following restrictive trade practices, to the extent it has been blocking the flow of funds to the market by recovering the consideration amount from the complainant and the like and delaying the delivery of the possession of the unit;

3. Direct the respondent to provide the Unit No.1, Second Floor, Tower No.4 situated in the project Canary Greens, Sector 73, Gurgaon and parking space allotted to the complainants in accordance with the agreed specifications and in the midst of green locales/eco-friendly landscaping and posh neighbours;

4. Direct the respondent to pay compensation for delayed possession i.e. Rs.2,00,000/- per month for the delayed period i.e. w.e.f. 23.7.2014 and till the date the possession is handed over by the respondent to the complainants of the unit allotted to them;

5. Direct the respondent to pay compensation for mental trauma and harassment caused to the complainants i.e. Rs.10,00,000/-;

6. Direct the respondent to pay interest @ 12% p.a. on the amount of Rs.73,67,757/- w.e.f. November, 2010;

7. Direct the respondent to pay the litigation expenses of Rs.2,00,000/- to the complainants;

8. Award cost of the proceedings;"

2. The complainants have taken a preliminary objection that since the agreed consideration was much less than Rs.1 crore, this Commission lacks the pecuniary jurisdiction to entertain the complaint. On merits, it is alleged that the construction has been delayed on account of reasons beyond the control of the opposite party.

3. A number of consumer complaints in respect of residential flats in this very project and involving the identical questions were decided by this Commission vide order dated 31.1.2017 passed in Consumer Complaint No. 198 of 2015 - Dushyant Kumar Gupta Vs. Today Homes & Infrastructure Pvt. Ltd. and connected matters. The following was the view taken by this Commission in the above-referred matters:-

"4. The main question which arises for consideration in these complaints is as to whether this Commission possess the requisite pecuniary jurisdiction to entertain

these complaints. As provided in section 21 of the Consumer Protection Act this Commission has jurisdiction to entertain the complaints where the value of the goods or services and compensation if any claimed exceeds Rs.1 crore. Though most of the complainants have claimed refund @ Rs.10,000/- per sq.ft. of the area of the flat, no credible evidence has been led by them to prove that the market value of a flat similar to the flat allotted to them and in the same or a comparable locality was Rs.10,000/- or more on the date these complaints were instituted. No price list of any developer in respect of residential flats in the same or a comparable locality with identical or comparable specifications has been produced by them, in the absence of a credible evidence, it would be difficult to accept the bald statements of the complainants as regards the market value of a similar flat in the same or a comparable locality, on the dates these complaints were instituted. Therefore, invocation of the pecuniary jurisdiction of this Commission on the basis of the aforesaid alleged market value of the similar flats is highly misplaced and cannot be entertained.

Though ordinarily the pecuniary jurisdiction is to be determined on the basis of the averments made in the complaint, this Commission will not be justified in entertaining the complaints based upon the allegations which are ex-facie untenable and where the claim is found to be highly inflated, fanciful and exaggerated, made only with a view to bring the matter within the pecuniary jurisdiction of a particular consumer forum. The scheme of the Consumer Protection Act, which requires a consumer complaint with pecuniary value of upto Rs.20 lakhs to be instituted before a District Forum and the complaints with a pecuniary value of more than Rs.20 lakhs and upto Rs.1 crore before the State Commission, cannot be allowed to be bypassed, by entertaining highly exaggerated and wholly unfounded claims.

5. This Commission has in the past granted compensation in the form of interest paid Rs.18% per annum in the cases where refund has been allowed and compensation in the form of interest @ 12% per annum in the cases where possession of the house/plot has been directed. Therefore, a claim for refund by adding the agreed sale consideration to compensation in the form of simple interest @ 18% per annum from the date of each payment till the date of filing of the complaint cannot be said to be highly exaggerated or fanciful and made only with a view to invoke the jurisdiction of this Commission, even if this Commission eventually grants a lesser compensation to the complainant. Similarly, where the complainant seeking only the possession of the house but there is no prayer for refund of the payment made by him to the builder, the value arrived at by adding the agreed sale consideration to the compensation in the form of interest @ 12% p.a. from the committed date of possession till the date of filing of the complaint would be maintainable before this Commission if the said claim comes to more than Rs.1 crore.

6. In a complaint where the complainant makes alternative prayers, one for possession of the house allotted / plot to him and the other for refund of the

amount paid by him to the developer along with compensation, this Commission would have pecuniary jurisdiction to entertain the complaint where either the relief of possession or the relief of refund, alongwith the compensation as calculated in terms of para-5 hereinabove falls within the pecuniary jurisdiction of this Commission. Since in such a case, the State Commission will not have the requisite pecuniary jurisdiction to grant one of the alternative reliefs claimed in the complaint, the complainant cannot be asked to approach the said Commission.

9. No material has been produced by the opposite party to prove that the completion of construction and offer of possession has been delayed on account of reasons beyond its control. Thus, no justification for the said delay has been made out.

12. Now I am coming to the complaints which do not come within the pecuniary jurisdiction of this Commission. The question which arises for consideration as to what course of action should be adopted in respect of these complaints which have been pending with this Commission for the last about 1 1/2 years. One course can be to dismiss these complaints with liberty to such complainants to institute fresh complaints before the concerned State Commission. The aforesaid course of action, in my view, would not be fair and reasonable, considering that the complaints are pending for about 1 1/2 years and at one point of time, this Commission held the view that the market value of the flat as on the date of filing of the complaint could be treated as the value of the service in such matters. In my view, the appropriate course of action in such matters would be to follow the procedure prescribed in Order 7 Rule 10 A of the Code of Civil Procedure. Though, the aforesaid provision has not been expressly extended to this Commission by Section 13 (4) of the Consumer Protection Act, the principle underlying the said provision can in appropriate cases, be adopted by this Commission, in order to protect the interest of the consumers, while simultaneously ensuring that no prejudice is caused to the service provider by adopting such a course of action. The opposite party in these cases has filed its written version on the merits of the complaints. It has also led evidence on merits. No prejudice would be caused to the opposite party if the complaints are returned for being presented before the concerned State Commission, with a direction to the State Commission to decide them afresh, taking into consideration, the pleadings, affidavits and the evidence including documentary evidence filed by the parties before this Commission provided an opportunity is given to the parties to lead additional evidence and if filed, such additional evidence is also considered along with the evidence, which was filed before this Commission. The aforesaid course of action besides ensuring a prompt and expeditious disposal of the complaints by a competent Consumer Forum will also ensure that no prejudice is caused to either party in any manner.

4. In the present case, since the complainants are seeking possession of the flat allotted to them, if the compensation in the form of simple interest @12% p.a.

computed from the committed date of possessing including the grace period, i.e., 23.1.2015 is added to the agreed sale consideration, the aggregate does not come to more than Rs.1 crore. This Commission, therefore, lacks the pecuniary jurisdiction to entertain the complaint. The following directions are, therefore, issued in this complaint:-

(i) The complaint be returned to the complainant along with an endorsement containing the date of presentation and return of the complaint, the name of the person presenting the complaint and a brief statement of reasons for returning the complaint;

(ii) The complaint shall be returned within one week from today, along with the requisite endorsement and can be presented before Delhi State Consumer Disputes Redressal Commission within two weeks thereafter;

(iii) The parties shall appear before the Delhi State Consumer Disputes Redressal Commission at 10.30 a.m. on 03.03.2017;

1. The State Commission need not issue a fresh notice requiring the parties to appear before it on the aforesaid date.

2. The State Commission shall decide the complaint in terms of Para 12 of the Order of this Commission dated 31.1.2017 in Consumer Complaint No. 198 of 2015 - Dushyant Kumar Gupta Vs. Today Homes & Infrastructure Pvt. Ltd. and connected matters, as extracted in Para 3 hereinabove.

3. There shall be no order as to costs in the aforesaid matter.

Considering that the complaint has been pending with this Commission for the last about 1 1/2 years, the State Commission is requested to hear and decide the complaint expeditiously, if presented before it, in terms of this order.