
(2018) 10 SC CK 0059
In the Supreme Court Of India
Case No : Civil Appeal Nos. 6649–50 Of 2018

Supertech Ltd

APPELLANT

Vs

Rajni Goyal

RESPONDENT

Date of Decision : 23-10-2018

Acts Referred:

Consumer Protection Act, 1986 — Section 21(a)(i), 23

Citation : (2018) 10 JT 530 : (2018) 14 Scale 187 : AIR 2018 SC 5351

Hon'ble Judges : Abhay Manohar Sapre, J;Indu Malhotra, J

Bench : Division Bench

Advocate : T. Mahipal

Final Decision : Disposed Off

Judgement

INDU MALHOTRA, J.

1. The present Civil Appeals have been filed under Section 23 of the Consumer Protection Act, 1986 to challenge the Judgment and Order dated 22.03.2018 in Review Application No. 94 of 2018 and the Judgment and Order dated 07.02.2018 in Consumer Complaint No. 708 of 2017 passed by the National Consumer Disputes Redressal Commission at New Delhi.

Section 23. Appeal - Any person, aggrieved by an order made by the National Commission in exercise of its power conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

2. The factual matrix of the present case, briefly stated, is as under:

2.1.The Appellant - Builder was developing a project named 'Capetown' in Sector 74, Noida. The Respondent - Purchaser booked a residential flat with the

Appellant - Builder in the said project.

2.2. On 22.05.2012, the Appellant - Builder vide Allotment Letter allotted Flat No. 1606 to the Respondent - Purchaser. As per the Allotment Letter, possession would be handed over in October 2013. This period could be extended due to unforeseen circumstances by a maximum of 6 months.

The Agreement also provided for escalation charges if there was any fluctuation in the price of construction materials and/or labour costs during the course of construction, payable by the Respondent - Purchaser.

The Agreement provided for payment of maintenance charges by the Respondent - Purchaser for maintenance and upkeep of the complex. These maintenance charges were payable from the date of issuance of a 'Letter of Offer of Possession'.

2.3. The Appellant - Builder was not able to hand over possession of the flat in October 2013 as per the Allotment Letter dated 22.05.2012.

2.4. The Appellant - Builder issued a Pre-Possession Letter on 12.10.2015 to the Respondent - Purchaser for completion of formalities, before possession could be handed over. The Pre-Possession Letter stated that upon completion of formalities as specified in the Letter, possession of the flat would be offered to the Respondent Purchaser. The Respondent - Purchaser was called upon to pay Rs. 12,35,656/- towards the balance cost of the flat, maintenance charges, labour welfare charges, water connection charges, escalation costs, etc. The Respondent - Purchaser was called upon to deposit the charges on or before 11.11.2015.

2.5. The Respondent - Purchaser failed to pay the charges demanded as per the Pre-Possession Letter by the Appellant - Builder.

2.6. That after over 15 months, on 15.03.2017, the Respondent - Purchaser filed a Consumer Complaint under Section 21(a)(i) of the Consumer Protection Act, 1986 before the National Consumer Disputes Redressal Commission [hereinafter referred to as "the Commission"]. The Respondent - Purchaser challenged the Pre-Possession Letter on the ground that on the date of issuance of the Pre-Possession Letter, the Appellant - Builder had not obtained the Occupancy Certificate. The Respondent - Purchaser also challenged the various charges demanded by the Appellant - Builder in the Pre-Possession Letter.

Section 21. Jurisdiction of the National Commission - Subject to the other provisions of this Act, the National Commission shall have jurisdiction-

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

2.7. The Commission vide Judgment and Order dated 07.02.2018, partly allowed the Consumer Complaint of the Respondent - Purchaser.

The Commission held that out of the charges mentioned in the Pre-Possession Letter dated 12.10.2015, the Appellant - Builder was entitled to payment of the following amounts -

- i) An amount of Rs. 3,166/- towards interest on delayed payment.
- ii) Water connection charges if paid to the concerned Authority, on proportionate basis subject to furnishing proof of such payment, in terms of this order.
- iii) Labour welfare charges subject to furnishing proof and computation with respect to the said charges in terms of this order.
- iv) Escalation charges + service tax amounting to Rs. 3,88,797.19/-

However, the Commission held that since there was a delay in handing over possession of the flat to the Respondent - Purchaser, the Appellant - Builder was liable to pay Interest to the Respondent - Purchaser by way of compensation. The scheduled date for handing over possession was 31.10.2013. The Appellant - Builder had issued the Pre-Possession Letter on 31.10.2015. As per the Respondent - Purchaser, the Appellant - Builder did not have the Occupancy Certificate on that date.

The Commission directed the Appellant - Builder to pay compensation in the form of Simple Interest @8% p.a. from 01.11.2013 till the date on which possession was actually offered to the Respondent - Purchaser.

2.8 Aggrieved by the Order dated 07.02.2018, the Appellant - Builder filed a Review Petition. The said Review Petition was dismissed by the Commission vide Order dated 22.03.2018.

2.9 Aggrieved by the Order passed by the Commission in the Consumer Complaint as also in the Review Petition, the Appellant - Builder has preferred the present Civil Appeals before this Court under Section 23 of the Consumer Protection Act, 1986.

3. We have heard the Counsel for the parties, and perused the pleadings of the case.

4. The Appellant - Builder inter alia submitted that -

Possession of the flat was offered to the Respondent - Purchaser in December

2015 after obtaining the Completion Certificate for the building.

Even though the Agreement provided for delivery of possession by 31.10.2013, the delay occurred because of various legal impediments in timely completion of the project because of various Orders passed by the National Green Tribunal. The delay ought to be computed from 6 months after 31.10.2013, i.e. from 01.05.2014 by taking into consideration, the 6 months grace period provided in the Agreement.

Furthermore, the period of Interest should close on April 2016 when the Full Occupancy Certificate was obtained as per the admission of the Respondent - Purchaser herself in Para 4(j) of the Consumer Complaint, wherein she has admitted that the Appellant - Builder had obtained the Completion Certificate as late as April 2016. The Respondent

- Purchaser could not have any further grievance after April 2016 with respect to delay in handing over possession. The Respondent - Purchaser ought not to be allowed to reap the benefits of her own delay in taking possession.

5. In light of the aforesaid discussion, the period of compensation of Interest must be computed from 01.05.2014 till 30.04.2016 at the rate awarded by the Commission.

6. The Order of the Commission is modified only to the extent mentioned hereinabove.

7. The Appeals are disposed of accordingly.