

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 634 OF 2018

(Against the Order dated 01/11/2017 in Appeal No. 492/2016 of the State Commission West Bengal)

1. BENGAL GREENFIELD HOUSING DEVELOPMENT LTD.

THROUGH ITS MANAGING DIRECTOR, HAVING ITS REGISTERED OFFICE AT HI TECH CHAMBER 7TH FLOOR, 84/1B, TOPSIA ROAD, (s) P.S. TOPSIA

KOLKATA-700046

WEST BENGAL

.....Petitioner(s)

Versus

1. SUMAN BANSAL

R/O. 15/16, MUSALMAN PARA LANE(KEDAMTALA) P.O. HOWRAH P.S. KADAMTALA

HOWRAH-711102

WEST BENGAL

.....Respondent(s)

REVISION PETITION NO. 1627 OF 2018

(Against the Order dated 01/11/2017 in Appeal No. 492/2016 of the State Commission West Bengal)

1. SUMAN BANSAL

15/16, MUSALMAN PARA LANE(KEDAMTALA) PO HOWRAH, P.S. KADAMTALA

HOWRAH,

WEST BENGAL

.....Petitioner(s)

Versus

1. BENGAL GREENFIELD HOUSING DEVELOPMENT CO. LTD. & ANR.

HI TECH CHAMBER 7TH FLOOR, 814/1B, TOPSIA ROAD(S) P.S. TOPSIA

KOLKATA-700046

WEST BENGAL

2. THE PROJECT MANAGER(GREEN FILED AMBITION)

BENGAL GREENFILED HOUSING DEVELOPMENT CO. LTD. HI TECH CHAMBERS 4TH & 7TH FLOOR 84/1B, TOPSIA ROAD(SOUTH) P.S TOPSIA

KOLKATA-700046

WEST BENGAL

.....Respondent(s)

BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING MEMBER

FOR THE PETITIONER :

FOR BENGAL GREENFIELD

HOUSING DEVELOPMENT LTD. : MR. PRIYADARSHNI
BANERJEE, ADVOCATE

MR. SOURAV DUTTA, ADVOCATE

MR. AARLIN, ADVOCATE

FOR THE RESPONDENT :

FOR SUMAN BANSAL : MR. PAWAN KUMAR RAY,
ADVOCATE

MS. SHUBHSMITA, ADVOCATE

Dated : 07 February 2024

ORDER

1. This Order shall decide both Revision Petitions Nos. RP/634/2018 and RP/1627/2018 filed under Section 21(b) of the Consumer Protection Act, 1986 (hereinafter referred to as the “Act”) arising out from impugned judgment/ Order dated 01.11.2017 passed by the learned State Consumer Disputes Redressal Commission, West Bengal (hereinafter referred to as the ‘State Commission’) in First Appeal No. 492/2016, wherein the State Commission has partly allowed the Appeal of the Complainant/ Appellant and set aside the Impugned Order dated 22.04.2016, passed by the District Consumer Disputes Redressal Forum, Unit-I, Kolkata (referred to as the “District Forum”) in Consumer Complaint No 584 of 2013 wherein the Complainant was dismissed.

2. For convenience, the parties are referred to as placed in the original Complaint before the District Forum. Suman Bansal is denoted as the Complainant and Green Field Ambition (Bengal Greenfield Housing Development Co Ltd) is referred to as the OP-1 and The Project Manager (Green Field Ambition) is referred to as the OP-2 (OPs Builder).

3. Brief facts, as per the Complainant, are that in the year 2007 she was influenced by an advertisement of OP-1 she entered into an agreement with OPs and booked Flat No. 11C on the 11th floor of Tower No.1 in MIG, Greenfield Ambition, New Town Kolkata, paying Application fee of Rs.50,000 on 13.06.2007, as part of the total consideration of Rs.12,42,000. According to Clause 11 of the terms and conditions, the possession of the flat was to be handed over to her by December 2009, with a 6-month grace period. However, the possession was delayed beyond the agreed timeframe, and despite her requests, OPs did not address the matter. Finally, possession was handed over on 17.07.2012, after delay of 30 months and was registered on 17.01.2013. As per Clause 12 of the general terms and conditions, the Complainant claimed compensation/penalty at the rate of Rs.3,000 per month for the 30-month delay, totaling Rs.90,000, along with 18% interest, but no avail. Being aggrieved, she CC No. 584/2013 before the District Forum, seeking payment of Rs.90,000/- for the 30-month delay at Rs.3,000 per month, compensation of Rs.3,00,000/- and litigation costs of Rs.10,000/-.

4. In their reply, the OPs refuted the allegations and asserted that they issued a possession letter for the said Flat in the Ambition project on 29.03.2012, along with a demand for

Rs.3,65,696. Upon payment of the amount on 22.06.2012, she took possession and declared satisfaction on 17.07.2012. The OPs asserted that her claim is baseless, harassing, and unsustainable since she expressed contentment and provided a no-claim certificate on 17.07.2012. OPs further contended that she concealed the OPs offer of possession and non-payment of the demanded dues until 22.06.2012. They relied on the General Terms and Conditions (GTC) related to the MIG and LIG apartments issued by OP-1. According to the GTC, the first phase was slated for possession by December 2009, with a 6-month grace period. The subsequent phases would follow. If the OPs failed to deliver within the specified period, compensation could be paid, subject to force majeure clauses. Her name was not included in the list of MIG flat allottees in the first phase. Clause-11 of the GTC addressed force majeure situations, and the company, through a letter dated 25.04.2013, clarified the circumstances beyond their control for project completion. The OPs asserted that the complaint was not maintainable due to the application of the statutory limitation period under the Act. No cause of action existed in December 2013 and the complaint was time-barred. The Complainant was not entitled for any relief and no actionable claim arose against them.

5. The District Forum after hearing both the parties vide Order dated 22.04.2016, dismissed the complaint with the following findings:

"Complainant did not pay the consideration amount within the stipulated period as per payment schedule. Complainant did not raise any objection at the time of taking the possession of the flat in question from o.ps. Moreover, if Dec. 2009 would be the provisional allotment date for the complainant then complainant had to make queries to o.ps. after 2009. Complainant knew that she had not paid the amount scheduled to be paid within 2009. So, it is clear that due to delay in delivery of the possession complainant did not pay the amount before 2009. Complainant paid the lumpsum payment of Rs.3,65,696/- on 22.6.12. Moreover, the name of the complainant had not been mentioned in the list of allottees of phase-1. Only Phase-1 had to be delivered within Dec. 2009. If cause of action arose on Dec. 2009 complainant had to file instant case within Dec. 2011. Only after taking of the possession of the apartment in question complainant filed the instant case on 25.9.13. So, the case is barred by limitation for that specific cause of action. At the time of taking of the possession of the apartment complainant raised no objection.

In view of above discussion, we are in the view that complainant has failed to substantiate her case and she is not entitled to relief.

Hence, ordered.

That the case is dismissed on contest without cost against the o.ps.."

6. Being aggrieved by the Order of the District forum, the Appellant / Complainant filed Appeal No. 492 of 2016 before the State Commission. The State Commission in its Order dated 01.11.2017, allowed the Appeal and set aside the Impugned Order dated 22.04.2016 passed by the District Forum in CC. No.584 of 2016, consequently allowed the Complaint filed by the Complainant with the following observation: -

“Considering the entire facts and circumstances and having heard the parties, I am of the view that the Ld. District Forum has proceeded in a wrong controversy and when there is an agreement regarding payment delivery of possession, the respondent no.1/developer must bound to fulfill their terms of obligation.

For the reasons aforesaid, I am constrained to interfere with the order impugned. In fact, there has been a total delay of 30 months in delivery of possession and as such as per Clause 12 of GTC, the appellant is entitled to Rs.3,000/- per month and thereby the appellant/complainant is entitled to compensation of Rs.90,000/-

Accordingly, the appeal is allowed on contest. However, considering the facts and circumstances, I do not make any order as to costs.

The impugned order hereby set aside.

Consequently, CC/584/2013 is thus, allowed

The respondent no. 1/OP No.1 is directed to pay Rs.90,000/- as compensation to the appellant/complainant within 30 days from date otherwise the amount shall carry interest 9% p.a. from date till its full realization.”

7. Dissatisfied by the Order of the State Commission, both the parties i.e., the Complainant and the OPs filed the present cross Revision Petitions before this Commission with the following prayer.

RP/634/2018 – filed by the OP-Bengal Greenfield Housing Development Ltd.

“a) Pass an order for setting aside of the impugned order dated November 01, 2017 passed by the State Consumer Disputes Redressal Commission, West Bengal, Kolkata in First Appeal No. A/492/2016;

b) Pass an order directing the District Consumer Disputes Redressal Forum, to consider and dispose of the petition for vacating the order of the said Forum dated April 22, 2016 in CC/584/2013;

c) And pass any other and other relief as may be deemed fit and proper in the light of the facts and circumstances of the instant case.”

RP/1627/2018 – filed by the Complainant-Suman Bansal

- a) Allow the present Revision Petition***
- b) Pass an order to modify the order passed by the Learned State Consumer disputes Redressal Commission, West Bengal in appeal bearing no. 429 of 2016 and award necessary compensation to the Petitioner along with the compensation for delay in possession to the tune of Rs. 90,000/- along with 15% rate of interest.***
- c) Pass an order to refund the maintenance charges imposed illegally by the Respondent even before the grant of Occupancy Certificate for a period of about 13 months amounting to Rs. 12,675/.***
- d) Order the Respondent to refund Rs 3,00,000/- paid by the Petitioner as rent during the 30 months delay period along with 18% of interest rate from the date of delay.***
- e) Order the Respondent to compensate for the legal expenses incurred by the Petitioner for a period of 5 years, to the tune of Rs. 1,00,000/- (Rupees One Lac only).***
- f) Order the respondents to compensate the Petitioner to the tune of Rs. 2,00,000 (Rupees Two Lac only) for the emotional and financial hardships borne by them.***
- g) To pass such other and further order as this Learned Commission may deem fit and proper under the circumstances of the case.***

8. Heard the Learned Counsel for both the parties. Perused the entire material on record *inter-alia* Orders of both the fora.

9. It is an admitted fact that in 2007, the Complainant booked a flat No. 11C, 11th Floor, Tower MIG, Green Field Ambition, located at New Town, Kolkata – 700156 on 13.06.2007, at a total cost of Rs. 12,42,000. An application fee of Rs.50,000 was paid. The agreement specified that possession would be handed over by December 2009, with a grace period of six months. However, it was handed over only on 17.07.2012.

10. It is also pertinent to note that Clause 12 of the General Terms and Conditions (GTC) establishes compensation for delay in possession. It states that if Bengal Green Field fails to deliver possession within the stipulated time (subject to force majeure), compensation shall be paid to the allottee for each apartment, starting from the scheduled completion date until actual handover. However, if the allottee fails to take possession after one intimation, no compensation is payable. Having purchased an MIG flat, the Complainant is entitled to Rs.3,000 per month under this condition for the delay in possession. A letter dated 29.03.2012 from the developer notified the Complainant for the first time that the apartment was ready for possession. In response to her claim for compensation due to the delay in

possession, a letter dated 25.04.2013 from OP-1/developer explained that the project's delay was beyond their control. The Complainant was advised to review the Force Majeure Clauses in Clause 11 of the GTC, asserting that no compensation is applicable under these circumstances. It is, therefore, clear that there was significant delay in handing over possession of the flat to her as per the Agreement. The Complainant cannot be expected to wait indefinitely, as she has already paid a substantial amount with the expectation of timely possession. Hon'ble Supreme Court in several cases asserted the right of buyers to receive fair delay compensation when developers unduly and unreasonably delay possession as per the Agreement.

11. The Hon'ble Supreme Court in *Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 SC*, decided on 25.03.2019 has observed that:

“.....It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by SCDRC and by the NCDRC for refund of moneys were justified.”

12. In another Landmark judgement, the Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghvan, II (2019) CPJ 34 (SC)*, decided on 02.04.2019 has held that:

We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfil his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest”.

13. The objection of the OPs that the delay was due to force majeure circumstances as the situation beyond the control for completion of the project within the stipulated period and as such there was no deficiency in services on the part of them. This Commission in CC 379 of 2013 *Sivarama Sarma Jonnalagadda & Anr vs. M/s Maruthi Corporation Limited & Anr.* decided on 21.09.2021 has held that:

“We are of the view that that the Complainant cannot be made to wait indefinitely for the delivery of possession and the act of the Opposite Party in relying on force majeure clause while retaining the amounts deposited by the Complainant, is not on only an act of deficiency of service but also amounts to unfair trade practice.”

14. It is undisputed that the property was to be handed over by December 2009 and six months grace period is provided for within the terms of contract. Thus, the unit was to have been handed over latest by June 2010. However, the possession was handed over on 16.07.2012. Therefore, there was 24 months delay. In terms of the contract, the Complainant is entitled for compensation @ Rs.3,000 per month for the delayed period. She is thus entitled for compensation for 24 months.

15. Based on the discussion above, I do not find any merit in both the present Revision Petition Nos. 634 of 2018 and 1627 of 2018 and the same are disposed of with the following modification of the order of the learned State Commission in Appeal No. 492 of 2016 dated 01.11.2017:

ORDER

The Opposite Party No. 1 (Bengal Greenfield Housing Development Ltd) is directed to pay Rs.72,000/- to the Complainant as compensation for delay of 24 months in handing over the possession of the flat in question, along with simple interest of 6% per annum from the date of filing the Complaint till final payment, within one month from the date of this order. In the event of delay, the rate of interest applicable shall be 9% per annum for such extended period.

16. There shall be no order as to costs.

17. All pending Applications, if any, stand disposed of accordingly.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER**

