

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 2037 OF 2018

(Against the Order dated 05/09/2018 in Complaint No. 3/2016 of the State Commission
Haryana)

1. M/S. EXACT DEVELOPERS & PROMOTERS PVT. LTD.
THROUGH ITS AUTHORIZED SIGNATORY, E-42/3,
OKHLA INDUSTIRAL AREA PHASE-II,
NEW DELHI

.....Appellant(s)

Versus

1. RAJESH SETHI & ANR.
S/O. SHRI R.P. SETHI, R/O. 163, MUKHERJEE PARK
NEW DELHI 110018
2. SHRI ATUL SHARMA
S/O. SHRI RADHEY SHYAM R/O. D-2, SHAM NAGAR
KHYALA ROAD
NEW DELHI 110018

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT :

Dated : 10 May 2024

ORDER

For Appellant : Dr. Bipin K Dwivedi, Advocate

Mr. Ankit Aakash Dwivedi, Advocate

For Respondent : Mr. Arvind Bhatt, Advocate

ORDER

PER SUBHASH CHANDRA

1. This Appeal has been filed by M/s Exact Developers & Promoters Pvt. Ltd., which was Opposite Party No.1 before the State Commission, against the order dated 05.09.2018 of the State Consumer Disputes Redressal Commission, Haryana Panchkula (for short "the State Commission") in Complaint No.03 of 2016 filed by the Complainants/ Respondents herein. By the impugned order, the State Commission directed the Appellant to refund the amount of ₹29,67,187/- along with interest @ 12% p.a. from the date of respective deposits till

realization and, in case of default, with interest payable @ 18% p.a. for the period of default. ₹1,50,000/- was also awarded as compensation for mental agony and physical harassment and ₹21,000/- as litigation charges.

2. In brief, the facts of the case are that Complainants were allotted a commercial unit No.304 with proposed super area of 1055 sq. ft. in Block A, “The Ace”, Manesar, Gurgaon, Haryana on 25.04.2007 to run a canteen for earning their livelihood for a sale price of ₹65,93,750/-. The complainants paid a total sum of ₹29,67,187/- to the Opposite Party who promised to handover possession of the unit within three years, i.e. by October 2009. In case of failure to do so, the Complainants were entitled to refund of the deposited amount alongwith interest @ 18% per annum from the dates of payment till realization. In view of the Opposite Parties having failed to offer possession, the Complainants requested the Opposite Parties to refund their deposited amount alongwith interest but in vain. The Complainants therefore filed a Complaint before the State Commission with the prayer that the Opposite Parties be directed to refund their deposited amount of ₹29,67,187/- alongwith interest @ 18% per annum from the date of deposit till realization, with compensation of ₹10,000/- for causing mental and physical agony and ₹33,000/- as litigation expenses.

3. The complaint was resisted by the Appellant by filing written version. It was submitted by Appellant that the unit in question was not booked for running a canteen and that the Complainants were not “consumers” under the Act as the unit was only booked for commercial purpose. It is the contention of the Appellant that the Complainants were defaulters in making payments and that the Complainants did not sign the Agreement deliberately and intentionally. It was further submitted that they had offered possession and asked the Complainants to complete the formalities which they failed to do. It was submitted that there was no deficiency on their part in rendering the services and that the Complaint be dismissed.

4. After hearing the arguments of learned Counsel for the parties and perusing the record, the State Commission allowed the Complaint.

5. We have heard learned Counsel for the parties and perused the record. Written synopsis has also been filed by the parties.

6. The State Commission has ordered as under:

“12. Since, there is a clear breach of terms and conditions of the allotment letter as O.P.No.1 could not deliver the possession of the unit within the permissible period i.e. three years. The developer or O.P. cannot be put to survive on the basis of the amount of the investors. It is the normal trend of the developer/O.P. that they would collect their hardened money from the investors and would invest the funds in other projects as a result thereof the project for which the investors have invested their hardened money is not completed. The case law cited by the counsel for the complainants are squarely covered by the decisions rendered in by the Hon’ble Apex Court and Hon’ble National Commission. The case laws cited by the counsel for the opposite party No.1 is not relevant in the present case because the facts and circumstances of the above-said cases are different. Hence with the above observation and discussion there are sufficient grounds to accept the

complaint and while accepting the complaint, the O.P No.1. is directed to refund of the amount of Rs.29,67,187/- alongwith interest @ 12% per annum from the date of respective deposits and till realization. In case, there is a breach in making payment within the stipulated period of 45 months in that eventuality the complainants would further be entitled to get the interest @ 18% per annum, for the defaulting period. The complainants are also entitled of Rs.1,50,000/- for compensation of mental agony and physical harassment. In addition, the complainants are also entitled of Rs.21,000/- as litigation charges. It is also made clear that for non-compliance, the provisions enshrined under section 27 of the C.P.Act would also be attractable.”

7. It is not in dispute that the unit in question was allotted to the Respondent/Complainants. It is also not in dispute that the Respondents had paid ₹29,67,187/-. It is argued by Learned Counsel for the Appellant that the Respondents had agreed for payments as per the payment schedule (Annexure-2A) which they failed to comply with, despite demand note dated 16.08.2010 and several reminders. It is argued that the allotment was never cancelled by the Respondents. It is submitted that the unit is ready for possession and although possession was offered the same was not taken by the Respondents. It is submitted that the Appellant had obtained all statutory approvals and Occupation Certificate. It is argued that the Respondents are not the “consumers” under the Consumer Protection Act since they booked a commercial office space for speculative purposes. It is also argued that there is nothing on record to substantiate that the office space was to be used exclusively for self-employment. It is submitted that the delay in the project occurred due to a dispute with the contractor M/s S.P. Contract Pvt. Ltd., and for reasons beyond the control of the Appellant. It is submitted that compensation and interest both could not be awarded under the Consumer Protection Act as held by this Commission in ***Laxmi Vilas Bank and Ors. Vs. P. K. Krishna***, I CPJ 43 (NC).

8. *Per Contra*, it was argued on behalf of the Respondents that the commercial unit in question was purchased exclusively by them for the purpose of earning their livelihood by means of self-employment. It was submitted that the plea that the project was completed and possession offered to them in 2013 was false since the Fire NOC, OC etc. were received by the Appellant only in the year 2015. It is also argued that possession was offered only after the Complaint was filed by them before the State Commission on 07.01.2016. It is contended that compensation and interest can both be granted under the Consumer Protection Act for deficiency in service and that the prayer of the Respondents be allowed.

9. In view of the foregoing, the issue which falls for consideration is whether the Respondents are entitled to approach this Commission seeking relief under the Consumer Protection Act and whether the State Commission was justified in awarding the reliefs provided by way of the impugned order.

10. The issue of ‘commercial purpose’ has been dealt with by the Hon’ble Supreme Court in ***Laxmi Engineering Works Vs P.S.G. Industrial Institute***, (1995) 3 SCC 583. As this is a question of fact and law it needs to be determined on a case to case basis. The Appellants have not established through evidence that the Complainants booked the commercial unit for the purpose of their livelihood. In the absence of any pleading based on evidence, this

contention cannot be accepted. Respondents are, therefore, 'consumers' under the Act entitled to such relief.

11. It is manifest that the unit was allotted on 25.04.2007. Possession was assured within three years, i.e. by 25.10.2009. Payment of ₹29,67,187/- was done as per payment plan. Appellant contends that possession was offered on 10.05.2013. However, the Occupation Certificate obtained by it is dated 04.11.2015. Therefore, the date of offer of legally valid possession can only be reckoned as 04.11.2015. Deficiency in service is, therefore, writ large in this case. As per the allotment, the Appellant was obliged to offer possession by 25.10.2009, failing which penalty @ 18% p.a. was liable to be paid to the Respondent. It is not the case of the Appellant that the Respondents were defaulters or that the allotment was cancelled for that reason. The delay in handing over possession has also not been attributed to any *force majeure* clause. Refund with compensation in the form of interest is, therefore, a valid prayer.

12. However, the Hon'ble Supreme Court in *DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda*, II (2019) CPJ 117 has held that multiple compensations under different heads for a singular default or deficiency is not justified. Hence, the additional compensation for mental agony cannot be sustained. As regards the quantum of interest awarded, the Hon'ble Supreme Court has laid down in *Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor*, C.A. No. 6044 of 2019 decided on 07.04.2022 that while the interest to be awarded in cases of refund shall be both compensatory and restitutionary, compensation @ 9% simple interest for same is just and equitable.

13. In the light of the discussion above, we partly allow the Appeal. The order of the State Commission is upheld with the following directions:

- (i) The Appellant is directed to refund ₹29,67,187/- with interest @ 9% p.a. from the respective dates of deposit till realization within eight weeks failing which with interest @ 12% p.a.;
 - (ii) Appellant shall also pay litigation costs of ₹33,000/- to the Respondent.
 - (iii) Compensation of ₹1,50,000/- for mental agony is set aside.
11. Pending applications, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER