

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 489 OF 2013

(Against the Order dated 23/05/2013 in Complaint No. 73/2012 of the State Commission
Rajasthan)

1. SAHARA PRIME CITY LTD. & ANR.

Through-Chairman & Managing Director, Sahara India
Centre, Kapoorthala Complex, ALIGANJ

LUCKNOW,

U.P

2. SAHARA CITY HOMES,

Opp. Radhaswami Satsang Beas, Villgae-Bilwa, Tonk
Road,

JAIPUR

RAJASTHAN

.....Appellant(s)

Versus

1. TAPASYA PALAWAT

W/O. Shjri Sanjeev Singh, J-24, Apna Ghar, Shalimar,
ALWAR

RAJASTHAN

.....Respondent(s)

FIRST APPEAL NO. 606 OF 2013

(Against the Order dated 23/05/2013 in Complaint No. 73/2012 of the State Commission
Rajasthan)

1. TAPASYA PALAWAT

W/O.SHRI SANJEEV SINGH, R/O. J-24, APNA GHAR
SHALIMAR,

ALWAR

RAJASTHAN

.....Appellant(s)

Versus

1. SAHARA PRIME CITY LTD. & ANR.

THROUGH CHAIRMAN & MANAGING DIRECTOR,
SAHARA INDIA CENTRE, KAPOORTHALA
COMPLEX, ALIGANJ,

LUCKNOW,

UTTAR PRADESH

2. SAHARA CITY HOMES,

OPP. RADHASWAMI SATSANG BES,
VILLAGE BILWA, TONK TOAD,

JAIPUR

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON'BLE MRS. M. SHREESHA,MEMBER**

For the Appellant : For the Complainant : Mr. Abhijeet Shah and Ms. Pragya Palawat,
Advocates.

For Sahara Prime City : Ms. Neha Gupta, Advocate.

For the Respondent : For the Complainant : Mr. Abhijeet Shah and Ms. Pragya Palawat,
Advocates.

For Sahara Prime City : Ms. Neha Gupta, Advocate.

Dated : 13 Sep 2019

ORDER

Per Mrs. M. Shreesha, Member

Aggrieved by the order dated 23.05.2013 in CC No. 73 of 2012 passed by the State Consumer Disputes Redressal Commission, Rajasthan (for short the "State Commission"), both Sahara Prime City Ltd. (for short "The Developer") and the Complainant preferred First Appeals 489 and 606 of 2013 respectively under Section 19 of the Consumer Protection Act, 1986 (for short "the Act"). By the impugned order, the State Commission has allowed the Complaint directing the Developer to restore the allotment of the subject flat immediately in the Complainant's favour on payment of the balance consideration and hand over possession of the same within six months from the date of the order. It was further ordered that in case it was not possible to hand over the possession of the subject flat to the Complainant, the Developer would refund the amount of 4,06,050/- to the Complainant along with interest @ 12% p.a. from the date of filing of the Complaint. A sum of 1,00,000/- was also awarded to the Complainant towards compensation and costs.

2. Briefly stated, the facts of the case are that the Complainant booked a flat with the Developer on 10.02.2006 by depositing a sum of 1,37,029/- towards booking amount. The Developer, vide their letter dated 24.04.2006, confirmed the booking fixing the total cost of the flat at 27,07,000/-. Thereafter the Complainant deposited the instalments as and when demanded by the Developer and deposited a total sum of 4,06,050/- which amounted to 15% of the agreed total consideration. The Complainant approached the Developer time and again for possession but though she was assured that the construction would start there was no progress. Ultimately, the Complainant was allotted Flat bearing No. C-4/306 vide allotment letter dated 21.08.2009. Subsequently, Complainant fell ill in December, 2009. After recovery from her ailment in April,

2010 she contacted the Developer about the status of her booking. She was told that her allotment was cancelled. She gave a representation to the Developer that she was ill and expressed her willingness to pay the amount due and accept the possession, which was refused. The Complainant got issued legal notice dated 11.10.2012 but there was no response. Aggrieved, the Complainant filed a Complaint seeking the following reliefs:-

- (i) The Developer be directed: to hand over the possession of the subject flat to the Complainant after accepting the due amount, as per the contract amount, from her and any action taken for cancellation of subject unit by the Developer would be declared cancelled;
- (ii) to refund the deposited amount of 4,06,050/- along with interest @ 18% p.a.;
- (iii) to pay the rent paid by the Complainant on the basis of the rent receipts;
- (iv) to pay an amount of 80,000/- towards damages;
- (v) to pay 7,00,000/- towards mental torture and 50,000/- towards costs.

3. The Developer, despite service of notice, did not appear before the State Commission.

4. The State Commission allowed the Complaint and passed the afore-noted directions.

5. We have heard the Learned Counsel for the parties and perused the record.

6. Learned Counsel for the Developer contended that they were proceeded ex-parte by the State Commission without waiting for the service report of the notice issued '*dasti*' to them merely on the ground that a period of more than one month had elapsed since issuance of '*dasti*' notice. He further contends that '*dasti*' notice means service on the Respondent by hand. However, Complainant sent the said '*dasti*' notice by Registered post which defeats the purpose of '*dasti*' notice. Affidavit in support of service is also not filed by the Complainant and thus the State Commission gravely erred in treating sending of '*dasti*' notice by registered post as sufficient/proper.

7. Learned Counsel submitted on merits that the State Commission erred in holding that they had cancelled the booking of the subject flat without giving any notice or opportunity of hearing to the Complainant. He stated that Complainant herself defaulted in making the instalments and the Developer sent three reminder notices dated 05.11.2009, 18.11.2009 and 04.12.2009 for making the balance payments. Despite the reminders, the Complainant did not pay the instalments and hence they were constrained to cancel the booking vide their letter dated 02.06.2010. The Complainant also refused to collect the refund and instead file a false and frivolous Complaint. It is submitted that it is the case of the Complainant that she fell ill suddenly in December, 2009 whereas she started defaulting in making instalments since October, 2009. It is also pleaded that the Complainant did not place any material on record in support of her averment that she suddenly fell ill in December, 2009. It is further pleaded that State Commission failed to appreciate that the Complainant herself had categorically admitted in the Complaint as well as in the affidavit of evidence that she had defaulted in payment of instalment of the flat and also admitted having received a letter of cancellation of booking sent by the Developer. The Complainant has also annexed the copy of the letter dated 05.11.2009 with the Complaint.

8. It is averred that the allotment of the flat has been cancelled by the Developer on 06.05.2010 and informed to the Complainant on 02.06.2010 as the Complainant did not pay outstanding instalments despite several reminders. It was only on 11.10.2012 that a legal notice was issued to revoke the cancellation of the booking. It is also averred that the Complainant did not place on record the reminder letters dated 18.11.2009, 04.12.2009 and also the Cancellation Letter dated 02.06.2010. As per the terms and conditions of the Booking Form, in case of default in payment of instalments, the Developer was at liberty to cancel booking after giving three months notice if the allottee has failed to pay.

9. Learned Counsel vehemently argued that the State Commission erred in holding that the Developer failed to appear despite service of notice. No presumption of service can be drawn based on dasti notice served by Registered Post.

10. Learned Counsel appearing for the Complainant has vehemently contended that the State Commission had recorded that the notice sent to the Developer was served and despite service none had chosen to appear.

11. Having heard both the parties with respect to service of notice, we perused the order of proceedings before the State Commission. It is seen from the record that on 26.11.2012 the Complaint was admitted for hearing and notice was issued to the Opposite Parties. On 03.01.2013 when the matter was taken up, notice sent to Second Opposite Party returned with an endorsement 'refused' and the State Commission had noted that service was deemed to be sufficient. With respect of First Opposite Party since the service report has not yet returned fresh notice was issued by dasti. The matter was called once again on 27.02.2013, proof of service on First Opposite Party was still awaited. On 20.03.2013 when the matter was called State Commission had recorded that more than one month time had lapsed and no service report of either refusal or otherwise has come back and, therefore, the service was presumed to be deemed sufficient. As per Regulation 10 '(1) Whenever the Consumer Forum directs the issuance of a notice in respect of a complaint, appeal or revision petition, as the case may be, to the opposite party (ies)/respondent(s), ordinarily such notice shall be issued for a period of 30 days and depending upon the circumstances of each case even for less than 30 days and (2) When there is a question of raising presumption of service, 30 days notice shall be required.'

12. Be that as it may, it is seen from the record that Sahara City Homes arrayed as the Second Opposite Party before the State Commission, is floated by the First Opposite Party and the Application Form for the subject flat has been issued in the name of the Second Opposite Party i.e. Sahara City Homes which, to reiterate, has refused the notice. Therefore, taking into consideration that the Complaint is of the year 2012 and seven years has lapsed, we do not find it a fit case to remand the matter back.

13. In this First Appeal ample opportunity was given to the Developer to present their case and their arguments were heard at length. Keeping in view the facts and circumstances of the case and the fact that the Project is still incomplete and the Developer is not in a position to hand over possession and also the Judgement of this Commission against the same Developer pertaining to the same Project, in Consumer Complaint No. 988 of 2015, Revision Petition No. 21 of 2015 and in First Appeal No. 82 of 2016, all of which have attained finality, we are of the considered view that there is deficiency of service on the part of the Developer in retaining the money with them from 10.02.2006 onwards when the Complainant paid the first booking amount and thereafter deposited a total amount of 4,06,050/- which is 15% of the cost of the flat. Even in their letter

dated 21.08.2009, the Developer, while confirming the price to the tune of 27,07,000/-, had promised possession of the flat within 38 months from the date of allotment but till date the fact remains that the Developer is not in a position to offer legal possession of the subject apartment with the Occupation Certificate. We hold that the cancellation by the Developer is unilateral and the their action in forfeiting the deposited amount amounts to unfair trade practice.

14. The contention of the Learned Counsel for the Complainant that the Complainant is entitled to enhanced compensation and also for additional interest needs to be considered. The interest @ 12% p.a. awarded by the State Commission stands confirmed and we find it a fit case to award an additional compensation of 2,00,000/- for the mental agony and the financial loss suffered by the Complainant as more than 10 years had lapsed and till date the possession could not be given.

15. We find it a fit case to rely on the Judgement of the Hon'ble Supreme Court in **Pioneer Urban Land and Infrastructure Ltd. Vs. Govindan Raghavan II (2009) CPJ 34 (SC)** and **Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra II (2019) CPJ 29 (SC)** and hold that the Developer has committed an act of deficiency of service and the Complainant is entitled to refund of the principal amount along with interest @ 12% p.a. as awarded by the State Commission from the respective dates of deposits till the date of realization together with compensation of 2,00,000/- and costs of 25,000/-. The order of the State Commission is modified to that extent.

16. In the result the First Appeal No. 489 of 2013 preferred by the Developer is dismissed and First Appeal No. 606 of 2013 preferred by the Complainant is allowed in part modifying the order of the State Commission to the extent indicated above. The statutory amount in First Appeal No. 489 of 2013 stands released to the Complainant with interest accrued, if any.

.....J
R.K. AGRAWAL
PRESIDENT
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M. SHREESHA
MEMBER