

(2024) 11 NCDRC CK 0008

National Consumer Disputes Redressal Commission

Case No: Consumer Case No. 1434, 1435 Of 2018

Vivek Gulati & Anr

APPELLANT

Vs

Realtech Developments And
Infrastructure (India) Pvt. Ltd. &
Anr

RESPONDENT

Date of Decision: Nov. 18, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(a)(i)

Hon'ble Judges: Karuna Nand Bajpayee, Presiding Member; Dr. Sadhna Shanker, Member

Bench: Division Bench

Advocate: Muskan Gupta

Final Decision: Partly Allowed

Judgement

Dr. Sadhna Shanker, Member

1. In complaint no. 1434 of 2018, the complaint was originally filed before the learned State Commission, Delhi but the same was returned to the complainants for lack of pecuniary jurisdiction in view of decision of the three judges bench of this Hon'ble Commission in the case of Ambrish Kumar Shukla & 21 Ors. vs. Ferrous Infrastructure Pvt. Ltd. (I) 2017 CPJ 1 (NC).
2. In complaint no. 1435 of 2018, the complaint was originally filed before the learned State Commission, Delhi but the same was dismissed as withdrawn for lack of pecuniary jurisdiction in view of Ambrish Kumar Shukla (supra).
3. We see that similar facts and same questions of law are involved in these two complaints. As such they are being disposed of vide this common order, with complaint no. 1434 of 2018 being taken as the lead case.

In Complaint no. 1434 of 2018 (the lead case).

4. The brief facts of the case are that the complainants booked a residential unit admeasuring 2800 sq. ft. for a total consideration of Rs. 3,50,00,000/- (i.e. at a basic cost of Rs. 12,500/- per sq. ft.), with the opposite parties no. 1 and 2 (hereinafter referred to as the 'real estate developers'), who are engaged in the business of construction and development of land and inter alia provide services of the nature of housing construction to their consumers. The complainants paid a sum of Rs. 30,00,000/- at the time of booking. Thereafter, the complainants paid a sum of Rs. 28,79,841/- towards second instalment against the said unit. The complainants had paid a total amount of Rs.58,79,841/-. It is alleged that after making payment of Rs. 58,79,841/-, the complainants sent several e-mails initially to the real estate developers asking about the status of the construction, issue of allotment letter, application form and execution of flat buyer's agreement and the developers made false and empty promises that the same will be done soon but the same had not been done. It is further alleged that even the excavation work has not been started by the real estate developers. It is alleged that as no adequate response was received from the real estate developers, having no other option, the complainants sought cancelation of booking and refund of the amount of Rs.58,79,841/- along with interest at the rate of 18% per annum but the real estate developers did not pay any heed to the request of the complainants.

5. The instant complaint has been filed under section 21(a)(i) of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") before this Commission seeking following reliefs:

(a) Direct the opposite parties to refund the amount of Rs.58,79,841/- (Rupees Fifty Eight Lacs Seventy Nine Thousand Eight Hundred Forty One Only) paid to them by the complainants along with interest at 18% per annum from the date of payment till the date realization.

(b) Award a sum of Rs. 10,00,000/- (Rupees Ten Lacs Only) in favour of the complainants to be paid by the opposite parties for compensation towards the harassment and mental agony caused by the opposite parties to the complainants;

(c) Award a sum of Rs.1,50,000/- (Rupees One Lac Fifty Thousand Only) towards the cost of the present proceedings in favour of the complainants.

(d) Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

6. Despite service of notice through post and publication, none appears for the real estate developers and vide orders dated 12.07.2023 and 26.08.2022, they (Realtech Developments and Infrastructure (India) Pvt. Ltd. and Homestead Infrastructure

Development Pvt. Ltd.) are being proceeded ex-parte.

7. The complainants have filed evidence by way of affidavit. The complainants have filed written synopsis in the matter.

8. We have heard the arguments of learned counsel for the complainant and have perused the record.

9. Learned counsel for the complainants has argued that on 11.02.2013, the complainants had booked a residential unit and had paid a total amount of Rs. 58,79,841/- upto 23.03.2013 but the real estate developers had failed to provide allotment letter and to execute the builder buyers' agreement, as promised. She further argued that the complainant cannot wait indefinitely and till date the developer had not delivered the physical possession of the units, hence, there is deficiency in service on the part of the real estate developers and the complainant is entitled for refund of the deposited amount of Rs.58,79,841/- with interest at the rate of 18% per annum from the date of deposit till realization.

10. The only question before this Commission is as to whether the real estate developers are deficient in service in handing over physical possession of the unit to the complainants.

11. The submissions raised on behalf of the complainants were heard. No one was present on behalf of the real estate developers to contest the case. From the documents filed by the complainants, it is seen that they had paid Rs. 30,00,000/- vide the application form dated 11.02.2013, which was duly acknowledged as being 'Booking Amount' in 'Group Housing Project at Sector 73, Gurgaon' vide receipt dated 05.03.2013. Vide a demand letter dated 07.03.2013, another instalment of Rs. 28,79,841/- was demanded and the same was also paid by the complainants. A receipt dated 11.04.2013 for the same reflecting "payment in respect of: "within 60 days of booking" is also on record. The project was to be completed within 36 months but the real estate developers failed even to allot the unit to the complainants, as is evident from a perusal of emails dated 26.02.2015 from Manoj Shrivastava to the complainants. It is also seen that neither the builder buyer agreement was executed between the parties, nor the real estate developer had delivered the physical possession of the units to the complainants. This amounts to deficiency in service as the builder has kept the money of the complainants for nearly ten years without any prospect of the house being available. In view of the same, the complainants are well within their rights to seek the refund of the amount of Rs.58,79,841/- along with reasonable interest.

The larger bench of Hon'ble Supreme Court in the case of **M/s Nexgen Infracon Pvt. Ltd. Vs Manish Kumar Sinha** in Civil Appeal No. 62 of 2021 decided on 11.01.2021, has held as under:

“.... This take us to the next question whether the rate of interest awarded by the Commission be maintained or whether such rate is required to be scaled down. In keeping with the directions issued by this Court in the case of Prateek Infra projects, we scale down the interest from 12% & 14% as ordered by the Commission to 9% per annum. We also modify the direction restraining the appellant from deduction the tax at source.

It is, therefore, directed that the amounts deposited by the respondents in respect of the apartment in question shall be refunded to them along with interest @9% per annum from the dates of respective deposits.”

13. The Hon’ble Supreme Court in the case of **DLF Homes Panchkula Pvt. Ltd. vs. D.S. Dhanda**, in CA Nos. 4910-4941 of 2019 decided on 10.05.2019 has held that multiple compensations for singular deficiency is not justifiable.

14. In view of the above discussion and keeping in view the decisions of the larger bench in the case of **M/s Nexgen Infracon Pvt. Ltd. Vs Manish Kumar Sinha** (supra) and **DLF Homes Panchkula Pvt. Ltd. vs. D.S. Dhanda** (supra), we are of the opinion that the complainants are entitled to refund of the entire deposited amount with compensation in the form of interest at the rate of 9% per annum from the date of respective deposits till its realization.

15. In the result, the complaint no. 1434 of 2018 is partly allowed and the real estate developers are directed to refund the amount of Rs.58,79,841/- with interest at the rate of 9% per annum to the complainants from the date of deposit till its realization within a period of eight weeks from today, failing which, the interest shall be enhanced to 12% per annum. The real estate developer shall pay Rs. 50,000/- as cost of litigation.

In Complaint No. 1435 of 2018

16. The complaint no. 1435 of 2018 is disposed of in terms of the examination and reasons contained hereinabove apropos complaint no. 1434 of 2018 (the lead-case) with similar directions mutatis mutandis.

In Complaint No. 1434 and No. 1435 of 2018

17. The Registry is requested to send a copy of this order to the parties and to their learned counsel within three days. The stenographer is requested to upload this order on the website of this Commission immediately.