

(2024) 11 NCDRC CK 0078

National Consumer Disputes Redressal Commission

Case No: Consumer Case No. 301 Of 2017

Kamlesh Bhatti & Anr

APPELLANT

Vs

M/s Country Colonisers Private
Limited

RESPONDENT

Date of Decision: Nov. 22, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 2(1)(d), 21(a)(1)
- Punjab Apartment and Property Regulation Act, 1995 - Section 14, 44

Hon'ble Judges: Subhash Chandra, Presiding Member; Avm J. Rajendra, Avsm Vsm (Retd.), Member

Bench: Division Bench

Advocate: Shreya Singh, Deb Deepa Majumdar

Final Decision: Disposed Of

Judgement

Subhash Chandra, Presiding Member

1. This consumer complaint has been filed under section 21 (a) (1) of the Consumer Protection Act, 1986 (in short, 'the Act') alleging deficiency in service on the part of the opposite party in delay in handing over the possession of a residential plot booked by the complainant. The opposite party resisted the complaint by way of reply to which rejoinder was filed by the complainant. Both the parties filed their short synopsis of arguments.

2. We have heard the learned counsel for both the parties and perused the records carefully.

3. Briefly put, the facts of the case are that the complainant booked a 500 sq yds residential plot in the project 'Fair Lakes' in Sector 85, SAS Nagar, Mohali on transfer of the plot from

one Avatar Singh on 28.12.2009 for a sale consideration of Rs.80 lakh. As per the Plot Allottee Agreement dated 15.04.2012, plot no.D 58 was allotted. As per clause 5.1 of the above agreement, the developed plot was to be handed over within 36 months or by 14.04.2015. Since the plot was not handed over, a legal notice dated 09.01.2017 was issued by the complainant seeking refund of Rs.73,33,022/- with interest @ 18% on Rs.28,00,022/- for the period from the booking till the date of signing of the agreement.

4. According to the complainant, the handing over the plot was inordinately delayed by the opposite party and therefore, he prayed for the same to be handed over along with interest as compensation. The opposite party has contended that the complainant was not a consumer under Section 2 (1) (d) of the Act, since he had also booked another plot as admitted by him in CC no.300 of 2017 which was subsequently withdrawn on 17.03.2017. It was contended that interim possession had been offered on 31.08.2018 which was acknowledged by the complainant on 21.02.2017 by e-mail. The contention of the complainant that the offer of possession was without a completion as well as occupation certificate. Reliance was placed on Section 14 of Punjab Apartment and Property Regulation Act, 1995 (in short, 'the PAPRA') by the opposite party, in view of the notification of the Government of Punjab, providing exemption under Section 44 for such a requirement. Reliance was also placed by opposite party on force majeure circumstances such as delay in land acquisition by the Government of Punjab in terms of the Memorandum of Association (MOA) dated 03.02.2006 and the failure of GMADA to provide the access road. It also claimed that petitioner was liable for delay charges of Rs.8,44,669/- which was the outstanding against them. Change of name of the project from "Fair Lake" to "Wave City" was acknowledged as a matter of record.

5. Vide order dated 08.09.2020 of this Commission, both the parties agreed for possession on payment of the balance amount. Possession certificate dated 19.02.2021 is on record. The only issue in the matter which remains to be decided is the compensation for the admitted delay in the offer of possession to the complainant.

6. Counsel for the opposite party has relied upon the order dated 23.09.2020 of this Commission in FA no. 1614 of 2018 – *M/s Country Colonisers Pvt. Ltd., vs Sunder Lal Bhatti and Anrs.*, and Kamlesh Bhatti which was a matter pertaining to the same project involving the same parties. As per this order, compensation for the delay in the offer of possession had been adjudicated on the basis of the judgment of the Hon'ble Supreme Court in *Wg Cdr Arifur Rahman Khan and Aleya Sultana and Ors. vs DLF Southern Homes Pvt. Ltd.*, (Civil Appeal no. 6239 of 2019 decided on 24.08.2020) and has awarded compensation in the form of interest @ 6% per annum from the date of due possession till the date of offer of possession. On the other hand, the counsel for the complainant has argued that he is entitled to higher rate of interest as compensation and that the Hon'ble Supreme Court in various cases has awarded 9% interest as compensation for the delay in possession.

7. The contention of the opposite party claiming interest on delay payment of Rs.8,44,669/- cannot be considered at this stage since the payments made had already been received by it and therefore, the claim for levy of penalty for delay cannot be raised at this stage.
8. In our considered opinion the matter is squarely covered by the judgment of this Commission in *Sunder Lal Bhatti* (Supra) and compensation for delay in possession @ 6% per annum as per the settled position of law for deficiency in service as held by the Hon'ble Supreme Court in *Wg Cdr Arifur Rahman Khan and Ors.*, (supra). We are not persuaded by the contention that the higher rate of compensation be considered for this reason.
9. In view of the foregoing, the Consumer Complaint is disposed of with the directions that the opposite party shall compensate the complainant for the delay in the offer of possession @ 6% per annum on the deposited amount of Rs.73,33,022/- with effect from 14.04.2015 till 19.02.2021 when possession was handed over. This order shall be complied with within a period of 8 weeks from the date of receipt of this order failing which the rate of interest shall be 9% till realisation.
10. There shall be no order as to cost. All pending IAs, if any, also stand disposed of by this order.