

(2005) 04 NCDRC CK 0011

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NANDITA SHAMNIK

APPELLANT

Vs

DLF UNIVERSAL LTD.

RESPONDENT

Date of Decision: April 11, 2005

Citation: 2005 0 NCDRC 31 : 2005 2 CPC 382 : 2005 3 CPJ 74 : 2006 1 CPC 639

Hon'ble Judges: M.B.SHAH , P.D.SHENOY J.

Advocate: L.N.MEHTA , ADITYA NARAIN

Judgement

1. IT is contented by the complainant that M/s. DLF Universal Limited (Opposite Party) is a colonizer and licensee of Haryana Government and it is bound by agreement of licence, laws regarding sale of apartments, registration of conveyance deed, agreement to sell consistent with rules and regulations. It is contended that the respondent had failed to hand over physical possession of the apartment despite full payment. It is pointed out that the complainant has made full payment to the opposite party as stated below :- Despite this payment possession of the premises was not handed over within the stipulated time on one or the other ground. Hence this complaint was filed on 15-1-2003 for a direction to the respondent to deliver the possession of the premises and to pay interest @ 20% per annum from the date of payment of the amounts to the date of delivery of possession of the apartment and for a direction that respondent be restrained from charging holding charges, maintenance charges, interest on various subsequent amounts raised without sanction of law or agreement, and various other reliefs. It is to be stated that the complaint was originally filed in District Consumer Dispute Redressal Forum, Gurgaon on 8-12-2000. As an objection with regard to pecuniary jurisdiction was raised, the District Forum passed an order on 17-9-2002 permitting the complainant to file a complaint in an appropriate Court or Commission. Hence, the present complaint was filed before this Commission. Admittedly, the amount paid by the complainant is more than Rs.61 lakhs. After hearing the learned counsel for the parties, the following interim order was passed on 13-5-2004:-

"Today, when the matter is called out, complainant is present. It is her submission that for one or other reason respondents are exploiting the situation and twisting arms of the complainant by charging extra amount for one or other reason, despite the fact that complainant has paid entire amount of cost of construction in 1999. As against this, learned counsel appearing on behalf of the DLF submitted that as per the agreement, respondent is entitled to recover holding charges because complainant has not accepted the possession of the apartment on 24th August 2000. He submitted that apart from the holding charges, complainant is required to pay interest on delayed payment under clause-9 of the agreement, as complainant has not deposited the amount on due dates of instalments and other charges in terms of the agreement and maintenance charges.

We have heard the learned counsel for the parties. For the time-being, till the matter is finally decided, we direct as under :-

Opposite party, DLF, shall hand-over possession of Apartment No. R 07A, Windsor Court, DLF City, Gurgaon (Haryana) to the complainant on or before 21st June 2004. It is agreed that complainant would pay stamp duty as well as Registration charges to the respondent by Account Payee Cheque on or before 21st June 2004. It is made clear that this order is passed subject to further determination of rights of the parties with regard to their claims in complaint as well as in written version filed by the opposite party. However, before taking possession of the apartment, complainant would file an unconditional undertaking before this Commission that, in case Commission directs the complainant to pay holding charges, maintenance charges or interest or any other amount, the said amount, would be paid by her within a period of 6 weeks from the date of the order. It is also made clear that before handing over possession of the premises, necessary Panchnama would be prepared with regard to the status of the premises so that future dispute with regard to proper construction or other facilities could be avoided."

Thereafter, on 20-7-2004, it was stated by the opposite party that the possession of the premises was handed over to the complainant but the complainant has raised two or three objections with regard to fittings in the servant quarter etc. The said objections would be appropriately dealt with and necessary repairs, if required, would be carried out. Again the matter was adjourned to 29-9-2004. On 29-9-2004 it was recorded that the possession of the flat was delivered to the complainant but the complainant had grievance with regard to leakage and change of cistern in the bathroom. Representative of the opposite party stated that necessary repairs would be carried out within one week. Again the matter was adjourned to 29-11-2004 and on that date an additional affidavit was filed along with some other documents, in support of the stand taken by the opposite party. Thereafter, the matter was kept for arguments on 28-2-2005. Pursuant to the interim order passed by this Commission, possession of the premises was delivered to the Complainant in the month of August, 2004. Further, stamp duty and registration charges were already

paid by the Complainant in compliance with the above said order. Findings:

Hence, the disputes requiring consideration are: (a) whether complaint is entitled to compensation for the delay in delivering the possession; or (b) whether the Opposite Party is entitled to recover holding charges at the rate of Rs.5/- per sq. ft. per month till the delivery of possession is handed over from 24.8.2000 when the Opposite Party informed the Complainant to complete the paperwork within 90 days by paying Rs.7,50,000/- towards stamp duty and for registration charges, otherwise the complainant will have to pay holding charges at the rate of Rs.5/- per sq. ft. per month. Calculation for the said holding charges came to Rs.3,26,603/- up to 30th September, 2002. As against this, (a) it is pointed out by the Complainant that the Complainant demanded draft conveyance deed before putting her signatures, but that was not provided to her and the Opposite Party wanted her signatures in its office. She had also some reservations regarding defects in construction and that she had drawn the attention of the Opposite Party in advance. That was necessary because she has to declare in conveyance deed that she had obtained possession and that the work was to her satisfaction, etc. (b) For the compensation it is contended that the complainant was keen to take possession of the premises as tenants were prepared to pay rent at the rate of Rs.22,000/- per month. It is her contention that demand of stamp duty charges was arbitrary and unjustified as it is the modus operandi of the Opposite Party to use huge stamp duty amount obtained from such persons. The Opposite Party has wrongfully withheld possession of the premises and for that they should be directed to pay interest at the rate of 20% p.a. on the amount paid by the complainant. She has also referred to a list of vendees whose amounts have been unauthorisedly used by the Opposite Party. She has also claimed refund of holding charges and interest recovered by the opposite party along with interest at the rate of 20% p.a. (c) It is also contended that the Opposite Party demanded Rs.2,34,020.96 for the alleged improvement made by it on its own. Complainant had objected to such illegal charges but as she was eager to take possession she was compelled to pay the same, so that amount also be refunded with interest at the rate of 20% p.a. (d) Under the Haryana Apartment Act, 1983, Cl. 3, parking area belongs to the apartment owners, but the opposite party had sold the same to other apartment owners. Therefore, the amount charged for parking area should be refunded along with interest. (e) Further by letter dated 3rd November, 2000, Complainant informed the Opposite Party as under: "Sub: Delivery/handing over of possession of Apartment No.R07A, Windsor Court, DLF Qutab Enclave, Gurgaon: 1. That I had purchased the above stated apartment vide agreement dated 3.6.1997. That I had meticulously gone through the advertisement, brochure, issued by you, terms and conditions of agreement. That I had been told that DLF had obtained licence from Haryana Govt. That rules and regulations of HUDA/Haryana are applicable. That I had further satisfied myself regarding goodwill, reputation of DLF. 2. That as per stated agreement I had been making payments as per demand. 3. That I found that certain amounts demanded

and obtained by you were not as per agreement and required scrutiny, personal discussion. 4. That I am ready to make payments accordingly. I am also ready to make payments without demur provided I am given immediate possession subject to discussion and scrutiny at later stage. 5. That stamp duty charges for registration of conveyance deed as per law is payable to Government of Haryana through you. I shall get the conveyance deed done after having physical possession of the apartment as its owner. 6. That you are therefore requested to hand over possession after receiving due amounts other than registration amounts. You are further urged to waive penalty of other charges for ready payments".

(f) Finally, by letter dated 9.7.04 the Opposite Party informed the Complainant regarding Apartment No.R07A Parking No.PWR057 & PWR058 in DLF Windsor Court, DLF City, Gurgaon, as under:

"This is to inform you that the property is ready for handing over and you are, therefore, requested to please make it convenient to contact our Dy. General Manager - Projects, Mr. Pramod Kaushal, at the earliest at site office, DLF City, Gurgaon (Phone Nos. 95124-2385601; 98101-52673), who will be pleased to assist you in all matters connected with the handing over of physical possession of the captioned apartment"

On the same letter, there is an acceptance clause, which reads as under:

"I/We accept the above and confirm that I/We have no claim, whatsoever, now towards the Company on the above apartment". The Complainant, scored out a major portion of this in ink, and wrote as under: "I accept the above subject to the rectification of defects as pointed out in attached inspection report. Some items are not as per specifications and the work is below standard which to anyone will be unacceptable. Sd/xxxx Nandita Shaunik 13.07.04"

(g). In another letter dated 13.7.2004 written by the Complainant to the Opposite Party, it is stated as under:

"I hereby accept the possession of my apartment No.R07A in DLF Qutab Complex subject to rectification of defects as attached. The tile work wherever done is very below standard and unacceptable." As against this, it is contended by the Opposite Party that: (a) as per the agreement dated 3.6.1997 possession of the premises was to be delivered within four years; (b) by letter dated 14.10.1999 they demanded extra charges in terms of the agreement dated 3.6.1997; (c) by letter dated 20th May, 2000 the queries raised by the Complainant were clarified and the possession of the premises was offered by letter 24th August, 2000. By letter dated 18.10.2000 other queries were also clarified. Again a demand notice dated 6.11.2000 was sent by them to make necessary payments. Thereafter, by letters dated 17.11.2000 it was further clarified and draft sale deed was forwarded to the Complainant. Again by letters dated 11.1.2001, 10.8.2001 and 22.9.2001 the Complainant was called upon to take possession and was informed that holding charges would be recovered. (d)

In all, demand was Rs.60,590/- by way of interest on delayed payment as per Clause 9; Rs.7,50,952/- by way of stamp duty and registration charges as per Clause 37; and Rs.4,92,328/- as holding charges under clause 16 of the agreement and maintenance charges under Clause 31. It is pointed out that on 24.8.2000 when the possession of the apartment was offered to the Complainant, demand was only for a sum of Rs.53,875/- towards delayed interest and Rs.6,715/- towards interest on delayed payment of extra charges and Rs.7,50,952/- towards stamp duty and registration charges. Therefore, there was no justifiable reason for the Complainant not to take possession of the premises. (g). Finally, it is pointed out that the Complainant owes to the Opposite Party a sum of Rs.53,052/- as maintenance charges upto 30.9.2003 and other amounts including parking charges of Rs.6,980/- each for parking space R-57 and R-58 respectively. The Complainant also owes Rs.82,446/- for maintenance charges and Rs.72,622/- as interest free maintenance security to the Condominium Association. (h). It is also contended that the Opposite Party received a communication from the office of the Deputy Commissioner, Gurgaon, on 9.6.1998, directing the colonizers to submit statements for unconveyanced plots and flats. Thereafter, the Opposite Party further received a communication dated 27.9.1999 to the effect that the conveyance deed must be got executed in respect of the sale for plots as soon as full payment for the plot has been made by the purchaser and until the full payment has been made conveyance deed is not required to be executed and cannot be insisted upon.

Conclusions: From the facts stated above, it is not that the Complainant refused to pay the amount for conveyance deed. The Complainant wanted the draft of the conveyance deed before taking possession of the premises. The reason was, if the construction is not as per the specification or agreement, it could be rectified. Once the conveyance deed is executed by mentioning that possession has been taken and that it is as per the satisfaction of the purchaser, it would be difficult for the purchaser to contend thereafter that the construction was defective and that there is non-compliance of the agreed terms. It is pointed out by the Complainant that she wanted the draft of the conveyance deed in advance. But, that was not supplied and that has lead to all this litigation and delay. It is her grievance that she has paid a large amount of Rs.61 lakhs and remained without possession of the premises for years together. The Complainant got possession of the premises only after the intervention of this Commission. For this purpose, the order dated 13.5.2004 was required to be passed. It cannot be held that the stand taken by the Complainant to read and peruse conveyance deed and verify the nature of work carried by the Complainant before making payment of stamp duty and registration charges was in way unjustifiable. In the letter dated 3rd November, 2000, the Complainant has specifically mentioned that she was ready to make the payments without demur provided she was given immediate possession subject to discussion and scrutiny at later stage. She has also shown her willingness to take possession and to pay any

amount due and payable by her if the possession of the premises was handed over to her in November, 2000. That was also not complied with by the Opposite Party. For taking possession of the premises, Petitioner moved the District Forum in the year 2000 and when the matter came up for hearing an objection with regard to pecuniary jurisdiction was raised. Hence, the complaint was withdrawn for filing the same before the appropriate Commission or Court. In this view of the matter, it is apparent that there was default or deficiency in service by the Opposite Party in not delivering the copy of the draft sale deed to the complainant who has paid more than Rs.61 lakhs for purchase of residential accommodation. Once it is held that there was deficiency on the part of the Opposite Party the Complainant cannot be directed to pay holding charges which the opposite party is required to incur for up keeping the apartment. Similarly, the demand for refund of Rs.2,34,020.96 which was an additional payment made by the Complainant is not justified because the Complainant had paid the said amount willingly for taking possession and on the basis of improvement made by the opposite party. In the same manner, the Opposite Party is also not entitled to recover any amount towards interest on alleged delay in payment of installments. It is apparent that most of the installments were paid in advance. Finally, the only question that requires consideration is whether we should award any compensation to the Complainant for delay in delivering the possession of the apartment. As stated above, the Complainant has shown her willingness to take possession of the premises in November, 2000. She moved the District Forum and thereafter to this Commission for this purpose. Possession was delivered to the Complainant only in August, 2004 pursuant to the interim order passed by this Commission. That means, approximately, the delay is about four years in delivering the possession of the apartment to the Complainant. Delay has occurred, as held above, because of the stand taken by the opposite party of not handing over the draft conveyance deed and possession of the property despite full payment of Rs.61 lakhs. It is true that the Complainant could have gone to the office of the opposite party for reading the same. Therefore, her say that she has suffered loss of Rs.22,000/- per month cannot be accepted. However, we think that it would be just and reasonable to award token compensation of Rs.50,000/- per year for the delay in delivering the possession. The said amount come to Rs.2 lakhs. Hence, we direct that the opposite party would pay a lumpsum compensation of Rs.2 lakhs for delay in handing over of the possession of the premises, i.e. Rs.50,000/- for each year. In the result, the complaint is partly allowed. It is held that the demand of the Opposite Party to recover holding charges is not justified. However, the Complainant would pay maintenance charges to the Society and parking charges. The Opposite Party would pay compensation of Rs.2 lakhs to the Complainant. There shall be no order as to costs.