

(2004) 01 NCDRC CK 0079

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

ANOOP K. JOSHI

APPELLANT

Vs

ANSAL PROPERTIES And
INDUSTRIES LTD.

RESPONDENT

Date of Decision: Jan. 24, 2004

Citation: 2004 2 CPJ 385

Hon'ble Judges: Rumnita Mittal , Mahesh Chandra J.

Advocate: Gurinder Singh

Judgement

1. THE above mentioned complaint has been filed by the complainant alleging deficiency in service on the part of the O.P. THE case of the complainant, in brief, is that he had booked a flat with the O.P. in the multi-storeyed group housing residential project known as "Neelpadam Apartments-II" to be constructed on plot No. 8, Vaishali Scheme of Ghaziabad Development Authority, Ghaziabad. THE complainant had deposited a cheque for Rs. 57,750/- with O.P. on 20.6.1989 towards the initial payment and had thereafter received an allotment letter from the O.P., provisionally allotting residential flat No. 607 in the proposed multi-storeyed project having an approximate super area of 1050 sq. feet on the 6th floor. Later on at the request of the complainant dated 18.2.1995 Flat No. 601 having on area of 1410 sq. ft. (with terrace) was allotted to the complainant subject to payment of differential amount of Rs. 1,56,960. THE complainant deposited total amount of Rs. 7,30,032/- i.e., 95% of the cost of the flats as per details in para 4 of the complaint. THE balance 5% of the price of the flat was payable along with other charges due, on the handing over possession of the flat. THE O.P. vide its letter/notice dated 5.3.1996 informed the complainant that the flat in question was ready for possession and also demanded further sum of Rs. 4,75,547.50 p. which was inclusive of the escalation charges of Rs. 1,08,217.50 p. which amount according to the complainant was unreasonable and unconscionable. THEREafter the complainant visited the site and found that the flat in question was not ready for possession on account of various deficiencies in the apartment specially the fact that the lift in Block-A in which the

flat of the complainant was situated was not operational at that time. Accordingly the complainant made representations regarding completion of the flat and installation of the lift and in response to the representations of the complainant, the O.P. kept reassuring the complainant that lift of Block-A would be made operational soon. Till the date of filing the present complaint, the lift was not operational and the possession of the flat was also not handed over to the complainant. As such the complainant has filed the present complaint praying for the following reliefs:

(1) To issue direction to O.P. to hand over the possession of the flat along with all services and facilities including lift in Block-A. (2) To restrain the O.P. from demanding escalation charges. (3) To restrain the O.P. from claiming interest, charges, levies or costs from the complainant, for the period from March 1996 till the date of actual possession. (4) Direction to O.P. to pay liquidated damages by way of interest @ 24% per annum from 31.7.1996, the date of payment of 95% of the cost of the flat till the date of possession.

2. THE O.P. in its reply/written version has stated that the complainant has failed to make the payment of dues in time and in terms of agreement executed between the parties, a sum of Rs. 5,84,377/- including interest is due and payable by the complainant to the O.P. It is further stated that the possession of the flat in question can be handed over to the complainant only if the above said amount is paid by the complainant. It is further the case of the O.P. that the flat was ready for possession in March, 1996 and even though the lift serving Block-A was not operational, the lift in Block-B was installed and was operational when the possession of the flat was offered to the complainant and there was no impediment in the way of the complainant to use the said lift for reaching his flat. Thus the allegation against the O.P. being false and frivolous, the complaint filed by the complainant is liable to be dismissed with costs.

The complainant has filed a rejoinder denying the contents of the reply/written version filed on behalf of O.P. and reiterating those of the complaint. Both the parties have led their evidence by way of affidavits. Complainant has filed his own affidavit by way of evidence whereas the affidavit of Shri T. Rajan, Manager, Sales has been filed on behalf of the O.P.

We have carefully perused the evidence/documents/material placed on record as well as have heard the arguments advanced on behalf of the parties. During the course of proceedings before this Commission, the possession of the flat in question was handed over to the complainant by the O.P. on 11.8.2000 which was recorded by this Commission vide order/proceedings dated 31.8.2000. Thereafter vide

order/proceeding dated 5.10.2000, it was accepted by both the parties that the surviving controversy in the present complaint is only in respect of payment of interest for delayed possession of the flat in question with all amenities. Thus the only point for consideration at this stage is as to whether there was delay on the part of O.P. in handing over the possession of the flat in question complete with all amenities as per agreement and if so, the relief to which the complainant is entitled. From the facts on record, it is apparent that though the possession of the flat in question was offered to the complainant vide letter dated 5.3.1996 the lift of Block-A in which the flat of the complainant is situated was not operational. Furthermore though it is contended on behalf of the O.P. that the lift of Block-B situated at a short distance, could have been used by the complainant, it is also admitted that the same was serving floors 5th and 7th only whereas the flat of the complainant is situated on 6th floor, thereby that the complainant would be subjected to inconvenience of having to climb stairs for one floor. Thus the assertion of the O.P. that at the time the possession of the flat was offered to the complainant the same was complete in all respects is incorrect. Thus it is apparent that there was delay in handing over the flat to the complainant complete with all amenities and accordingly the complainant is entitled to be compensated for the same.

3. IT is, therefore, directed that O.P. shall pay interest @ 12% per annum on the deposited amount from 5.3.1996 (when possession was offered without complete amenities to the complainant) till the date of actual possession i.e., 11.8.2000. Since interest has already been awarded, double benefit of compensation cannot be conferred on the complainant. However, the complainant is entitled to the cost of proceedings which is fixed at Rs. 5,000/- to be paid by the O.P. to the complainant. The above directions be complied with by the O.P. within 45 days of the receipt of this order failing which the complainant shall be at liberty to file appropriate application under Sections 25/27 of the Act for implementation of this order. The above mentioned complaint stands disposed of in above terms. Complaint disposed of.