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## **Kunj Behari Mehta Vs ANSAL PROPERTIES And INDUSTRIES LTD.**

**None**

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**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** May 12, 2008

**Citation:** 2008 0 NCDRC 78 : 2008 2 CPJ 351

**Hon'ble Judges:** M.B.Shah , Anupam Dasgupta J.

**Advocate:** S.K.Dholakia , Rajesh Lathigara , Avtar Singh

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### **Judgement**

1. CAN a builder after agreeing to deliver the possession within a stipulated time, raise a contention that as the price of the flat/property has gone

up, it should not be directed to pay any compensation or to pay compensation at reduced rate for delay in delivering the possession of the

property?

2. IN our view such contention of any builder is unjustified and unreasonable because after sale of the property all the benefits accrue to the

purchaser and not to the vendor. IN any case, if such contention is accepted, the builders/contractors would earn crores of rupees by delaying the

delivery of the possession of the flat/property for months together for one reason or the other.

The Complainants have approached this Commission on 3rd May, 2000 with a prayer that the Opposite Party Ansal Properties & Industries Ltd.,

be directed to deliver possession of apartment No.502, on 5th floor, E Block, Celebrity Homes and also to pay interest @ 24% per annum on

Rs.26,26,790/-, i.e., the amount deposited by them with the Opposite Party, w.e.f. 10.10.1998 till the date of delivery of possession. In the

alternative, they have prayed that if the Opposite Party, is unable to deliver the possession of the apartment, then the Opposite Party be directed to

refund the amount of Rs.26,26,790/- to the Complainants with interest @ 24% from the date of payment of the instalment till the date of actual

realization from the Opposite Party.

On the said complaint, on 19th December, 2000, this Commission had issued notice to the Opposite Party. However, the matter remained

pending on one ground or the other. When it came up for hearing on 7th December, 2007, the matter was adjourned so as to enable the parties to

explore the possibility of a compromise. On that date it was agreed by the Complainants that they would deposit Rs.5,58,000/- with the Registrar

of this Commission on or before 12th December, 2007 and the Opposite Party would deliver the possession of the flat to the Complainants on or

before 19th December, 2007. This agreement was without prejudice to the contentions raised by both the parties before this Commission. It was

also pointed out by the learned counsel for the Opposite Party that while calculating the amount of Rs.5,58,000/-, the Opposite Party had not

considered the maintenance charges which were required to be paid by the Complainants from the date of offer of possession, i.e., from

September, 2003 and, hence, that issue be kept open for arguments at the time of final hearing. Order was passed accordingly.

3. AGAIN, when the matter came up for hearing on 30th April, 2008, the learned counsel appearing on behalf of the Complainants submitted that

for unjustified delay in delivering the possession of the apartment from 10th October, 1998 till 20th December, 2007, the Opposite Party should

be directed to pay interest @ 24% per annum on the amount deposited by the Complainants. Further, reliance was placed on the receipt dated

3rd September, 1996 and covering letter dated 28th August, 1996 to the effect that interest @ 17% per annum would be payable by the Opposite

Party on all advance deposits provided the entire payment is made in one go. On that basis, the Complainants deposited the 6th, 7th, 8th and 9th

instalments for which receipt was issued by the Opposite Party on 3rd September, 1996. On that receipt, it was specifically mentioned, This

payment is to confirm that the 6th, 7th, 8th and 9th instalments are made in advance and 17% interest would be allowed.

For verification of the said letter and the receipt, time was given to the learned counsel for the Opposite Party. At the time of hearing, learned

counsel for the Opposite Party did not dispute the said letter or the receipt.

4. WITH this background, we would refer to the agreement executed between the parties with regard to sale of the apartment which was to be

constructed by the Opposite Party. The agreement is dated 2nd March, 1995. As per the said agreement, the Opposite Party was to construct the

Celebrity Homes, Palam Vihar with certain specifications as provided therein and the Complainants were required to pay basic sale price of

Rs.28,38,000/-, external development charges of Rs.89,870, charges of Rs.1,00,000/- for car parking space in the basement, and club

membership fee of Rs.20,000. The basic sale price was to be paid in instalments from 9th April, 1995 to 9th December, 1997. It was also agreed

that at the time of delivery of possession 5% of the basic price, i.e., Rs.1,41,900/- was to be paid by the Complainants.

As per Clause 13, the Opposite Party had agreed that the possession of the said premises, Phase-1, was likely to be delivered by the Company to

the Apartment/Penthouse/Garden Allottee within three and half years from the date of booking, subject to force majeure circumstances and on

receipt of all payments punctually as per agreed terms, and also on receipt of complete payments of the basic sale price and other charges due and

payable upto the date of possession.

As some extra construction was made, the Complainants were required to pay a higher basic sale price at Rs.29,88,800. Out of that, the Opposite

Party received Rs.25,29,770/-. That amount was paid by the Complainants before October, 1997.

5. IT is also agreed that the Complainants were required to pay extra development charges amounting to Rs.4,140/-, electric connection charges

of Rs.2,35,000/- as well as fire fighting charges amounting to Rs.29,688/-, stamp duty and registration charges at Rs.6,000/-.

6. FOR the aforesaid facts, there is no dispute between the parties.

The question which requires consideration is how much compensation is to be awarded to the Complainants for the delay in construction and

delivery of possession?

As stated above, possession of the premises was to be delivered within 3-1/2 years from the date of agreement, on payment of the due instalments

regularly. It is not disputed that the Complainants had paid the entire amount before October, 1997. The agreement between the parties was

executed on 2nd March, 1995. If the period of 3-1/2 years is taken into consideration, then the Opposite Party was required to deliver the

possession on or before 10th October, 1998.

7. HOWEVER, the Opposite Party was actually required to be directed by this Commission to deliver the possession in December, 2007 and

consequently, the possession of the apartment was delivered only on 20th December, 2007(as against 10th October, 1998).

The learned counsel appearing on behalf of the Opposite Party submitted that the Opposite Party had written a letter to the Complainants on 2nd

August, 2003 and informed the Complainants that the Opposite Party had immense pleasure in forwarding the formal letter as Offer of Possession

and welcoming the Complainants to Celebrity Homes an important Land Mark of Palam Vihar. The Opposite Party produced on record a copy of

the said letter.

8. AS against this, it is contended by the learned counsel for the Complainants that the said letter was sent to a wrong address, because before the

date of the said letter the Complainants had shifted and the letter was received back by the Opposite Party. The learned counsel further contended

that knowing full well that the complaint was filed on 19th December, 2000, no such offer of possession was made before this Commission, in the

present proceedings. He submits that this was a fraud committed by the Opposite Party. He, therefore, contended that the Opposite Party should

be directed to pay compensation and the measurement of the compensation should be grant of interest, if not @ 24% p.a. as prayed, at least, @

17 % per annum as agreed by the Opposite Party in its own letter dated 28th August, 1996 and the receipt dated 3rd September, 1996.

As against this, the learned counsel appearing on behalf of the Opposite Party submitted that in such cases, there was no question of awarding

interest @ 24% or 17% because the Opposite Party had already delivered the possession of the flat and the value of the said flat had increased

due to the increase in the price of the property.

The learned counsel for the Complainants contended that the Opposite Party was charging interest @ 24% per annum, on delayed payments, and,

therefore, it should be directed to pay compensation at the said rate, and, in any case @ 17% per annum.

9. IN our view, the contention that there is increase in the price of the property and, therefore, compensation for such inordinate delay in delivery

of possession should not be granted, is totally misconceived. If the price of an immovable property increases, it cannot be said that the parties are

not required to abide by their contractual obligations. IN any case, it is the luck of the Complainants that the price of the property has increased

and it cannot be said that it is for the benefit of the vendor. The builder/vendor of the property cannot claim advantage on account of increase in

price after sale. Hence, this contention is totally unreasonable and unjustified.

10. FURTHER, an Application dated 7.11.2006 was filed before this Commission, stating therein that the Complainant, namely, Kunj Behari

Mehta, came to India on 29.9.2006 and visited the flat on 1.10.2006 and came to know that the Opposite Party had given possession of adjoining

flats, namely, E-501 and E-503. He, therefore, met the Manager at site who informed that his flat No.E-502 was ready for possession for quite

some time. However, the Manager expressed his inability to show the flat in question as the same was occupied by the contractor of the Opposite

Party, and, at that time, the flat was locked. Thereafter, the complainant No.1 went to the Head Office of the Opposite Party and contacted the

Manager-Sales and requested him to hand over the possession of the flat in question. The Manager, roughly and curtly, replied, Go to the Court

and get its possession through the Court. These facts are not denied by the Opposite Party.

Considering the aforesaid facts, in our view, the Opposite Party is required to pay compensation for unjustifiably not delivering the possession of

the flat as per the agreement in October 1998 till December, 2007.

In our view, the ends of justice would be met if, for this unjustified delay, we direct the Opposite Party to pay interest @ 12% per annum from 1st

November, 1998 till 1st December, 2007 on the amount deposited by the Complainant upto 1st November, 1997 i.e. in all on a sum of

Rs.25,29,770/-.

11. FURTHER, for the high-handed and rough behaviour of the Manager of the Opposite Party, the Opposite Party shall pay compensation of

Rs.50,000/-. This amount shall be deposited with this Commission by way of bank draft drawn in the name of the Registrar of this Commission

which shall be transferred to the Consumer Legal Aid Account maintained by this Commission.

In the result, the complaint is partly allowed. The Opposite Party is directed to pay interest @ 12% per annum from 1st November, 1998 till 1st

December, 2007 on the amount deposited by the Complainant upto 1st November, 1997, i.e., in all on the sum of Rs.25,29,770/-. It would be

open to the Complainants to withdraw the amount of Rs.5,58,000/- deposited with this Commission and the Opposite Party after adjustment of

the said amount of deposit, shall pay the remaining amount on account of interest to the complainants within four weeks from today. There shall be

no order as to costs.