

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION NEW DELHI**

RESERVED ON : 18.12.2024
PRONOUNCED ON : 29.04.2025

FIRST APPEAL NO.1126 OF 2023

(Against the order dated 31.10.2023 in C.C. No.128 of 2021
State Consumer Disputes Redressal Commission, Delhi)

WITH

IA/15340 OF 2023 (Exemption from filing the C/C)

1. Atul Kulshrestha
S/o Mr. K.P. Kulshreshtha
R/o E-9/G, DDA Apartments,
Munirka, New Delhi.

2. Nishi Kulshrestha
W/o Mr. Atul Kulshreshtha
R/o E-9/G, DDA Apartments,
Munirka, New Delhi.

... Appellants

Versus

1. EMAAR India Limited
(Earlier Known as Emaar MGF Land Limited)
Through its Directors
306-308, Square One,
C-2, District Centre,
Saket, New Delhi-110017.

Also at:

Emaar MGF Business Park,
2nd Floor, Mehrauli, Gurgaon Road,
Sikandarpur, Sector-28,
Gurgaon-122002.

... Respondent

FIRST APPEAL NO.1176 OF 2023

(Against the order dated 31.10.2023 in C.C. No.128 of 2021
State Consumer Disputes Redressal Commission, Delhi)

WITH

IA/16282/2023, IA/7749/2024 (Exemption from filing the C/C)

1. EMAAR India Limited
Through its Authorized Representatives,

306-307-308, 3rd Floor, Square One,
C-2, District Centre, Saket,
New Delhi-110017.

... Appellant

Versus

1. Atul Kulshrestha
S/o Mr. K.P. Kulshreshtha
R/o E-9/G, DDA Apartments,
Munirka, New Delhi.

2. Nishi Kulshrestha
W/o Mr. Atul Kulshreshtha
S/o Shri K.P. Kulshrestha,
R/o E-9/G, DDA Apartments,
Munirka, New Delhi.

... Respondents

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (RETD.), MEMBER

For Atul Kulshrestha & Anr. : Ms. Ishita Singh, Advocate
For EMAAR India Limited : Mr. Arjun Jain, Ms. Anushree Narain and
Mr. Vipin Chaudhary, Advocates

JUDGMENT

AVM J. RAJENDRA, AVSM VSM (RETD.), MEMBER

1. The matter pertains to a claim for compensation for delay in handing over possession of a flat to the complainants by the Opposite Party (OP) Builder. Accordingly, the complainant filed Complaint Case No. 128 of 2021 before the learned State Commission, Delhi (State Commission) which was disposed of vide order dated 31.10.2023 partly allowing the complaint and directing the OP to pay the complainants compensation for the delayed period in the form of simple interest @ 8% per annum on the total amount deposited by the complainants, i.e.

Rs.1,92,68,146, for the period from the date when the position of the apartment was due to be delivered (01.04.2015) until the date of offer of possession (11.03.2019), after deducting an amount of Rs.7,81,794, which has already been paid to the complainants as a compensation for handing over the position of the said apartment. The learned State Commission has also awarded Rs.2,00,000 as compensation for mental agony and harassment and Rs.50,000 as costs.

2. Against the Order of the learned State Commission in CC No. 128 of 2021 dated 31.10.2023, the complainants have filed First Appeal No. 1126 of 2023. On the other hand, the OP Builder has also filed a cross appeal vide FA. No. 1176 of 2023 with a delay of 1 day's. As the facts of the case, contentions etc are substantially similar, both these Appeals are being disposed of together by this common order and delay in F.A. No.1176 of 2023 is condoned.

3. For convenience, First Appeal No. 1126 of 2023 is being considered as the lead case and the parties in these Appeals are being referred to as stated in the complaint.

4. Brief facts of the case, as per the complainants, are that they booked a Flat with the OP Builder on 14.11.2010 in the residential apartment project 'The Palm Terraces Select' constructed the OP at 66, Gurgaon, Haryana. Subsequently, OP allotted Apartment No. PTS-11-

0301 on the third floor of Block No.11. The Apartment Buyer Agreement (ABA) was executed between the parties on 21.12.2010. In terms of Clause No.4 of the said ABA, the OP was to hand over possession of the unit in question within 30 months, with grace of 3 months, from the date of commencement of construction. The possession was, however, offered to the complainants only on 11.03.2019 and the unit was handed over to the complainants on 26.04.2019 i.e. after delay of over five years. It is the contention of the complainants that the OP had failed to offer adequate compensation for the inordinate delay in handing over the possession of the apartment while the liability for the same is stated in the ABA. Aggrieved by the non-payment of compensation the due the complaint was filed. In a nutshell, therefore, in the case in question the possession of the flat has already been handed over to the complainants and the main dispute pertains to payment of compensation for the delay in handing over the possession.

5. On issue of notice, OP filed its written version raising objections, including that complainants are not consumers under the Consumer Protection Act, there was no delay in handing over the possession, there was no deficiency in service etc. It was contested that the time period for handing over possession of the flat in the form of 30 months, along with three months grace period was to commence from the date of commencement of construction and not the date of the ABA. The OP

contended that there is no actual delay in handling our position and that some lime lag was on account of reasons beyond their control. The possession was handed over in time along with all necessary certifications and that the complainant is not entitled for any relief in this regard whatsoever. It is the specific contention of OP that the construction was complete in all respects as per the terms and quality specifications, and there was no deficiency in service or unfair trade practices by the OP. The project was constructed, completed and duly handed over to the full satisfaction of the complainants, in due compliance of the ABA.

6. Vide order dated 31.10.2021, the learned State Commission directed OP to pay the complainants compensation for the delayed period in the form of simple interest @ 8% per annum on the total amount deposited by the complainants, i.e. Rs.1,92,68,146, for the period from the date when the position of the apartment was due to be delivered (01.04.2015) until the date of offer of possession (11.03.2019), after deducting an amount of Rs.7,81,794, which has already been paid to the complainants. The learned State Commission has also awarded Rs.2,00,000 as compensation for mental agony and harassment and Rs.50,000 as costs.

7. Being aggrieved by the impugned order, both parties filed the present cross-Appeals.

8. The learned counsel for the complainants argued that the vide the impugned 31.10.2023 that the compensation awarded by the State Commission is inadequate, with due regard to established precedents of the Hon'ble Supreme Court with respect to relief liable to be granted for such genuine cases of established delay. It is the specific assertion of the learned counsel for the complainants that the impugned order is liable to be set aside on account of the significant shortfall in the award of compensation as per norms established by the Hon'ble Supreme Court. The learned counsel for the complainants contended that award of simple interest @ 8% is grossly inadequate and that the ABA had proved for substantially higher compensation, which has been duly agreed between the parties. He contended that the higher payment ought to have been considered and awarded. He also relied on Hon'ble Supreme Court in the case of Experion Developers Pvt Ltd Vs. Sushma Ashok Shiroor [2002 SCC OnLine 146] specifically stipulating simple interest @ 9% per annum as compensation. The learned counsel painstakingly argued that award of interest @ 8% per annum in established cases of delay when deficiency in service has been duly proved is grossly inadequate. He asserted that just award has been

denied to the complainants, notwithstanding the fact that this Commission as well as Hon'ble Supreme Court has been consistent in this regard. As per him, the State Commission grossly erred in award of inadequate compensation and not recognizing the harassment, delay and agony of loss of lifetime savings for so long suffered by the complainants. He, therefore sought setting aside of the order of the State Commission dated 31.10.2023; enhance the simple interest @ 9% per annum; enhance compensation to Rs.10 Lakhs for mental agony and suffering; and award of Rs.2 Lakhs as costs.

9. On the other hand, the learned counsel for the OP argued that essentially the matter entails compensation for the alleged delay in handing over possession of the flat in question. It is the specific contention of the learned counsel for the OP that the matter entailed number of challenges that were faced by the OP in progressing and completing the construction project within time. And the reasons were clearly beyond their anticipation and control. The circumstances were entirely unforeseen and could not have been held against the OP. He asserted that the OP has also significantly suffered due to these severe adversities. Unfortunately, these aspects were not considered adequately by the State Commission and liability was unreasonably fastened on the OP. But for reasons beyond their control for some time, there is no delay in the project. Award of simple interest @ 8% per

annum was highly unreasonable and it ought to have been only @ 6%. It is the specific contention of the OP that award of Rs.2,00,000 towards mental agony, harassment etc is disallowed in law. He asserted that, as per the established precedents of the Hon'ble Supreme Court, multiple compensations for single deficiency are not allowed. When once the complainants are already awarded compensation in the form of interest component, they could not have been awarded further compensation for the same delay under mental agony, harassment etc as well. He, therefore, sought the award of Rs.2,00,000 to be set aside.

10. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties.

11. Mainly, in the case in question, the possession of the flat has already been handed over to the complainants and the only dispute pertains to payment of compensation for the delay in handing over the possession. It is undisputed that the complainants booked a Flat with the OP Builder on 14.11.2010 in the residential apartment project 'The Palm Terraces Select' constructed by OP at 66, Gurgaon, Haryana. In pursuance of the same, the OP had allotted Apartment No. PTS-11-0301 on the third floor of Block No.11. In terms of clause No.4 of the ABA executed between the parties on 21.12.2010, the OP was to hand over possession of the said flat to the complainants within 30 months,

with grace of three months, from the date of commencement of construction. In this case, however, the possession was offered to the complainants only on 11.03.2019 and the unit was handed over on 26.04.2019. It is the contention of the complainants that the OP failed to offer adequate compensation for the delay in handing over the flat, while the liability for the same is stated in the ABA. The complainants contended that award of simple interest @ 8% is grossly inadequate, and that the ABA had provided for substantially higher compensation. They relied on Hon'ble Supreme Court in the case of Experion Developers Pvt Ltd Vs. Sushma Ashok Shiroor [2002 SCC OnLine 146] stipulating simple interest @ 9% per annum as compensation in such cases. The complainants claimed that the State Commission erred in award of inadequate compensation by not recognizing the harassment, delay and agony of loss of lifetime savings suffered by them and sought enhanced simple interest @ 9% per annum; enhanced compensation to Rs.10 Lakhs for mental agony and suffering; and award of Rs.2 Lakhs as costs. From OP side it was contended that the matter entailed number of challenges that were faced by OP in progressing and completing the construction in time. The reasons for delay were clearly beyond their anticipation and control as they could not have been unforeseen and thus could not have been held against OP. OP also significantly suffered due to these adversities. OP contended that,

unfortunately, these were not considered by the State Commission and liability was unreasonably fastened on OP. It is OP's assertion that, but for reasons beyond their control, there is no delay in the project. Simple interest @ 8% per annum awarded was highly unreasonable and it ought to have been only @ 6%. It is the specific contention of the OP that award of Rs.2,00,000 towards mental agony, harassment etc is disallowed in law as multiple compensations for single deficiency are not permitted. When once the complainants were already awarded compensation in the form of interest, they could not have been awarded further compensation for the same cause of action towards mental agony, harassment etc also. The OP, therefore, sought the order of the learned State Commission to be set aside.

12. It is clear that the possession of the flat was to have been offered to the complainants on 01.04.2015. However, the complainants offered the same only on 11.03.2019 and handed over on 26.04.2019. Thus, there was a delay of over five years in offer of possession. Therefore, the issue with respect to delay in handing over possession of the unit in question from 01.04.2015 to 11.03.2019 is established. The OP defended the delay citing certain reasons stated to be beyond their control. However, after due evaluation of the entire facts and circus of the case the learned State Commission considered that there has been a delay in handing over position of the apartment by the OP to the

complainants from 01.04.2015 to 11.03.2019. It is also undisputed that Rs.7,81,794 stands already paid by the OP to the complainants towards compensation for delayed possession. The limited issue for consideration at this stage is whether the learned State Commission fairly awarded compensation in the case?

13. As per the established precedent in this regard by the Hon'ble Supreme Court in the case of ***Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, in Civil Appeal No.6044 of 2019*** decided on 07.04.2022 has held:-

***“We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the Order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in DLF Homes Panchkula Pvt. Ltd. Vs. DS Dhanda and in modification of the direction issued by the Commission, we direct that the interest on the refund shall be payable from the dates of deposit. Therefore, the Appeal filed by purchaser deserves to be partly allowed. The interest shall be payable from the dates of such deposits.*”**

At the same time, we are of the opinion that the interest of 9% granted by the Commission is fair and just and we find no reason to interfere in the appeal filed by the consumer for enhancement of interest.”

14. At the same time, in terms of the judgement of the Hon'ble Supreme Court in ***DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda***, in CA Nos. 4910-4941 of 2019 decided on 10.05.2019,

multiple compensations for the same cause of action are disallowed. Therefore, when once compensation in the form of interest component on the amount paid as consideration is already granted, further compensation for the same cause of action towards mental agony, harassment etc cannot be granted.

15. In view of the foregoing, after due consideration of the entire facts and circumstances of the case, including the pleadings, detailed arguments advanced by the learned counsels for both the parties as well as the considerations made by the learned State Commission, the order of the learned State Commission dated 31.10.2023 is modified as under:

ORDER

- I. The Opposite Party is directed to pay the complainants compensation for the delayed period in the form of simple interest @ 9% per annum on the total amount deposited by the complainants, i.e. Rs.1,92,68,146, for the period from the date when the position of the apartment was due to be delivered (01.04.2015) until the date of offer of possession (11.03.2019), after deducting an amount of Rs.7,81,794, which has already been paid to the complainants as compensation for handing over the position of the said apartment;**
- II. The compensation of Rs.2,00,000 awarded towards mental agony, harassment etc is set aside; and**
- III. The Opposite Party is directed to pay the complainants Rs.50,000 as costs of litigation.**

16. With these directions, both First Appeal No. 1126 of 2023 and First appeal No. 1176 of 2023 are disposed of.

17. There shall be no order as to costs.

18. All pending Applications, if any, also disposed of accordingly.

.....
(SUBHASH CHANDRA)
PRESIDING MEMBER

.....
(AVM J. RAJENDRA, AVSM VSM RETD.)
MEMBER