

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

FIRST APPEAL NO. NC/FA/120/2017

(Against the Order dated 8th November 2016 in Complaint 236/2014 of the State Consumer Disputes Redressal Commission Punjab)

M/S. BARNALA BUILDERS & PROPERTY CONSULTANTS

PRESENT ADDRESS - OFFICE AT: SCO NO. 1, ZIRAKPUR-PATIALA ROAD, OPPOSITE YES BANK, , ZIRAKPUR, , PUNJAB ,

.....Appellant(s)

Versus

RITIKA GILL & ANR.

PRESENT ADDRESS - W/O. MR. SANDEEP GILL, RESIDENT OF FLAT NO. E-1, GH-30, SECTOR-5, , MDC, PANCHKULA , HARYANA ,

MR. SANDEEP GILL

PRESENT ADDRESS - S/O. MR. P.S. GILL, RESIDENT OF FLAT NO. E-1, GH-30, SECTOR-5, , MDC, PANCHKULA

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA , PRESIDING MEMBER

HON'BLE DR. SADHNA SHANKER , MEMBER

FOR THE APPELLANT:

MR. NAVNEET R., ADVOCATE MS. ALANKRITA SINHA, ADVOCATE

FOR THE RESPONDENT:

MR. SANDEEP GILL, IN PERSON.

DATED: 16/06/2025

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

This Appeal has been filed against the impugned Order dated 08.11.2016 in Complaint No. 236/2014, passed by the State Consumer Disputes Redressal Commission, Punjab vide which the Complaint was allowed.

2. The factual background, in brief, is that the Complainants/Respondents, approached the Opposite Party/Appellant after being attracted by newspaper and brochure advertisements that depicted "Maya Garden City", a housing project on Chandigarh-Ambala Highway, Village Singhpura, as a fully developed, encumbrance-free residential complex. Relying on those representations, they booked Flat No. 501, Block D-2 (2-BHK, super area 1307 Sq. Ft.) on 13.08.2011 under a down-payment plan priced at Rs. 35 lakh, paying an initial Rs. 1.00 lakh by cheque. No Buyer's Agreement was supplied at that stage. Further payments of Rs. 4,25,000/- on 03.09.2011 brought the acknowledged Earnest money to Rs. 5,25,000/-. By successive demand letters the Opposite Party asserted that Rs. 28.00 lakh was due by 30.12.2011 and, thereafter, persistently demanded Rs. 26,25,000/- as balance consideration. The Complainants raised that

sum through a State Bank of India loan and remitted it on 01.10.2012, whereupon the Opposite Party belatedly produced an undated Agreement to Sell incorporating onerous and previously undisclosed Clauses such as parking at the Opposite Party's discretion, a requirement to pre-pay three years' maintenance before possession, exclusion of the Opposite Party's maintenance responsibility from the date of possession and an extended possession deadline of 30.11.2014 instead of the originally promised 30.11.2013.

3. In February 2013, the Opposite Party demanded Rs. 1,02,743/- as service tax without any computation details, Fearing forfeiture of deposits, the Complainants paid on 20.04.2013. In November 2013, a further unexplained service-tax demand of Rs. 3,91,589/- was raised and reiterated by a series of letters through 2014 despite the Complainants' registered objections in December 2013, March 2014 and June 2014. On 10.11.2014, the Opposite Party issued a "possession" letter although, according to the Complainants' inspection, essential development works, permanent utility connections, and statutory approvals including Completion/Occupation Certificates were still absent. That letter also sought an additional amount of Rs. 1,75,000/- as balance price, Rs. 3,90,055/- as interest, Rs. 5,407/- as revised service tax, and Rs. 1,29,393/- as one-time maintenance for three years, none of which had been contemplated in the earlier correspondences. Having already paid Rs. 33,25,000/- towards price and Rs. 1,02,743/- towards service tax, and faced with continuing non-completion and shifting, opaque demands, the Complainants no longer wished to retain the flat. They consequently served a Legal Notice on 22.11.2014 seeking refund, which elicited only threats of forfeiture. Development at the site remains incomplete and possession remains merely "on paper". Aggrieved with the deficiency of service and unfair trade practice on the part of the Opposite Party, the Complainants filed their Consumer Complaint before the Ld. State Commission, Punjab seeking refund of the deposited amount along with other ancillary reliefs.

4. The Ld. State Commission vide the impugned Order dated 08.11.2016 allowed the Complaint and directed the Appellant to refund to the Complainants the deposited amount of Rs. 34,27,747/- with interest @ 12% p.a. from the date of deposit till realization, along with Rs. 1,00,000/- towards compensation and Rs. 11,000/- towards litigation costs.

5. Ld. Counsel for the Appellant has argued that the apartment allotted to the Respondents is completely habitable and all internal development and common facilities have long been finished. Fire-safety clearance, Air-Force NOC and State-level environmental clearance are in hand, and an application for the Municipal Completion Certificate is already lodged. More than two-hundred families reside in the project; That the impugned Order disregards the Respondents' repeated payment defaults, which constitute a fundamental breach of contract. Under the allotment letter the down-payment plan required 95 per cent of the sale price to be remitted within forty-five days, failing which the construction-linked plan automatically applied. Both the general terms of application and Clause 17 of the Agreement to sell stipulate that time is of the essence and unpaid instalments attract interest at 20% per annum, with a right to the Developer to terminate and forfeit on persistent default. The State Commission expressly noted delays by the Respondents yet extended them relief contrary to the contractual regime and settled precedent. Past decisions of this Commission arising from identical payment plans in the Appellant's "Maya Garden" developments, i.e. "Manoj Kathuria v. Barnala Builders, FA/642/2016", "Rajinder Singh Bisht v. Barnala Builders, RP/461/2017", "Madan Lal Sharma v. Barnala Builders, RP/462/2017", affirm that an allottee who fails to make payments and honour the schedule must bear the contractual consequences, including interest, service tax and delayed-payment charges.

6. Ld. Counsel for Appellant has further argued that the service-tax demands impugned by the Respondents arise under the Finance Act 1994, not the Punjab Apartment and Property Regulation Act. Clause 7 of the application form expressly makes the allottee liable for all statutory

levies on the project, and this Commission has repeatedly held that such dues are payable by the purchaser. The Respondents never pleaded any challenge to the rate or computation of service tax before the State Commission. Therefore the finding that the tax itself was improper is untenable; That the Respondents approached the consumer forum with unclean hands, concealing their defaults, yet seeking restitution after breaching the very terms they invoked. This Commission has consistently rejected petitions premised on suppression and neglect, most recently in “R. Narasimha Reddy v. Kuchakula Surender Reddy, 2012 SCC OnLine NCDRC 106”. The flat was ready for possession when first offered and its fitness is proved by the fact that many similarly placed allottees have long since taken occupation. No element of deficiency or unfair practice can be imputed to the Appellant, who acted diligently and in good faith throughout.

7. Ld. Counsel for the Respondents has argued that despite repeated opportunities, the Appellant has never produced an Occupation-cum-Completion Certificate for the Flat or for the project as required by Section 14 of the Punjab Apartment and Property Regulation Act, 1995. In the absence of that mandatory certificate, any offer of possession was purely “on paper”, and established law squarely holds that a builder’s obligation is not discharged until a valid Completion or Occupation Certificate is obtained and handed over. The Hon’ble Supreme Court’s decision in “Faqir Chand Gulati v Uppal Agencies Pvt Ltd., CA No. 3302/2005” affirms that a developer must rectify deviations, secure a Completion Certificate, and furnish it to the allottee before claiming to have fulfilled the contract. Later judgments, such as “Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725”, “DLF Homes Developers Pvt. Ltd. v. Capital Greens Flat Buyer’s Association, CA No. 3864-3889/2020” and “Kolkata West International City Pvt. Ltd. v Devasis Rudra, CA No. 3182/2019”, all reiterate that only possession supported by a statutory Completion Certificate is valid. The 12% p.a. refund interest directed by the State Commission faithfully follows Rule 17 of the Punjab Apartment and Property Regulations Rules, 1995, which mandates that a promoter refund all monies collected, together with interest at 12% p.a. from the date of collection until repayment.

8. Ld. Counsel for the Respondents has further argued that Clause 17 of the very agreement drafted by the Appellant entitles the builder to charge the Respondents 20% interest on delayed buyer payments, it is therefore unconscionable for the Appellant to argue that the 12% rate is excessive; That the State Commission recorded, on unchallenged evidence, that development works remain incomplete and that the Respondents have nonetheless paid 95% of the sale consideration. It further found that the Appellants failed to produce any proof of approvals, layout plans, licences, utility clearances or completion documentation, a deficiency that remains unchanged on appeal. Instead of curing these defects, the Appellant has attempted to introduce fresh documents that were never produced before the trial forum, without seeking leave of this Commission, while simultaneously withholding several exhibits that had been produced by the Complainants before the State Commission. Such selective disclosure calls for an adverse inference against the Appellant.

9. We have heard the Ld. Counsel for the Appellant and Respondents, and perused the material available on record.

10. The only grievance raised on behalf of the Appellant at this stage is that the rate of interest awarded in favour of the Respondents/Complainants is exorbitant and so is the amount of compensation of Rs.1 lakh awarded separately to them.

11. Reliance in this regard has been placed on the decision of the Hon'ble Supreme Court in the case of “Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, 2022 Live Law (SC) 352”, in which it was held that interest @ 9% per annum interest in case of refund is just compensation which amounts to restitutory and compensatory. In the light of the order of Hon’ble Supreme Court, the Order of the State Commission is liable to be modified.

12. It is undisputed that the Respondents/Complainants from their side had opted for the down payment option for purchasing their apartment. There were some minor omissions on their parts in making the payments as meticulously as agreed upon. They nevertheless paid up the amounts more or less satisfactorily.

13. It is also well settled that in Consumer Claims the award of interest alongwith refund itself is a mode of compensation to the claimant. Consequently, a separate compensation of Rs.1 lakh apart from the interest awarded was not called for. In the totality of the circumstances therefore, the impugned Order does warrant some modification in view of the decision of the Hon'ble Supreme Court in Experion Developers (Supra).

14. Consequently, the Appeal is allowed by modifying the impugned Order to the extent that instead of 12%, the Respondents are found entitled to grant of compensation on the amounts deposited by them at the rate of 9% per annum from the date of each respective deposits. The additional direction to pay compensation of Rs.1 lakh passed by the State Commission is set aside. However the litigation Costs awarded to the Respondents are enhanced to Rs.40,000/- instead of Rs.11,000/-. Parties to bear their own costs.

15. The Appellant is now directed to make the complete payment in compliance of this Order within six weeks from the date of Order, failing which any, outstanding dues shall attract interest @ 12 % per annum till final realization.

16. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

.....J
SUDIP AHLUWALIA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER