IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 16.10.2014
Date of Hearing: 31.07.2024
Date of Decision: 22.11.2024

FIRST APPEAL NO.- 992/2014

IN THE MATTER OF

1. RAKESH PRASAD SINGH
S/O LATE MR. SHASHI BHUSHAN PRASAD SINGH
R/O SHASTRI NIKETAN
BUDDHA MARG
PATNA 110001.

2. POONAM SINGH
W/O RAKESH PRASAD SINGH
R/O SHASTRI NIKETAN
BUDDHA MARG
PATNA 110001.

(Through: Mr. Braj K. Mishra and Mr. Abhishek Yadav, Advocates)

…Appellants

VERSUS

1. M/S ESSEL HOUSING PROJECTS PVT. LTD,
N-49, 1ST FLOOR
CONNAUGHT PLACE, NEW DELHI-110001.

2. MR. SANJAY JAIN
GENERAL MANAGER, COMMERCIAL
M/S ESSEL HOUSING PROJECTS PVT. LTD.
N-49, 1ST FLOOR
CONNAUGHT PLACE, NEW DELHI 110001.

(Through: Mr. Vishnu Kant, Advocate)

… Respondents

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Mr. Braj K. Mishra and Mr. Abhishek Yadav, counsel for the Appellant.
Mr. Vishnu Kant, counsel for the Respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are*:*

"The complainants had applied for allotment of a residential flat bearing no. PC1/301 3rd Floor J Block in Pearl Court, Essel Towers, Gurgaon being developed by the OP on 18.2.2002. It was agreed to between the parties that the basic sale price of the flat would be @ Rs. 1,890 / Sq. Ft. Besides this it was also agreed that the complainants will pay Rs. 95 / sq. ft. towards preferential location charges, Rs. 65 / Sq. Ft. towards external development charges, Rs. 25 / Sq. Ft. towards interest bearing maintenance charges and a sum of Rs. 1 Lac towards covered car parking. The complainants had deposited a sum of Rs. 3,16,868/- towards earnest money vide receipt no. 1695 dated 18.2.2002. The complainants had initially chosen the "construction linked installment plan" for payment of the cost of the said flat. Subsequently, the plan was changed to "dream scheme" for which the complainant was to pay @ Rs. 1,794.50/ sq ft as the basic sale price of the flat besides paying for preferential location charges, extra development charges, interest bearing maintenance charges and car parking. The total payment of consideration thus worked out to be Rs.34,35,944.50. As per the letter received by the complainants a payment of Rs. 670783.90 was to be made at the time of booking , Rs. 24,13,480.15 at the time of offer of possession and Rs. 3,43,680.45 at the time of handing over of possession. It is alleged by the complainants that the OPs had incorrectly

calculated the balance amount payable by them which fact was brought to the notice of OP vide their letter dated 23.8.2002. Along with this letter the complainants had enclosed cheque no. 537977 dated 23.8.2002. An apartment's buyer agreement was signed by the parties. It is alleged by the complainants that at the time of applying for the flat they had pointed out to the OP that they required certain modifications in the flat as per their own peculiar needs. This was done vide letter dated 23.7.2003 It is also alleged that the complainants had brought to the notice of the OP that they proposed to pay the consideration of the flat by raising a loan from the bank. The OP had assured the complainants that the documents required for obtaining a bank loan would be provided to them well in advance. It is alleged that the OP did not discharge its obligations of providing necessary documents and instead issued a letter dated 1.12.2004 demanding payment of Rs. 2415608/-. It is also alleged that vide this letter possession of flat was not offered as construction of the building had not been completed. It is alleged that in order to extract a huge sum of money much before the date on which it became payable and in order to earn an illegitimate interest on the said amount, the OP had issued the letter dated 1.12.2004. It is alleged that the finally on 30.4.2005, the OP made offer of possession. It also raised a demand for Rs. 29.76.627.50 along with stamp duty and charges of Rs. 1,50,099/- towards interest for delayed payment, although, the second installment was payable only at the time of offer of possession which was made on 30.4.2005. On receipt of letter dated 30.4.2005, the complainants visited the site of construction in June 2005and found that the work had not been carried out as promised. It is alleged that the OPs had not supplied the requisite documents for obtaining loan from the bank. The complainants visited the site on 9.10.2005 and again requested for supply of legal documents for obtaining housing loan. It is also alleged that the changes required by the complainants in the flat had not been carried out. The complainants, therefore ,wrote letter dated 19.10.2005. It is alleged that instead of sending requisite legal *documents to the petitioners for obtaining loan, the OP sent an invoice for payment of maintenance charges for the period 1.10.2005 to 31.12.2005. It is alleged that the OPs provided legal documents for grant of loan by a letter dated 1.12.2005 and asked the complainants to deposit the amount due within 7 days. It is alleged by the complainant that this was a clear case of deficiency of service on the part of the OPs as on the one hand they did not supply the requisite legal documents and on the other hand had insisted for payment of the second installments knowing fully well that payment of such a huge amount required bank loan and it was their duty to provide the legal documents. It is alleged that the OPs wanted to cancel the allotment on the one ground or the other and earn illegitimate profit by selling the flat to a third party. The complainants wrote a letter dated 6.12.2005 to the OP and enclosed the in-principle sanction letter issued by SBI for the housing loan while requesting the OP to provide them with requisite legal documents. The OP forwarded the requisite legal documents vide their letter dated 14.12.2005 and asked the complainants to pay the entire outstanding amount within a period of 7 days from the date of the letter. The complaints by their letter 24.12.2005 informed the OP that the bank had intimated them that disbursal of loan would take some time and sought 15 days time for payment of installments. The OP , however, without giving a reasonable time to the complainants to raise loan after the supply of the legal documents, cancelled the allotment vide notice dated 10.1.2006. It is alleged that this action of the OP was illegal, unjust and uncalled for. Hence, the complaint wherein the complainants sought a direction to the OP to deliver the possession of the flat in question to them on payment of the balance consideration or in the alternative pay a sum of Rs. 65 Lacs towards compensation."*

2. The District Commission after taking into consideration the material available on record passed the order dated **29.11.2012**, whereby it held as under:

"It is admitted by the parties that the complainants had booked a flat with the OPs vide application dated 18.2.2002 and had opted for construction linked installment plan. Later on, vide fax dated 7.7.2002, the complainants had requested for change of the payment plan to the "Dream Scheme" which was accepted vide letter dated 23.7.2002 and the details of the payment along with the payment schedule was forwarded to the complainants. The payment schedule reads as under:-

PAYMENT SCHEDULE

At the time of Booking	20% of BSP+ 20% EDC + 20% PLC+20% CP	Rs. 678783.90
Offer of Possession	70% of BSP+ 80% EDC +80% PLC+80% CP	Rs. 2413480.15
Handing over of Possession	10% of BSP+IBMS	Rs. 343680.45

It is , therefore, clear that as per the payment schedule the complainants were bound to make payment of a sum of Rs. 24,13,480.15 at the time of offer of possession. The OPs had sent a letter intimation dated 6.10.2004 to the complainants which inter-alia reads as under:-

The construction of the aforesaid court is processing well and the finishing works have started.

We shall be raising the 70% of BSP+ 80% EDC +80% PLC+80% CP installment by November 15 2004. You are requested to make the necessary arrangements for payment of the above said installments.

The OPs raised a demand vide their letter dated 1.12.2004 which inter-alia reads as under:-

> ***This is in reference to the above mentioned Unit Booked under Dream Scheme. The said apartment building is near completion and we are in process of handing over the possession of your apartment.***
>
> ***You are requested to make the payment of Rs. 24,5,608 towards (70% of BSP+ 80% EDC +80% PLC+80% CP) installment by 25.12.2004.***

The Complainants did not pay the installments nor gave any response despite receipt of the demand and a remainder dated 9.2.2005.

The OPs then wrote letter dated 30.4.2005 which was a final call notice to the allottees. They offered possession along with statement of account and sought payment on or before 31.5.2005. The complainants did not pay and instead wrote a letter dated 19.10 2005 i.e. after a period of four months. The letter inter-alia reads as under:-

> ***Sub:- Regarding one previous letter dated 23.7.2003 to you in respect of our booking of Apartment no. PC-I/301, measuring 1681 sq. ft. in Essel Towers, Gurgaon and now final payment and registration process.***
>
> ***Dear Sir,***
>
> ***We have visited twice to your office after receiving one Final Call notice dated 30.4.2005 and secondly on 13.10.2005 , first time in June 05. We met you personally and then you directed one of your office staff to go along with me to the said flat and verify the issues which we have already requested through one letter dated 23.7.2003. After that your concerned staff and engineers said that by mistake, they overlooked the request done by me on 23.7.2003 but now they will rectify immediately. But now again when we visited on 19.10.2005, the entire thing lies is same condition, rather the worst thing has been done by your staff. In June 2005 visit, your staff has told me that since, the***

> ***entire other toilets has been constructed and finishing has also been completed, so now it is very difficult to comply my request my request to provide Indian style dress pan instead of comboard, so, finally your staff told that now we will change the comboard into Anglo Indian Comboard. Then we finally agreed for only study room bathroom and we told that leave other toilets with same comboard. But when we visited this time then we found that the study room toilet has become of no function, instead of Anglo Indian comboard, they have raised one small corner in a very shabby manner for putting a small Indian Orissa par which spoiled the entire use of the toilet in the study room.***
>
> ***Therefore, kindly look in this matter and instruct your engineers to put just an Anglo Indian Comboard to make due the toilet functional. We will also request you to send the concerned legal document for obtaining a housing loan from the SBI, Patna Main branch for doing your final payment.***

In response to the above letter, the OPs wrote letter dated 1.12.2005 which inter-alia reads as under:-

> ***Subject: Payment due against Appt. no. PC-1/301 in Essel Towers***
>
> ***Dear Sir/Madam,***
>
> ***This is in reference to your letter dated October, 19 2005 in which you have mentioned that you will make the final payment after obtaining the housing loan from SBI , Patna main Branch. Neither we have received the sanction letter of the bank till date nor the final payment.***
>
> ***You are requested to deposit the amount due immediately within 7 days failing which the booking will be cancelled.***

On 5.12.20005 , the complainants wrote the General Manager (Commercial) of the OP which inter-alia reads as under:-

Dear Sir,

We are enclosing the Photostat copy received from SBI, Boring Canal Road Branch, Maa shared Complex, Boring Canal Road, Patna080001 regarding in principle sanction of housing loan of Rs. 31,36,000/- for the purchase of the above mentioned flat.

We are also enclosing the photo stat letter dated 5.12.2005 received from State Bank of India, Boring Canal Road Branch, Maa Sharde Complex, Boring Canal Road, Patna-80001 regarding giving the certain documents from the builder as mentioned in serial no. 1 , 2 & 3 for early disbursement of housing loan of Rs. 31,36,000/- in favour of your company. So, kindly send all the concerned documents at the earliest.

This was followed by a letter dated 14.12.2005 by the OP. It inter-alia reads as under:-

Sub: Payment of due against Appt. No. PC-1/301 in Essel Towers at Gurgaon,

Dear Sir,

This is with reference to your letter dated 5.12.2005 and the telecom with our Mr. B. K. Sharma held with you on 13.12.2005 on the above mentioned subject. AS desired by you, we are enclosing herewith the following documents:

1. Photocopy of the approval of building plan in form BR-III dated 21.2.1997.

2. Original Permission to Mortgage letter in favour of your ank.

> ***We have already forwarded to you the Apartments Buyers Agreement executed in your favour.***
>
> ***As there is a considerable delay caused by you in making the payment, therefore, please make the outstanding payment along with interest there on within a period of 7 days from the date of this letter, failing which we shall be constrained to cancel your allotment.***

The complainants replied vide letter dated 24.12.2005 which inter-alia reads as under:-

> ***Sub:- Payment due against Aptt. No PC-1/301 in Essel Tower at Gurgaon.***
>
> ***Ref: Your letter dated 14.12.2005***
>
> ***With reference of your above mentioned letter which we received on 17.2.2005 and immediately we forwarded all the papers sent by you to State Bank of India, Booring Canal Road Branch, Patna. They have informed us on 22.12.2005 that it will take little time to process the entire housing loan we have given youe documents on 15/12/2005 (Monday) which we received on 17.12.2005 (Saturday). They have informed us that they have to obtain legal opinions also on the documents sent by you through SBI Delhi office. We anticipate that it will not take more than 15 days for the disbursement of the said housing loan in favour of your company as assured by SBI Patna Office also.***
>
> ***We will request you to see our letters dated 23.7.2003 and 15.12.2005 given to you through which you will see that the toilet of the study room has been spoiled rather the said toilet had become non function. It was very simple as agreed by your engineers that the normal comboard should be charged by the Anglo Indian Comboard but they have spoiled the entire toilet concept. As they have for often our earlier request also***

which we have requested through our letter dated 23.7.2003.

Therefore, our earlier request has not been implemented which we have written through our letter dated 23.7.2003 but at least the toilet of study room should become functional. As your engineers has done mistake rather we will say that it was very simple job but they have spoiled the entire toilet. So, we anticipate that SBI , Patna will pay you entire amount due against the cost of the said flat within 15 days time and kindly rectify the study room toilet also by putting only Anglo Indian Comboard to make it functional, so that we can take the possession of this flat also.

On 10.1.2006, the OPs cancelled the allotment of the flat in question. The cancellation notice reads as under.:-

Sub:- Cancellation of Allotment of Apartment no. PC1301 in Essel Towers at Gurgaon

Dear Sir/Madam,

This is in reference to the above -mentioned letter for payment against the above said apartment. As per clause 4 of the Apartment Buyers agreement, we have cancelled your allotment of the above said apartment due to non-payment of installments.

The earnest money paid by you shall be refunded shortly.

Indeed, the earnest money deposited by the complainants was refunded to them by way of separate cheques which were duly encashed by the complainants.

It is, therefore, clear from the correspondence exchanged between the parties that the complainant had agreed to a payment schedule according to which they were bound to make payment of a sum Rs. 2,413,480/- at the time of issuance of the letter of possession. This was different from the actual possession of the flat in question. Indeed, the OPs had *sent a letter dated 6.10.2004 informing the complainant that they will be raising a demand of Rs. 2,413,480/- by 15.11.2004. The demand was not raised on 15.11.2004 but was actually raised on 1.12.2004 and the complainants were asked to make payment by 25.12.2004. The complainants, therefore, had sufficient time i.e. from 6.10.2004 to 25.12.2004, a period of almost three months to arrange money and to pay for gas to the OPs. As already stated, the complainants were bound to make this payment under the payment schedule agreed to by the parties under the terms and conditions of the contract entered into between them. The complainants were, therefore, not taken by surprise. However, it appears to us that the complainants had simply ignored the demand raised on them and did not care to give a response. A reminder which was issued by the OPs on 9.2.2005 also met with the same fate. The OPs had, thereafter issued a final call vide its letter dated 30.4.2005. This letter was also ignored by the complainants. This continued till 19.10.2005 when for the first time the complainants raised an issue as regards installation of Indian Type WC as was requested earlier by them. By means of a passing reference, they had mentioned that they be supplied with concerned legal documents for obtaining a housing loan so that final payment is made to the OPs . It is , therefore ,clear that from 6.10.2004 to 19.10.2005 the complainants made no effort to arrange funds. If they wanted to raise a loan from a banker , they had not initiated any process for the same. Conspicuously enough , in their letter dated 19.10.2005 the complainants did not spell out the documents which were required to be supplied by the OPs for obtaining a housing loan. We must note that raising finances in order to pay the cost of the flat was the exclusive responsibility of the complainants and the OPs had never agreed to supply documents or cooperate with the complainants in raising a loan from a bank. But assuming for the sake of arguments that the OPs were obliged to supply documents to the complainants, was it not incumbent on the part of the complainants to have sought them at an appropriate time. Indeed, the letter dated 19.10.2005 was written more for* *the purpose of addressing some construction concerns rather than with an intention to make payment of the demand raised on the complainants. We must, therefore, observe that up to this time there was absolutely no design / attempt on the part of the complainants to pay the installments as agreed to in the contract signed by the parties. The Ops had infact supplied documents as asked for by the complainant and had cancelled the allotment vide letter dated 10.1.2006 i.e. after more than 6 months of the issuance of the final call letter. In our considered opinion, the OPs were justified in cancelling the allotment of the flat as the complainants had failed to adhere to the payment schedule and had breached the terms of the contract. We are supported in our view by the following observations made by the State Commission vide its order dated 28.3.2007 in the case in hand:-*

> ***Accordingly, the OP furnished the requisite documents to the complainant with the stipulation that the balance amount to be paid within 7 days of offer of possession. If at all the allegations in the complaint are admitted it is only to the limit of delay in handing over the requisite documents to the complainants for arranging loan. There was no contract between the complainant and the OP that the offer of possession would be made only on receipt of loan by the complainant from the bank.***

From the above discussion, we hold that the complainants have failed to prove a case of deficiency in service on the part of the OPs. We see no merits in this complaint which is hereby dismissed."

3. The Appellants, aggrieved by the decision of the District Commission, have filed the present appeal, arguing that the Commission's finding—namely, that the Appellants failed to establish any deficiency of service on the part of the Respondents—is both unreasonable and illogical. The Appellants point out that Clause 36 of the Apartment Buyers Agreement clearly stipulates that the allotment can only be cancelled after a notice

period of 30 days. They argue that the provision of allotment-related documents is essential to secure financing from a bank, as a loan cannot be obtained without such documentation.

4. While the Appellants acknowledge that providing these documents may not be explicitly required by the contract, they contend that it is a general obligation owed to them as customers. The Appellants assert that the Respondents' failure to fulfil this duty resulted in delay in securing financing, which ultimately led to the cancellation of their allotment.

5. Additionally, the Appellants argue that the timeframe allowed to arrange the loan was inadequate. The necessary documents were provided only on December 14, 2005, and the payment demand letter, which threatened allotment cancellation if payment was not made within 7 days, was received on December 17, 2005, leaving only 4 days to arrange for the loan. The Appellants further contend that the District Commission wrongly concluded that the Respondents were under no obligation to provide the required documents. The Appellants maintain that it was indeed the Respondents' duty to supply these documents, and the Respondents' failure to explicitly agree to do so does not absolve them of this responsibility. Lastly, the Appellants assert that they were always willing to make the payment and should not be held accountable for the delay. Pressing the aforesaid submissions, the Appellants prayed for setting aside the order of the District Commission.

6. The Respondents have filed the reply to the present Appeal, whereby, denied all the allegations of the Appellants and submitted that there is no error in the impugned order and submit that the delay in question may not be condoned. The Respondents also submit that the property has already been sold to a third party and the sum total of the value paid by the Appellants has been refunded to the Appellants. Lastly, the Respondents submitted that the District Commission has erred in not relying upon the

terms and conditions as mentioned in the Policy. Pressing the aforesaid submission, the counsel for the Respondents prayed for the dismissal of the present Appeal.

7. We have perused the Appeal, Reply of the Respondents and the Impugned Order.

8. ***The primary issue for consideration before us is whether the District Commission was correct in restricting the deficiency of service by the Respondents solely to the failure to provide documents that were allegedly required for obtaining a housing loan, and whether the delay on the part of the Appellants should be condoned in light of the circumstances.***

9. Perusal of the record reveals that the Appellants repeatedly requested the Respondents to provide the necessary documents related to the property in order to obtain a housing loan. Without these documents, securing such a loan would have been impossible. The Respondents, however, delayed in providing these crucial documents, while simultaneously demanding timely payment from the Appellants for the possession of the property. It is important to note that the Appellants did not specify the documents required for the loan, operating under the reasonable expectation that any builder or developer company would be aware of the necessary documentation typically required for loan processing. While the Respondents cannot be held responsible for providing a specific list of such documents, it remains their general duty, as a service provider, to facilitate the possession process and assist their customers to the greatest extent possible. The Respondents failed to fulfil this obligation.

10. Additionally, the absence of an explicit agreement to share the necessary documents does not absolve the Respondents of their duty to assist the Appellants in any way within their power. The failure to provide the required documents and assistance in a timely manner constitutes a clear

deficiency of service and reflects poorly on the Respondents' overall duty of care towards their customers.

11. On the other hand, in their reply, the Respondents have claimed that the Appellants delayed their efforts to secure financing and to take possession of the property. According to the Respondents, the delay in the Appellants' financing efforts and their repeated requests for documents led to the cancellation of the allotment. However, even if we were to accept that the Appellants made other efforts to secure financing, the entire process would have been futile until the necessary documents, required by the banks, were provided. Therefore, the Respondents cannot justify the cancellation of the allotment based on the Appellants' delay, as the key issue was the failure of the Respondents to supply the required documents in a timely manner.
12. Furthermore, the time allowed after the provision of the documents was insufficient. The Respondents cancelled the allotment merely seven days after providing the documents to the Appellants. This was in clear contravention of Clause 36 of the Apartment Buyers Agreement, which stipulates that if the Company decides to cancel the agreement, the Allottee(s) must be given thirty (30) days from the date of the notice of cancellation to rectify any default. In this case, the Appellants were entitled to a reasonable period of time to arrange for the loan after receiving the documents. The Appellants had shown willingness to take possession of the property and had even compromised on modifications they had initially requested. The Respondents' hasty decision to cancel the allotment within an unreasonable time frame constitutes an avoidance of duty and a clear deficiency in service.
13. Based on the above facts, it is evident that the Respondents failed to fulfil their obligations towards the Appellants by not providing the necessary documents promptly, thereby causing unnecessary delays in the financing

process and the allotment of the property. The Respondents' actions, in this case, amount to a significant deficiency of service.

14. However, the Respondents refunded the Appellants upon cancellation of the allotment and the Appellants have also encashed the cheques, hence, the Respondents are directed to pay a sum:
    A. Rs. 30,000/- as cost for mental agony and harassment to the Appellant and
    B. The litigation cost to the extent of Rs. 20,000/-.
15. The Respondent in directed to comply with the directions passed in Para14 of this judgment within 1 month from the date of this judgment, failing which, the Respondents have to pay interest @ 9% per annum on Rs. 20,000/- from 18.12.2024 till actual realization of the amount.
16. Additionally, we set the order dated ***29.11.2012*** passed by the ***District Consumer Disputes Redressal Commission (V)***, ***(North West District) CSC-Block, Shalimar Bagh, Delhi–110088. Resultantly, the present Appeal stands allowed***.
17. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
18. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
19. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On: **22.11.2024**

LR-SM