NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 1890 OF 2018

(Against the Order dated 27/07/2018 in Complaint No. 385/2016 of the State Commission Haryana)

1. M/S. ORRIS INFRASTRUCTURE (P) LTD. & 2 ORS.
THROUGH ITS CMD SH. VIJAY GUPTA, J-10/5, DLF PHAS II, MG ROAD, MEHRAULI-GURGAON,
GURGRAM
HARYANA 122002
2. M/S. ORRIS INFRASTRUCTURE (P) LTD
THROUGH ITS MD. SH. AMIT GUPTA,J-10/5, DLF PHAS II, MG ROAD, MEHRAULI-GURGAON,
GURGRAM
HARYANA 122002
3. M/S. ORRIS INFRASTRUCTURE (P) LTD
THROUGH ITS DULY AUTHORIZED SIGNATORY, J-10/5, DLF PHAS II, MG ROAD, MEHRAULI-GURGAON,
GURGRAM
HARYANA 122002 .....Appellant(s)

Versus

1. NAVEEN GARG & ANR.
S/O. SH. KRISHNA GARG, H NO 529, FIRST FLOOR SECTOR 22A
GURUGRAM
HARYANA
2. MRS. DEEPSHIKHA GARG
W/O. NAVEEN GARG , S/O SH. KRISHNA GARG, H. NO 529, FIRST FLOOR SECTOR 22A
GURUGRAM
HARYANA .....Respondent(s)

BEFORE:
HON'BLE MR. DINESH SINGH,PRESIDING MEMBER

For the Appellant : Mr. Sunil Mund, Advocate
(through video conferencing)

For the Respondent : Mr. Karan Nehra, Advocate
(through video conferencing)

Dated : 25 Mar 2021

ORDER

ORDER

1. This Appeal has been filed under Section 19 of The Consumer Protection Act, 1986 (the 'Act 1986') challenging the Order dated 27.07.2018 in C. C. No. 385 of 2016 passed by the State Consumer Disputes Redressal Commission, Haryana (the 'State Commission').

2. Heard arguments from Mr. Sunil Mund, learned Counsel for the Appellant (the 'Builder Co.') and Mr. Karan Nehra, learned Counsel for the Respondents (the 'Complainants').

Perused the material on record, including *inter alia* the impugned Order dated 27.07.2018 of the State Commission and the Memorandum of Appeal.

3. This relates to a builder-buyer dispute.

4. The State Commission vide its Order dated 27.07.2018 has accepted the Complaint.

The Award made by the State Commission in para 18 of its impugned Order of 27.07.2018 reads as below:

> - - - and hence with the above observation and discussion there are sufficient grounds to accept the complaint and while accepting the complaint, the O.Ps. are directed to refund of the amount of Rs. 66,13,435/- alongwith interest @ 11% per annum from the date of respective deposits and till realization. Hence this question is answered in affirmative. In case, there is a breach in making payment within the stipulated period of two months in that eventuality the complainants would further be entitled to get the interest @ 18% per annum, for the defaulting period. The complainants are also entitled of Rs.1,00,000/- for compensation of mental agony and physical harassment. In addition, the complainants are also entitled of Rs.21,000/- as litigation charges. It is also made clear that for non-compliance, the provisions enshrined under Section 27 of the C.P. Act would also be attractable.

That is to say, the State Commission has ordered for refund of the amount of Rs. 66,13,435/- deposited by the Complainants with interest at the rate of 11% per annum from the respective dates of deposit till its realisation; it has also stipulated that if the payment is not made within a period of two months, the Complainants will be entitled to get interest at the rate of 18% per annum for the defaulting period. It has also ordered for lumpsum compensation of Rs.1,00,000/- and cost of litigation of Rs. 21,000/-.

5. Vide Order dated 24.05.2019 of a coordinate bench of this Commission, the operation of the impugned Order of the State Commission was stayed subject to deposit of the principal amount of Rs. 66,13,435/- with the State Commission.

During the course of adjudication of this case, vide Order dated 24.10.2019 of a coordinate bench of this Commission, after considering the submission made by the Complainant(s) in person that he required money urgently for treatment of his parents as well as for the maintenance of his child, and after considering the objection of the learned Counsel for the Builder Co. that it will be difficult for it to get refund from the Complainants in case the Appeal is decided in its favour, an amount of Rs. 12,00,000/- was ordered to be released to the Complainants against bank guarantee.

The said Order dated 24.10.2019 has not been put to review by either side.

6. Mr. Sunil Mund, learned Counsel for the Builder Co. argued that the Builder Co. has since obtained the Completion / Occupancy Certificate and has since made the offer of possession to the Complainants. This offer has been made within a reasonable period of expiry of the agreed and assured period of offering possession. The Builder Co. faced several problems which impeded timely execution of its Project. The Agreement has a specific clause re *Force Majeure*. The Complainants are only entitled to take possession along with reasonable compensation for delay in offering possession.

Mr. Karan Mehra, learned counsel for the Complainants argued that the Completion / Occupancy Certificate and the offer of possession have been unreasonably and inordinately delayed. The prayer made in its Complaint before the State Commission was for refund of the amount of Rs. 66,13,435/- deposited with the Builder Co. with interest at the rate of 11% per annum, lumpsum compensation of Rs. 1,00,000/- and cost of litigation of Rs. 25,000/-. The Builder Co. cannot force the Complainants to take possession after unreasonable and inordinate delay and after protracted litigation. The Complainants at this belated stage only want refund of their deposited amount with interest, compensation and cost of litigation.

7. It is noted that the Complainants made an application dated 03.01.2012 for the purchase of the subject unit and paid a sum of Rs. 66,13,435/-. The payment was made in the period between 03.01.2012 and 07.05.2014. The Agreement was executed on 28.04.2012. The agreed and assured period of completion was 36 months plus grace period of 06 months from the date of execution of the Agreement i.e. in all contingencies by 28.10.2015. The Complainants deposited in total an amount of Rs.66,13,435/- with the Builder Co. The

Builder Co. was not in a position to offer possession of the subject unit to the Complainants till even the expiry of the (extended) grace period of 06 months i.e. till 28.10.2015. The Complainants instituted action before the State Commission on 07.12.2016, after over 01 year and 02 months of the expiry of the grace period. The Builder Co. obtained the Completion / Occupancy Certificate subsequent thereto, on 06.04.2017, and made its offer of possession still subsequent thereto.

On the one hand, the Builder Co. was not in a position to offer possession of the subject unit within the agreed and assured period of 36 months plus grace period of 06 months i.e. total 36+6=42 months or within a reasonable period thence (reasonable period here would connote a period that is reasonable *per se* and which a reasonable man will not normally agitate). On the other hand, it is holding on to the deposits made by the Complainant since 2012 / 2014 (we are now in 2021).

A builder company cannot retain the amount deposited by a Consumer indefinitely or unreasonably, indefinite or unreasonable holding on to the amount deposited by a Consumer cannot continue *ad nauseam, ad infinitum*.

8. It is noted that the State Commission has passed a well-appraised reasoned Order, it has aptly dealt with all the issues and contentions raised by the Builder Co.

9. The argument that the subject unit has since been completed and Completion / Occupancy Certificate obtained and therefore refund should not be allowed is bereft of merit. The Complainants had made their deposits in January 2012 to May 2014. The Project had to be completed within 36 months with a grace period of 6 months i.e. in all contingencies by 28.10.2015. Completion / Occupancy Certificate was not obtained till the date (07.12.2016) of the filing of C.C. No. 385 of 2016 before State Commission i.e. for over 01 year and 02 months of the expiry of the grace period. Unreasonable and undue delay is self-evident.

Prior to, or, at the least, simultaneous to, getting a Consumer to enter into its Agreement and accepting the first payment towards the total cost of the subject unit, the Builder Co. was required and expected to have the due pragmatic and realistic assessment and preparation of the Project Planning, Execution and Completion.

It was the prime responsibility of the Builder Co. to ensure that it was in a position to deliver the possession of the subject unit/s to the Buyer/s Consumer/s within the assured period of 36 months and in all contingencies within the extended grace period of 6 months thence.

Planning, Execution and Completion were its responsibility, and not of the Consumer.

(Normal) impediments or problems that arise in Planning, Execution and Completion were its responsibility, and not of the Consumer.

Specifically, availability of land (/ acquisition of land), as well as all approvals from the concerned Government and Municipal Authorities, as and when due, being fundamental basic requirements of a residential housing project, were decidedly the Builder Co.'s primary responsibilities, and not of the Consumer.

Cost and Time overruns were its responsibility, not of the Consumer.

Non-fulfilment of its overall responsibilities of Project Planning, Execution and Completion can not be and are not grounds for condoning or overlooking delay in completion and failure to hand over possession within the assured period.

And, *Force Majeure*, unforeseeable circumstances, irrespective of its various 'liberal' or 'strict' interpretations, and irrespective of its various interpretations in different sets of facts, can, but, not be nebulously and irrationally articulated in the Agreement, or contended and argued for anything and everything related to the Builder Co.'s responsibilities for completion of the Project without Cost or Time overruns.

10. A Consumer cannot be made to wait indefinitely or unreasonably. Indefinite or unreasonable delay cannot continue *ad nauseam, ad infinitum* (such situation would be absurd). In the facts of the present case, unreasonable delay is writ large. A natural corollary thereof is that two rights accrue to the Consumer:

one : the option to wait for the subject unit to be handed over, if and when the construction is completed and the offer of possession of the subject unit is made by the Builder Co., at his (the Consumer's) considered

wisdom and discretion, and in addition to seek just and equitable compensation under the Act for unreasonable delay and loss and injury.

two : to claim refund of the principal amount with just and equitable interest / compensation / cost of litigation.

That is, the Consumer has both options available, *one*, to obtain possession of the subject unit if and when offered by the Builder Co. and in addition seek just and equitable compensation under the Act for unreasonable delay in possession, and, *two,* to opt for a fair amount from the Builder Co. comprising of refund of the deposited amount with just and equitable interest / compensation / cost of litigation.

11. It is seen that of the two options available to the Complainants herein they opted for obtaining a fair amount comprising of refund of the principal amount paid to the Builder Co. with interest / compensation / cost of litigation.

12. This Commission has no hesitation in agreeing with the State Commission that, in facts of the present case, the Complainants are entitled to refund of the amount deposited with just and reasonable interest along with just and reasonable lumpsum compensation and cost of litigation.

13. In respect of the Award made by the State Commission, it is but to say that the State Commission has ordered for refund of the deposited amounts of Rs. 66,13,435/-. with interest at the rate of 11% per annum along with lumpsum compensation of Rs. 1,00,000/- and cost of litigation of Rs.21,000/-. The Award, to this extent, appears just and equitable in the facts of the present case.

However, penal interest at the rate of 18% per annum after two months of State Commission's Order appears to be unreasonable and inappropriate in the facts of the present case.

14. In the light of what has been abridged above, the State Commission's Award is modified as below and with directions as below:

The Builder Co. through its Chief Executive shall refund the entire amount of Rs. 66,13,435/- deposited by the Complainants with interest at the rate of 11% per annum from the respective dates of deposit till realisation along with lumpsum compensation of Rs. 1,00,000/- and cost of litigation of Rs. 21,000/-.

Of the amount of Rs. 66,13,435/- deposited by the Builder Co. in compliance of this Commission's Order dated 24.05.2019, the State Commission shall forthwith release the residual amount remaining (after the release of the amount of Rs. 12,00,000/- in furtherance to this Commission's Order dated 24.10.2019) to the Complainants along with interest if any accrued thereon, as per the due procedure and after the due verification.

The balance amount remaining, after adjustment of the amount now ordered to be released by the State Commission as well as the amount earlier released by the State Commission in compliance of this Commission's Order dated 24.10.2019, shall be made good within a period of 45 days from the date of this instant Order of this Commission.

In case the balance amount is not made good within the stipulated period i.e. within 45 days from 25.03.2021, the State Commission shall forthwith undertake execution, for '*Enforcement*' and for '*Penalty*', as per the law.

15. The Appeal is so disposed.

16. The Registry is requested to send a copy each of this Order to the Builder Co. & to its chief executive and to the Complainants, as well as to their learned Counsel, and additionally to the State Commission, within three days from today. The stenographer is requested to upload this Order on this Commission's website immediately.

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DINESH SINGH
PRESIDING MEMBER