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REAL ESTATE

Buyer's right to refuse possession of flat upheld in case of delay in construction by developer

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In a recent case^[1], the National Consumer Disputes Redressal Commission (“**Commission**”) disposed off three complaints regarding inordinate delay in construction of the projects in favour of flat buyers. The Complainants had booked flats in the projects undertaken by Parsvnath Developers Ltd (“**the Developer**”) and had paid 95% of the sale consideration. The Complainants had also taken loan from the banks for the purpose of making payment to the Developer. The Complainants sought refund of the amount from the Developer alongwith interest @ 18% per annum or @ 24% per annum, in the event of the failure by the Developer to complete construction within the time period stipulated in the flat buyers agreement (“**Agreement**”).

The Developer tried to justify the delay on account of recession in the real estate market, including reduction in the number of bookings and default on the part of the some of the allottees in making timely payment. The Commission held that the terms of the Agreement between the parties did not justify the delay in completion of the project on the aforesaid grounds and therefore, the Developer was duty bound to complete the construction. The delay in construction could only be justified if there was any restriction from any Court/Authority or due to non-availability of building material. If the delay had occurred as a result of non-payment by some allottees, the Developer could arrange finance from alternative sources such as taking loan, liquidating inventory at a lower price.

Another contention raised by the Developer was that the Complainants were seeking refund with exorbitant interest. The Complainants cannot claim more than the compensation stipulated in the Agreement entered into, with the Developer. The Complainants could be awarded the refund of the amount paid by them, only in terms of Clause-10(c) of the Agreement which reads as under:

“In case of delay in construction of the Flat beyond the period as stipulated subject to force majeure and other circumstances as aforesaid under Clause 10 (a), the Developer shall pay to the Buyer compensation @ Rs.53.82/- (Rupees Fifty three and paise eighty two only) per sq. meter or @ Rs.5/- (Rupees Five only) per sq. ft. of the super area of the Flat per month for the period of delay. Likewise, if the Buyer fails to settle the final account of the Flat within thirty days from the date of issue of the final call notice, the buyer shall be liable to pay to the Developer holding charges @ Rs.53.82/- (Rupees Fifty three and paise eighty two only) per sq. meter or @ Rs.5/- (Rupees Five only) per sq. ft. of the super area of the Flat per month on expiry of thirty days’ notice. Further, in the event of his failure to take possession for any reason whatsoever, the Buyer shall be deemed to have taken possession of the Flat on expiry of thirty days of offer of possession for all intents and purpose under this Clause/Agreement including for liability to payment of maintenance and any other charges, levies in respect of the Flat”.

The Commission held that, the time period stipulated for completing the construction in the Agreement was thirty-six months from the date of commencement of the construction. Since the Developer could not complete the projects within the agreed time and there had been a lapse of more than five years, the Complainants were justified in seeking refund of the amount, which they had paid to the Developer. The Commission further held that Clause 10 (c) of the Agreement applied only in a case where the buyer accepted the possession of the said flat from the seller in spite of delay in construction, and consequently, accounts will have to be settled between the parties. The aforesaid clause, would not apply to a case where the buyer, on account of the delay, is no more interested in the possession of the flat and wants to take refund of the amount.

The Commission then had to consider the quantum of interest to be awarded. As per the Agreement between the parties, in the event of delay on the part of the Complainant in making payment to the Developer, the Complainant was required to pay interest @ 24% per annum. The Commission held that, similarly, on account of delay by the Developer in performing his obligations under the agreement, the buyer was justified in charging interest @ 24% per annum.

The Commission also took into consideration the fact that the Complainants cannot look for an alternative accommodation on the same consideration that was agreed with the Developer seven-eight years back. The market value of the land and the cost of construction of residential projects had risen over the course of time and consequently, the Complainants cannot get a comparable flat either at the same price or even at the aforesaid agreed price plus interest thereon @ 18% per annum. Therefore, payment of interest to the Complainants was not only on account of loss of income by way of interest but also on account of loss of the opportunity of an alternative flat at the same price.

On the basis of aforementioned reasons, the Commission disposed off the complaints with a direction to the Developer to refund the amount which the Complainants had deposited with it, along with interest on the said amount @ 18% per annum from the date the deposit was made till the date the refund is made. The rate of interest was calculated on the basis of 8% per annum on

account of appreciation in the land value and increase in the cost of construction and 10% on account of interest.

[1] *Puneet Malhotra v. Parsvnath Developers Ltd., Consumer Complaint No. 232 OF 2014 with IA/9215/2014; Nitin Bhatia and Amit Bhatia v. Parsvnath Developers Ltd., Consumer Complaint No. 233 OF 2014; Sunil Joshan, Consumer Complaint No. 293 OF 2014.*