

SUPREME COURT OF INDIA

CCI Projects (P) Ltd.

Vs.

Vrajendra Jogjivandas Thakkar

C.A.No.6784-6785 of 2018

(Uday Umesh Lalit and R.Subhash Reddy,JJ.,)

27.11.2018

JUDGMENT

Uday Umesh Lalit,J.,

1. These appeals under Section 23 of the Consumer Protection Act, 1986 are directed against the common order dated 23.01.2018 passed by the National Consumer Disputes Redressal Commission, New Delhi (“Commission” for short) in Consumer Case Nos.975 and 976 of 2016.

2. In Consumer Case No.976 of 2016, Vrajendra J. Thakkar, HUF had booked a residential flat with the appellant in a project named “White Spring Building”, which the appellant was to construct at Village Magathane Dattapada Road, Borivali (East), Mumbai, for a consideration of Rs.90,38,850/- and flat No.6A in the building was allotted to said Vrajendra J. Thakkar, HUF. The parties entered into an agreement dated 30.10.2012 and in terms of Clause 17 of said Agreement, the possession was to be delivered by August, 2014. However, in terms of the Agreement, the date of delivery of possession would stand automatically extended in the event of any of the contingencies specified in the said clause which was to the following effect:

“Possession of the said Premises in the said Building shall be given by The Promotor to the Purchaser on or before August, 2014 on a “best effort” basis. Provided that in the even of occurrence of any of the following events, the aforesaid date of possession shall automatically stand extended by a period by which the possession is delayed on account of such event(s) -

(a) Non-availability of steel, cement, other building of construction materials, water or electricity supply;

(b) War, civil commotion, strike, lockout, riots, acts of terrorism, epidemics, earthquake, flood, other act of God, any prohibitory order of any court, tribunal or authority against the development of the said Properties:

(c) Any notice, order, rule, notification, circular of the Government and/or other public or competent authority, court, tribunal or Quasi-judicial body or authority;

(d) Delay in getting NOC, permissions licenses, approvals, consents, connections, plans, occupancy, certificate, completion certificate and permissions from MCGM and other authorities/bodies.

(e) Change in any law, rules, regulations, bye-laws of any Government, authorities, public/local bodies affecting the development of the said Properties.

(f) Any notice/direction notification, order from the forest department, Ministry of environmental department, pollution control department, MCGM, any Government Department or public body/local Authority, in respect to the said Properties;

(g) Delay or default in payment of the balance purchase price and/or other amounts payable hereunder by the Purchaser to the Promoter (without prejudice to the right of the Promoter to terminate this Agreement in terms of clause 12 above.”

3. Said Vrajendra Thakkar, HUF thereafter transferred the allotment in favour of mother of the present respondent namely Kumudben Jagjivandas Thakkar. Said Kumudben Thakkar thereafter gifted the very same Apartment to the present respondent.

4. In Consumer Case No.976 of 2016, Smt. Hemali Vrajendra Thakkar had booked a residential flat with the appellant in the same project and Flat No.6B was allotted to her for the same consideration of Rs.90,38,850/-. She also entered into similar agreement dated 30.10.2012 having identical clauses including the aforesaid Clause No.17 to deliver the possession by August, 2014. Later, the aforesaid allotment was transferred by Hemali Vrajendra Thakkar in favour of her mother-in-law namely Kumudben Thakkar who in turn gifted the same to the respondent herein. The gift deed dated 19.08.2015 contained one of the recitals as under:

“And Whereas, although the Donee has other siblings too but right from beginning the Donor and her late husband had been staying with the Donee and his family at the aforementioned address and it is only the Donee who had been taking care of each and every thing of the Donor and her husband from the smallest to the biggest of their requirements ”

5. On or about 02.06.2016, the aforesaid Consumer Case Nos.975 and 976 of 2016 were filed contending inter alia that though sum of Rs.85,86,911/- had been deposited in respect of each of the flats, no possession was delivered by the appellant. In the circumstances following reliefs were prayed for:

“a. OP be directed to handover the legal possession of flat to complainant within one month AND

b. OP be directed to pay to Complainant 18% interest per annum on Rs.85,86,911/- from September 2014 on the consideration amount already paid to OP till OP handover the possession of the flat to Complainant. Or

c. if granting prayer a) & b) is legally not possible then in alternative OP be directed to hand over any other newly constructed flat to complainant consisting same area, at the same rate in same locality in tower with same facility. OR

d. OP be directed to refund the Complainant Rs.2,00,00,000/- (Rupees Two Crore) the current market value of the said flat. AND

e. AND OP be directed to pay the complainant 18% interest per annum on Rs.85,86,911/- from September, 2014 on the consideration amount already paid to OP till OP refund complainant Rs.2,00,00,000/- the current market value of the said flat. AND

f. OP be directed to pay complainant Rs.5,00,000/- as compensation for causing mental stress, harassment and agony. AND

g. OP be directed to pay to Complainant Rs.1,00,000/- as litigation cost.

h. Any other relief as Hon'ble Commission deem fit and proper.”

6. The appellant resisted the complaints and submitted that the construction activity had begun after obtaining requisite permissions. However, New Development Control Rules stood notified in 2012 which obliged the builder/developer to prefer fresh application after seeking mandatory permission from the Fire Department. An application in that behalf was made on 21.12.2012 after complying with the mandatory provisions but the amended No Objection Certificate came to be granted only on 07.05.2013. Additionally, between August, 2013 till September, 2015 i.e. for more than 24 months there was restriction on sand mining activity as a result of which, one of the basic raw material for construction had become scarce in the market. It was further stated that the complainants themselves were in default and as such demand for payment of Rs.1,04,207/- in respect of each of the flats towards interest on outstanding amounts was raised and appropriate debit notes were issued by the appellant.

7. During the pendency of the matters before the Commission, the possession of the aforesaid flats 6A and 6B was offered by the appellant vide letter dated 16.11.2016. On 10.07.2017 the Commission directed the complainants to pay admitted sums to the appellant and to deposit the disputed sums with the Commission, whereafter the possession of the flats was taken on 04.08.2017. The matters before the Commission thus stood confined to the issue whether the complainants in both the cases were entitled to any compensation in respect of delayed payment or whether the appellant was entitled to have the period extended in terms of aforesaid clause No.17.

8. The Commission rejected the submission in respect of amended NOC granted on 07.05.2013. It further rejected the submission regarding non-availability of sand by observing that no document had been placed on record to substantiate such claim. The Commission observed that except the sum of Rs.104,207/- which the appellant sought to recover towards interest for delayed payment, rest of the sums were not disputed by the complainants and stood paid to the appellant. After considering the rival claims the Commission disposed of the complaints with following directions:

“1. The balance, if any, out of the amount deposited by the complainant with this Commission before taking possession of the flat and proportionate interest which may have accrued on that amount deducting (i) the interest amount of Rs.10427/- (in both the complaints) and (ii) an amount equivalent to compensation payable to the complainant in terms of direction (3) below, shall be released to the opposite party.

2. The amount of Rs.104207/- shall (in both the cases) be released to the complainant along with proportionate interest which may have accrued on that amount.

3. The opposite party shall pay compensation in the form of simple interest @ 8% per annum on the amount which had been paid by that date, to the complainant, w.e.f. 01.09.2014 till the date on which the possession was actually delivered to him. The compensation to the extent available shall be adjusted out of the amount payable to the complainant in terms of direction (1) above.

4. The opposite party shall also pay Rs.25,000/- as the cost of litigation in each complainant to the complainant.

5. The payment by the OP in terms of the order shall be made within three months from today.”

9. In these appeals challenging the correctness of the decision of the Commission, we heard Mr. Sanjiv Sen, learned Senior Advocate and Dr. Vinod Kumar Tewari, learned Advocate for the parties.

10. It was submitted by Mr. Sanjiv Sen, learned Senior Advocate:

(a) The complaints were not maintainable in as much as the original allottees had transferred their interest. Reliance was placed on the decision of this Court in *Haryana Urban Development Authority v. Raje Ram*¹.

(b) The time lost between 21.12.2012 till 07.05.2013 on account of mandatory requirement for re-submission of plans, the appellant was entitled to have that period extended.

(c) The National Green Tribunal had banned sand mining activities across the country on 05.08.2013 which came to be relaxed only when new policy was formulated by Union of India in September, 2015. It was submitted that the availability of sand during this period had come down to 20% of what it was before.

It was therefore submitted that the appellant was not at fault. In any case the possession was offered on 16.11.2016 and thus it was only a short period of more than 2 years between August, 2014 and 16.11.2016 which was the period in question. In his submission, the period stood completely explained and as such the Commission was not justified in imposing liability on the appellant.

11. The learned Advocate for the respondent on the other hand submitted that the transfers effected by the parties were within the family. He submitted that the appellant was not entitled to any extension of period. He further submitted that the order passed by the National Green Tribunal had banned illegal sand mining activity and not sand mining activity itself. The sand was thus available in market.

12. We have gone through the record and considered the rival submissions. The decision of this Court in the case of Haryana Development Authority (supra) turned on individual facts of the case where the very entitlement of the subsequent allottees to claim damages or compensation for delayed delivery of possession was found to be unsustainable. Said decision of this Court related to cases where the original allottees had transferred the allotment in favour of total strangers with the permission of the authority and as found by this Court, the subsequent allottees were aware that there was delay in delivering the allotted plots on account of time taken in forming the layout or on account of encroachment and yet had purchased the interest of the original allottees. In the present case the transfers were effected within the family where the members had been living together. The decision of this Court in Haryana Urban Development Authority (supra) cannot be stretched to say that in every case where there is a transfer, the complaint by the subsequent transferee would not be maintainable at all.

13. At the same time, the appellant is justified in saying that as a result of mandatory requirements to resubmit the plans and get the fresh NOC in respect of fire safety permission, the period between 21.12.2012 to 07.05.2013 stood completely explained. Thus, out of the period between August, 2014 till 16.11.2016, the appellant would be entitled to have a period of 6 months of extension. That still leaves us with a period of a year and 8 months. The Commission has awarded 8% interest on the deposited sum. The deposited sum in either case being Rs.85.86 lakhs, going by the direction issued by the Commission, the interest element in respect of the period of one year and 8 months would be in the region of Rs.11.4 lakhs. We now consider the second part of the submission. It is true that there was no complete ban on sand mining. But as a result of reduced availability of sand in the market, the demand and supply ratio must have been upset. The appellant would therefore be entitled to some benefit on that count.

14. Considering the entirety of the matter, in our view, instead of direction No.3 issued by the Commission, a lumpsum payment of Rs.5 lakhs in substitution of said direction, would meet the ends of justice. We, therefore, modify the directions issued by the Commission. Retaining directions 1, 2 & 4, the direction No.3 is substituted and in its place the appellant would be required to pay a lumpsum compensation of Rs.5 lakhs to the respondent in respect of each case. We direct that all the sums covered by the directions shall be made over within 2 months from today failing which the respondent complainant shall be entitled to 8% interest on the amounts in question.

15. With these directions civil appeals stand disposed of. No costs.

Judgment Referred.

¹*AIR 2009 SC 2030*