

Dharmendra Sharma Vs. Agra Development Authority

Civil Appeal No. 6344 of 2024 · Supreme Court of India · 2024-09-06 · Vikram Nath · Prasanna Bhalachandra Varale · F2J-C-1493

Full judgment text

Dharmendra Sharma Vs. Agra Development Authority

[Civil Appeal Nos. 2809-2810 of 2024]

[Civil Appeal No. 6344 of 2024]

Vikram Nath, J.

1. Civil Appeals 2809-2810 of 2024, by the appellant filed under Section 23 of the Consumer Protection Act, 19861, read with Order XXIV of the Supreme Court Rules, assail the correctness of the final judgment and order dated 15.09.2023 passed by the National Consumer Disputes Redressal Commission2 in CC No.600/2020 as also the order dated 30th October, 2023 passed on the Review Application No.335/2023.

By the aforesaid orders, the NCDRC allowed the CC No.600/2020 partly to the extent that it directed refund of the entire amount deposited by the Complainant (appellant) (except non-judicial stamp paper worth Rs.3,99,100/- deposited on 15.02.2014) along with interest @9% p.a. from the date of the complaint i.e. 11.07.2020 till the date of refund within a period of two months from the date of the order.

2. Further, Civil Appeal No. 6344 of 2024 has been filed by the Agra Development Authority 3 assailing the correctness of the same judgment of the NCDRC dated 15.09.2023 partly allowing the complaint.

3. The appellant -Dharmendra Sharma had applied for allotment and purchase of an apartment (residential flat) in the category of Super Deluxe 2 on 28.07.2011 and had deposited the booking amount of Rs.4,60,000/- along with the application. This application was submitted pursuant to an advertisement issued by the ADA for a group housing project lodged in the name of ADA Heights, Taj Nagari, Phase II at Fatehabad Road, near Taj Express Way, Ring Road, Agra.

The allotment was done by lottery system on 29.08.2011 whereby the appellant was allotted Flat No.DT-1/1204 which was communicated vide letter dated 19.09.2011, according to which the tentative price of the apartment was Rs.56,54,000/- which could be deposited in 24 equal quarterly instalments or could be paid in full with certain other relaxations. The appellant, opted for full payment and accordingly vide letter dated 21.10.2011, attached two cheques, one by the appellant of Rs.6.94 lakhs and the other of Rs.45 lakhs issued by the LIC Housing Finance Limited. Possession was to be given within six months under the scheme.

4. Upon completion of six months, the appellant requested for possession vide communication dated 03.04.2012. Apparently, the construction was not completed and, in any case, not ready for delivery of possession, as such no possession was delivered even after six months. The appellant thereafter received a communication dated 04.02.2014 offering possession subject to further payment of Rs.3,43,178/- along with non-judicial stamp paper for execution of the deed amounting to Rs.3,99,100/-. The demand so raised was under the following three heads:

- i) Rs.84,300/- for solar system;
- ii) Rs.46,878/- as leased premium; and
- iii) Rs.2,12,000/- for covered parking area.

5. On receipt of the said letter, the appellant visited the site as also the office of ADA on 15.02.2014. He deposited the non-judicial stamp papers as required of Rs.3,99,100/-. But after inspection of the site, he found various deficiencies in the construction which were reported to the Assistant Engineer of the ADA with the request that once the deficiencies are removed, he may be communicated for taking over possession. ADA sent reminders dated 22.09.2014 and 20/21.11.2014 for depositing the balance

amount of Rs.3,82,748/-.

The appellant, on the other hand, was demanding for completion certificate. There is a further communication by the ADA dated 17.01.2018 demanding an amount of Rs.6,11,575/- and for taking possession after depositing the same and getting the deed executed. On the other hand, the appellant, vide communication dated 02.04.2018, requested for waiver of interest on the balance amount and also sought confirmation whether the flat was ready for physical possession.

6. It was thereafter that the appellant along with letter dated 04.06.2019, sent a cheque dated 01.06.2019 for Rs.3,43,178/- and again requested for confirmation of the date of possession. The ADA encashed the said cheque but did not inform any date for handing over possession. It looks like the appellant got the loan transferred to the State Bank of India whereupon the SBI is writing letters demanding the title deed of the apartment vide communications dated 14.03.2017, 25.06.2019 and 19.10.2019.

These communications further mention that in case the title deed is not deposited, then penal interest @2% p.a. would be levied. The appellant again reiterated his earlier request for waiver of interest on balance amount vide reminder dated 18.09.2019 and again requested for confirmation whether the flat was ready for physical possession.

The appellant again visited the office of ADA on 23.11.2019 and requested for completion certificate and firefighting clearance certificate, which were not provided. He again visited the site and found that the apartment was not in a habitable condition. The appellant thus proceeded to institute a complaint before the NCDRC on 10.07.2020 alleging deficiency in service as also unfair trade practice on the part of ADA.

7. The ADA filed its reply in which the amounts as deposited by the appellant, as noted above, were admitted. Further, according to ADA, the construction was ready and possession was offered on 04.02.2014 along with demand of Rs.3,43,178/- which the appellant did not pay and continued to claim for waiver of interest and had ultimately paid the said amount on 04.06.2019 vide cheque dated 01.06.2019. According to ADA, after adjustment there was still an outstanding amount of Rs.4,71,159/- as on 05.02.2021.

It was also stated in the written statement that in 2011, at the time of allotment, the tentative price was Rs.56,54,000/- and under Clause 45 of the Registration and Allotment Rules, it was clearly mentioned that the price could vary upto 10%. Further, according to ADA, the demand raised by the letter dated 04.02.2014 of solar system, lease premium and car parking were apart from the cost of the flat and not due to increased cost. The appellant had unnecessarily delayed payment of the demand raised on 04.02.2014.

It was also stated in the written statement that out of the 582 apartments built under the project in question, except for 20 allottees, all other allottees had taken possession. The ADA further pleaded that the complaint was barred by time and secondly, that as the total payment made by the appellant was Rs.59,97,178/-, as such it would not fall within the pecuniary limit of the NCDRC, and therefore, the complaint was liable to be dismissed for the above two reasons also.

8. The parties led their evidence. The NCDRC rejected technical objections raised by the ADA regarding limitation as also the pecuniary jurisdiction. In so far as the limitation is concerned, the NCDRC held that as subsequent demand and reminders were sent by the ADA and the ADA even accepted the cheque of Rs.3,43,178/- in 2019, it was not open for the ADA to raise the plea of limitation. In so far as the pecuniary jurisdiction is concerned, the NCDRC held that the claim was of more than Rs.2 crores as such the said objection was also not sustainable.

The NCDRC, however, held that the additional demand made by the ADA vide communication dated 04.02.2014 although was other than additional cost of 10% which was permissible but, in any case, it was within the 10% admissible clause, as such could not be held to be illegal. The NCDRC also held that if the possession was delayed beyond two years, the appellant would be entitled for a refund but in the present case, Clause 27 of the Registration and Allotment Rules would not be applicable.

The NCDRC further held that although the appellant had deposited the nonjudicial stamps worth Rs.3,99,100/- on 15.02.2014 but he continued to delay payment of additional demand of Rs.3,43,178/- and was continuously requesting for waiver of interest resulting into the presumption that he was avoiding payment of the balance amount. On such finding the NCDRC denied to grant interest from

the date of deposit but made it applicable from the date of the filing of the complaint. In so far as the deficiency in construction was concerned, the NCDRC found that only bald allegations have been made by the appellant and he never made any effort to get a report from the Commissioner and allowed the apartment in question to remain locked for six years.

9. After considering the pleadings and evidence on record and in view of the above findings, the complaint was partly allowed by the NCDRC on 15.09.2023.

10. The appellant preferred a Review Application which was dismissed by the NCDRC by its order dated 30th October, 2023. In the Review Application also, the NCDRC reiterated that the review was liable to be rejected as while offering possession, the ADA vide letter dated 04.12.2014 had made a further demand which amount was not deposited within the time and it was only deposited in 2019 and that too without interest and the complaint was made after six years and, therefore, the appellant would not be entitled to interest from the date of deposit.

11. In the two appeals filed by the appellant, the relief claimed is to the extent that the payment of interest be awarded from the date of deposit while refunding the same and not from the date of the complaint. Whereas in the appeal filed by the ADA, it is submitted that in view of the fact that the petition had been filed after six years from the date of offering possession, as such it was barred by limitation and also as the amount deposited was only Rs.59,91,000/- i.e. less than Rs.1 crore, the complaint ought to have been filed before the State Consumer Disputes Redressal Commission and the NCDRC would have no pecuniary jurisdiction to entertain the complaint with a value of less than Rs.1 crore.

12. We have heard Shri Vipin Sanghi, learned senior counsel appearing for the appellant and Shri Sudhir Kulshreshtha, learned counsel for the ADA in all the three appeals.

13. The facts as recorded above are not disputed. Even the NCDRC did not find any contradiction in the factual aspect. The only issue is as to whether the possession as offered on 04.12.2014 should be taken as a valid offer of possession even if there was no completion certificate and also whether the firefighting clearance certificate was available with the ADA or not. Despite specific requests and demands by the appellant for providing the completion certificate and firefighting clearance, the ADA failed to produce the same.

Senior Counsel for the appellant has relied upon the following judgments in support of his submission that offer for possession would be invalid where the completion certificate and firefighting clearance certificate have not been obtained by the developer i.e. ADA: (a) Debashis Sinha & Ors. vs. R.N.R. Enterprise⁵ (b) Pioneer Urban Land and Infrastructure Limited vs. Union of India & Ors.⁶ (c) Treaty Construction vs. Ruby Tower Cooperative Housing Society Ltd.⁷ It is then submitted that even before the NCDRC the completion certificate and the firefighting clearance certificate could not be produced by the respondent -ADA.

14. It is also submitted on behalf of the appellant that under the provisions of RERA Act, 2016 as also the UP (Promotion of Apartment and Ownership and Maintenance) Act, 2010 offer of possession would be valid only after a developer obtains the completion certificate, which had not been done so far by the developer ADA in the present case. On behalf of the appellant, it is also argued that the demand of Rs.3,43,178/- along with alleged offer of possession dated 14.02.2014 was totally unjustified and illegal.

It was also submitted that the appellant having deposited the amount of approximately Rs.60 lakhs and that too after taking loan from financial institutions, cannot be deprived of counting the interest from the date of deposit rather than from the date of filing of the complaint. In support of this submission, reliance has been placed upon the following judgments: (a) Ghaziabad Development Authority vs. Balbir Singh⁸ (b) Rishab Singh Chandel & Anr. vs. Parsvnath Developers Ltd. & Anr.⁹ (c) Lucknow Development Authority vs. M.K.Gupta¹⁰ (d) Marvel Omega Builders Pvt. Ltd. vs. Shri Hari Gokhale & Ors.¹¹ (e) Experion Developers Pvt. Ltd. vs. Sushma Ashok Shierror¹²

15. On such submissions it was prayed by the appellant that his appeals be allowed and the interest be awarded from the date of deposit and to that extent the impugned judgment and order of NCDRC be modified. Further that the appeal filed by the respondent be dismissed.

16. Having considered the submissions of both parties, we are of the opinion that both have contributed to delays at various stages. The respondent ADA raised an objection that the complaint

was barred by limitation, claiming that the complaint was filed on 10.07.2020, well beyond the statutory limitation period prescribed under Section 24A of the Consumer Protection Act, 1986, which mandates that a complaint must be filed within two years from the date on which the cause of action arises. ADA argued that the offer of possession made on 04.02.2014 should have triggered the limitation period.

However, the NCDRC, in its impugned order, rightly rejected this argument by considering that the respondent ADA issued reminders to the appellant on 22.09.2014, 21.11.2014, and 17.01.2018. Additionally, ADA accepted the appellant's payment of Rs. 3,43,178/- on 20.06.2019 without any reservations. Given these facts, the NCDRC correctly applied Sections 18 and 19 of the Limitation Act, 1963, which extend the limitation period where part payments or acknowledgments are made. Consequently, the cause of action continued to exist, and the filing of the complaint in July 2020 is within the limitation period.

17. This Court concurs with the NCDRC's reasoning and affirms that the complaint was not barred by limitation. The ongoing interactions between the parties, including ADA's acceptance of part payment in 2019 and the reminders sent, effectively extended the limitation period under established legal principles. However, while the complaint is within limitation, we also recognize that the appellant delayed making the balance payment of Rs. 3,43,178/- for over five years, from 2014 to 2019. This delay was largely due to the appellant's requests for a waiver of interest, which, while understandable, contributed significantly to the delay in finalizing the transaction.

18. In light of these circumstances, while the appellant is entitled to a refund along with interest, it would be inequitable to award interest from the date of the original payment in 2011 given the appellant's role in the delay.

19. The respondent ADA has also challenged the pecuniary jurisdiction of the NCDRC, contending that the total payment made by the appellant amounted to Rs. 59,97,178/-, which was less than Rs. 1 crore. As such, ADA argued that the complaint should have been filed before the State Consumer Disputes Redressal Commission and not the NCDRC, which has jurisdiction over matters exceeding Rs. 1 crore as per Section 21(a)(i) of the Consumer Protection Act, 1986. This Court finds no merit in ADA's argument.

The NCDRC, in its impugned order, correctly observed that the claim made by the appellant was not limited to the deposit amount alone but also included compensation for mental agony, harassment, and loss of income, which brought the total claim well above Rs. 1 crore. In consumer disputes, the value of the claim is determined not just by the amount deposited but by the aggregate relief sought, which includes compensation and other claims. Therefore, the NCDRC rightly held that it had the requisite pecuniary jurisdiction to entertain the complaint, and this Court affirms that finding.

20. The appellant's key contention regarding the absence of the completion certificate and firefighting clearance certificate merits serious consideration. The appellant consistently raised this issue, asserting that a valid offer of possession cannot be made without these documents. Section 4(5) of the UP Apartment (Promotion of Construction, Ownership & Maintenance) Act, 2010 and Section 19(10) of the RERA Act, 2016 mandate that a developer must obtain these certificates before offering possession. Despite the appellant's repeated requests, ADA failed to produce these certificates, rendering its offer of possession incomplete and legally invalid.

21. The appellant has rightly cited relevant precedents to bolster this argument. In *Debashis Sinha v. R.N.R. Enterprise* (2023)¹³, this Court held that possession offered without the requisite completion certificate is illegal, and a purchaser cannot be compelled to take possession in such circumstances. The Court in that case held:

"20. Finally, we cannot resist but comment on the perfunctory approach of Ncdrc while dealing with the appellants' contention that it was the duty of the respondents to apply for and obtain the completion certificate from KMC and that the respondents ought to have been directed to act in accordance with law. The observation made by Ncdrc of the respondents having successfully argued that it was not their fault, that no completion certificate of the project could be obtained, is clearly contrary to the statutory provisions.

21. Sub-section (2) of Section 403 of the KMC Act was referred to by Ncdrc in the impugned order [*Debashis Sinha v. R.N.R. Enterprise*, 2020 SCC OnLine NCDRC 429] . Sub-section (1) thereof, which finds no reference therein, requires every person giving notice under Section 393 or Section 394 or

every owner of a building or a work to which the notice relates to send or cause to be delivered or sent to the Municipal Commissioner a notice in writing of completion of erection of building or execution of work within one month of such completion/erection, accompanied by a certificate in the form specified in the rules made in this behalf as well as to give to the Municipal Commissioner all necessary facilities for inspection of such building or work.

22. Section 393 mandates every person, who intends to erect a building, to apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form and containing such information as may be prescribed together with such documents and plans. Similarly, Section 394 also mandates every person who intends to execute any of the works specified in clause (b) to clause (m) of sub-section (1) of Section 390 to apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form and containing such information as may be prescribed.

23. It is, therefore, evident on a conjoint reading of Sections 403, 390 and 394 of the KMC Act that it is the obligation of the person intending to erect a building or to execute works to apply for completion certificate in terms of the Rules framed thereunder. It is no part of the flat owner's duty to apply for a completion certificate. When the respondents had applied for permission/sanction to erect, the Calcutta Municipal Corporation Buildings Rules, 1990 (hereafter "the 1990 Rules" for short) were in force. Rule 26 of the 1990 Rules happens to be the relevant Rule. In terms of subrules (1) to (3) of Rule 26 thereof, the obligation as cast was required to be discharged by the respondents. Evidently, the respondents observed the statutory provisions in the breach."

This position is supported by other decisions, including Pioneer Urban Land and Infrastructure Ltd. (supra) and Treaty Construction (supra), where the absence of these certificates was found to constitute a deficiency in service. In the present case, the ADA's failure to provide the required certificates justifies the appellant's refusal to take possession. This strengthens the appellant's claim for additional compensation to compensate for the delay caused by ADA's breach of its statutory obligations.

22. This Court is of the considered view that both parties have exhibited lapses in their respective obligations. On the one hand, the appellant, despite having paid the tentative price of Rs. 56,54,000/- in 2012, failed to remit the additional amount of Rs. 3,43,178/-, as demanded by the ADA, even after being repeatedly reminded. Instead, the appellant persistently sought a waiver of the penal interest on the delayed payment, eventually settling the amount only on 04.06.2019, a significant delay that cannot be overlooked and that too without the interest component which had further accrued over a period of about five years.

On the other hand, the ADA, despite making an offer of possession in 2014, did not fulfil its statutory obligations by providing the requisite completion certificate and firefighting clearance certificate, both of which are essential for a valid and lawful offer of possession. The absence of these documents, which were also not furnished before the NCDRC, unquestionably vitiates the offer of possession made by the ADA.

23. In light of the aforementioned observations and taking into account the shortcomings on the part of both the appellant and the ADA, this Court deems it appropriate to provide a compensation of Rs. 15,00,000/- (Fifteen Lakhs only) apart from what was awarded by the NCDRC. Therefore, apart from the refund of the entire amount deposited by the appellant @ 9% interest per annum from 11.07.2020 till the date of refund, the ADA is directed to pay an additional amount of Rs. 15,00,000/- (Fifteen Lakhs only) to the appellant. The entire amount should be rendered to the appellant within three months of this order. We also order the ADA to return the non-judicial stamp worth Rs. 3,99,100/- back to the appellant.

24. Furthermore, we refrain from imposing any exemplary costs on either party, recognizing that both have contributed to the situation at hand. It is also to be noted that the ADA, being a civic body tasked with serving the public and operating on a non-profit basis, should not be unduly penalized in a manner that could impede its functioning.

25. The Civil Appeals 2809-2810 of 2024 are disposed of accordingly.

26. The appeal filed by the ADA i.e. Civil Appeal No.6344 of 2024 stands dismissed, as its primary arguments regarding both limitation and pecuniary jurisdiction are found to be without merit.

.....J. (Vikram Nath)

.....J. (Prasanna Bhalachandra Varale)

New Delhi

September 06, 2024

1 CPA, 1986

2 NCDRC

4 SBI

3 ADA

5 (2023) 3 SCC 195

6 (2019) 8 SCC 416

7 (2019) 8 SCC 157

8 (2004) 5 SCC 65

9 Civil Appeal No.3053 of 2023

10 (1994) 1 SCC 243

11 (2020) 16 SCC 226

12 (2022) 6 SCALE 16

13 (2023) 3 SCC 195

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