



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

108(1)

CWP-6912-2024 (O&M)

Date of decision: 21.05.2024

Improvement Trust, Chotti Baradari, Patiala and another ...Petitioners

VERSUS

Sheela Gupta and Ors.

...Respondents

108(2)

CWP-6914-2024 (O&M)

Date of decision: 21.05.2024

Improvement Trust, Chotti Baradari, Patiala and another ...Petitioners

VERSUS

Narinder Kumar Bhalla and Ors.

...Respondents

108 (3)

CWP-6918-2024 (O&M)

Date of decision: 21.05.2024

Improvement Trust, Chotti Baradari, Patiala and another ...Petitioners

VERSUS

K.K. Sachdeva and Ors.

...Respondents

108(4)

CWP-6924-2024 (O&M)

Date of decision: 21.05.2024

Improvement Trust, Chotti Baradari, Patiala and another ...Petitioners

VERSUS

Yogesh Rai Mangla and Ors.

...Respondents

108(5)

CWP-6935-2024 (O&M)

Date of decision: 21.05.2024

Improvement Trust, Chotti Baradari, Patiala and another ...Petitioners

VERSUS

Usha Sood and others

...Respondents



CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Abhilaksh Gaind, Advocate and
Mr. Rakesh Roy, Advocate for the petitioners.

VINOD S. BHARDWAJ, J. (Oral)

1. Raising common issues, these five writ petitions are being decided by a common judgment. The facts for understanding the controversy are however extracted from **CWP-6912-2024** titled as '**Improvement Trust, Chotti Baradari, Patiala and another Vs. Sheela Gupta and Ors.**'.

2. Challenge in the said petition is to the order dated 06.08.2021 passed by respondent No.3-The District Consumer Disputes Redressal Forum, Baradari, Patiala, in a petition preferred under Section 27 of the Consumer Protection Act, 1986 (since repealed), hereinafter referred to as '**the Act of 1986**', and the order dated 02.02.2022 passed by respondent No.2-The State Consumer Disputes Redressal Commission, Punjab, whereby the appeal preferred by the petitioners has been dismissed.

3. Briefly summarized, the facts of the case are that respondent No.1-Sheela Gupta, had filed a complaint under the Act of 1986 bearing consumer complaint No.295 dated 08.12.2015 seeking issuance of a direction to petitioner-Trust to deliver the possession of the flat, with complete facilities as per the offer letter, immediately and further for making payment of Rs.25,000/- per month as rental value from 07.11.2012 till the



delivery of actual physical possession and also for payment of Rs.2,00,000/- as compensation on account of mental pain, agony and physical harassment alongwith Rs.2,00,000/- as litigation expenses. It was alleged in the said complaint that the petitioner-Improvement Trust had floated a scheme (Vikas Scheme) for sale of HIG and MIG Flats and invited applications from the general public. In the said scheme, 15 HIG Flats having an area of 1978 sq. feet each, were offered for a tentative price of Rs.24.45 lakhs for 1st floor; Rs. 24.35 lakhs for second floor; Rs.24.25 lakhs for 3rd floor; Rs.24.15 lakhs for 4th floor; and Rs.24.05 lakhs for 5th floor respectively. Additionally, 30 MIG flats having an area of 1600 sq. feet each were also offered with a tentative price of Rs.19.60 lakhs for 1st and 2nd floor; Rs.19.50 lakhs for 3rd floor and 4th floor; and Rs.19.30 lakhs for 5th floor.

4. As per the version of respondent No.1-consumer/Sheela Gupta, she applied for allotment of MIG flat by depositing an amount Rs.1,97,000/- towards earnest money and was declared successful in draw of lots. Flat bearing No.01-A at 1st floor was allotted to her, vide letter No.1482 dated 07.05.2010. The allottee was further required to deposit a sum of Rs.3,71,000/- within a period of 30 days of the issuance of the allotment letter and the balance amount was to be paid in installments communicated in the letter of allotment.

5. In compliance thereto, respondent No.1-consumer deposited a sum of Rs. 3,76,800/- with the petitioner-Trust on 04.06.2010 vide receipt No.41198. The possession of the flat was to be delivered within a period of



2 ½ years from the date of allotment. The first 05 installments were duly paid without interest, and the balance installments were to be paid, with interest, after delivery of possession which was to be given on or before 25.09.2012.

6. Respondent No.1-complainant/Sheela Gupta claimed to have deposited the amount of Rs.4,92,500/- in five installments within time, vide receipt No.41782 dated 23.09.2010; receipt No.42619 dated 24.03.2011; receipt No.43740 dated 23.09.2011; receipt No.44926 dated 26.03.2012; and receipt No.46053 dated 21.09.2012 respectively. It was averred by respondent No.1-complainant/Sheela Gupta that the possession of the flat was though not delivered yet the petitioner-Trust made the allottee pay the amount along with interest @12% per annum. It is submitted that the letter dated 10.06.2014 was sent by the petitioner-Trust calling upon the allottee to obtain the possession at the site on 18.06.2014, however, when respondent No.1-complainant/Sheela Gupta went at the site, she was dissatisfied with the works executed as the works at the flats were incomplete, no civil works and basic amenities had however been provided. Further, there were no electricity, sewer and water connection etc. Possession of the flat was however, taken under protest and specific deficiencies and defects were pointed out to the petitioner-Trust. It was claimed that the liability of the allottee to pay the interest would arise at the best only after 25.09.2012 when the possession was to be given after completion of all basic amenities in the project, however, the same having not been done, the charge levied by the



petitioner-Trust was unsustainable and the petitioner-Trust would instead be liable to compensate the allottee for the harassment meted out to her.

7. The petitioner-Trust entered appearance and filed its response, wherein, the factual aspect pertaining to allotment of flat was not disputed, however, certain objections were raised with respect to the maintainability of the proceedings before the District Consumer Disputes Redressal Forum, Patiala. It was admitted in their reply that letter dated 18.06.2014 was sent by the petitioner-Trust to the allottee for obtaining possession of the flat. It was stated that the possession of the flat, as per the scheme/brochure, could not be delivered due to non-availability of electricity, which was to be provided by the Punjab State Power Supply Corporation (PSPCL).

8. On consideration of the pleadings, the evidence led and after hearing the learned counsel for the respective parties, the District Consumer Disputes Redressal Forum, Patiala, partly accepted the said complaint and directed the petitioner-Trust to handover the physical possession of the flat in question complete in all respect to respondent No.1-complainant/Sheela Gupta as per the scheme/brochure and to pay interest @12% per annum on the amount deposited by the complainant before 07.11.2012 w.e.f. 07.11.2012 till payment is made and also to pay interest @12% per annum on the payment deposited by the complainant after 07.11.2012 from the respective dates of deposit till payment is made. A sum of Rs. 20,000/- was also awarded as cost of litigation.

9. Aggrieved of the said award dated 16.03.2017 passed by the



District Consumer Disputes Redressal Forum, Patiala, the petitioner-Trust preferred appeal No.299 of 2017 before the State Consumer Disputes Redressal Commission, Punjab, which was also dismissed vide order dated 29.09.2017 after hearing the respective parties at length. While dismissing the appeal(s), it was specifically recorded by the State Consumer Disputes Redressal Commission, Punjab that the petitioner-Improvement Trust had launched the self-finance scheme and invited application from the general public for allotment of semi-finished HIG and MIG flats, vide publication Ex.C-1. Further, it was noted that as per the case of respondent No.1-Sheela Gupta, the possession of the flat was to be handed over on 25.09.2012 i.e. within a period of 2 ½ years from the date of allotment and the petitioner-Trust neither disclosed the date of commencement of construction work nor it made clear anywhere in the scheme or the response filed by it as to when the construction at the project was to commence. It was thus held by the Consumer Court that since the petitioner-Trust was to deliver the possession of flat within a period of 2 ½ years from the date of allotment and as the allotment was made on 07.05.2010, hence, the possession was to be delivered by 07.11.2012 and not upto 25.09.2012 as alleged by respondent No.1-Sheela Gupta. The possession of the flat was claimed to have been offered by the petitioner-Trust on 10.06.2014 vide Ex.C24, which was refused by respondent No.1-Sheela Gupta alleging that the flat lacked basic facilities. Reference was also made to the affidavit of Lachhman Dass, SDO, Department of Electricity tendered by the petitioner-Trust on



01.03.2016 wherein it was deposed that the possession of the flat had not been delivered due to non-availability of the electricity supply which was to be provided by the PSPCL. It was also noticed that while passing order on an application dated 13.10.2016 moved by the petitioner-Trust for spot inspection of the site, the District Consumer Disputes Redressal Forum, Patiala, directed the petitioner-Trust, vide order dated 07.11.2016, to place on record the documents establishing providing of basic amenities at the site. The said documents were later placed on record as per which the water supply and sewerage connection was released on 12.01.2017. No document with regard to the supply of the electricity at the site had been filed by the petitioner-Trust. It was thus noticed that the basic amenities and necessities required to be available at site for the utilization and enjoyment of the property had not been made available and the possession could not be deemed to be lawfully handed over w.e.f. 11.06.2014 and that the same is just a paper possession. It was thus held that the appeal lacked merit and was liable to be dismissed.

10. Against the order dated 29.09.2017 passed by the State Consumer Disputes Redressal Commission dismissing the appeal, the petitioner-Trust raised a further challenge before the National Consumer Disputes Redressal Commission (**NCDRC**), New Delhi, vide Revision Petition No.3610 of 2017. The above Revision Petition was considered along with a batch of other Revision Petitions and on consideration of the rival submissions advanced by the respective parties, the same was partly



allowed by the National Consumer Disputes Redressal Commission vide order dated 05.06.2018 and the allottee was held entitled to interest, at the rate as awarded by the Fora below, for the period from the committed date of delivery of possession till the date of actual delivery of possession to them, with further interest for the period from the date of actual delivery of possession till actual payment. The said proceedings thus had attained finality and were not a subject matter of any further challenge.

11. Respondent No.1-Sheela Gupta, in the meanwhile, filed an application dated 11.05.2017 under Section 27 of the Act of 1986 for implementation and execution of the order dated 16.03.2017 passed by the District Consumer Disputes Redressal Forum, Patiala. A short reply was filed by the petitioner-Trust claiming that the possession had already been delivered vide letter dated 05.04.2016 and that the electricity connection had also been provided w.e.f. 23.02.2016. It is alleged that notwithstanding the aforesaid submission, the District Consumer Disputes Redressal Forum, Patiala, directed attachment of the account of the petitioner-Trust.

12. Aggrieved thereof, an appeal was filed by the petitioner-Trust before the State Consumer Disputes Redressal Commission, Punjab, bearing appeal No.18 of 2022. The said appeal was also dismissed vide order dated 02.02.2022. The petitioner-Trust thereafter preferred a Revision Petition again before the National Consumer Disputes Redressal Commission bearing No.1120 of 2022, however, the same was dismissed as being not maintainable, vide order of the National Consumer Disputes Redressal



Commission dated 31.08.2022. The present writ petition has thereafter been filed before this Court, which came up before this Court for first hearing on 14.05.2024, i.e. after more than 1 ½ year of the above order.

13. Learned counsel appearing on behalf of the petitioner-Trust has argued that the order passed by the District Consumer Disputes Redressal Forum, Patiala, and the order of subsequent dismissal of the appeal by the State Consumer Disputes Redressal Commission, Punjab were bad in the eyes of law and are liable to be set aside since the Fora had failed to consider that the construction had been completed by the trust on 21.05.2013 and the possession had been offered on 11.06.2014. The presumption drawn by the Fora about delivery of possession along with all the basic amenities and facilities, after the receipt of first five installments alongwith interest, was misconceived. In fact, the possession was to be offered only after receipt of first five installments and remaining facilities were to be provided thereafter. He further submits that there was no specific time for handing over the possession in the allotment letter or in the brochure. Clause 11 of the allotment letter thereof, provided that the allottee shall be entitled for possession only after the completion of the construction which was 2 ½ years from the date of start of construction. The Fora erroneously held that the date of start of construction having not been disclosed, therefore, the period of 2 ½ years has to be construed from the date of letter of allotment i.e. 07.05.2010. The said analogy drawn was incorrect and amounts to reading conditions into the contract and arriving at a date of offer of



possession, even though the same was not intended by the petitioner-Trust.

14. It is further submitted that the Fora also failed to take into consideration that the possession was offered on 05.04.2016, yet, the Fora wrongly concluded that the date of actual delivery of possession is 31.03.2018 which is a date without any valid basis, and notwithstanding that no documents has been placed on record in support thereof by the claimant.

15. It is also argued that the completion certificate was furnished by the petitioner-Trust showing the date of completion as 21.05.2013 and that the documents qua water-supply and sewerage connection were also placed on record before the Fora which established that the said facilities were made available on 12.01.2017. It is thus submitted that the derived date of offer of possession viz. 31.03.2018 was not sustainable and that the order passed by the authorities computing the dues by treating the date of offer of possession on 31.03.2018 is misplaced, misconceived and unsustainable. He further submits that the interest as awarded by the National Consumer Disputes Redressal Commission, while partly allowing the Revision Petition, was to be assessed with effect from the date of committed date of possession and that the committed date of possession having been wrongly ascertained by the authorities below, the proceedings are liable to be set aside.

16. I have heard the learned counsel appearing on behalf of the petitioner-Trust at length and have gone through the documents appended along with the present petition with their assistance.



17. So far as the arguments raised by the learned counsel for the petitioner-Trust that the committed date of possession has been wrongly derived by the Consumer Fora is concerned, the emphasis of the petitioner has been that the period of 2 ½ years was to be computed w.e.f. date of commencement of the construction and that the authorities had erroneously inferred the date of commencement of construction w.e.f. the date of allotment and not from the date of actual construction.

18. Even though said argument may appear catchy at first instance, however, a thorough consideration thereof reveals that the said issue is a re-agitation of the initial defence raised by the petitioner-Trust before the Consumer Courts. The contention emphatically argued on behalf of the petitioner-Trust was declined by the Consumer Courts due to failure on the part of the petitioner-Trust to produce the documents reflecting actual date of commencement of construction. The burden of claiming the benefit under Clause 11 of the letter of allotment pertaining to computation of the period of 2 ½ from the date of commencement of the construction lies upon the petitioner-Trust. Having chosen not to produce the said documents, it cannot be permitted to raise an argument and to plead that it must be given benefit of re-computing the committed date of offer possession. The Consumer Fora has thus deduced the committed date of offer of possession on the basis of the documents that were already available on record and by drawing an inference against the petitioner-Trust on an objective assessment of all the documents brought on record.



19. Further, the petitioner despite having been granted sufficient number of opportunities to agitate on the said issue and to dispel the inference so drawn against it by not only the State Consumer Disputes Redressal Commission but also before the National Consumer Disputes Redressal Commission failed to discharge the same. No such documents have been placed on record even now in the writ petition. There is no explanation given by the petitioner-Trust as to why the actual date of commencement of construction or completion of the basic amenities could not be informed by the petitioner-Improvement Trust which would be in possession of all the relevant documents. Learned counsel is also not in a position to refer that as the award has been passed against them and Improvement Trust is drifting the date of offer of possession, hence, burden lies on the Improvement Trust to establish, by referring to the actual date of commencement of all basic amenities before possession is offered.

20. The present writ petition emanates from the orders that have been passed in Execution of the award. The Executing Court cannot travel beyond the findings recorded by the Court while dealing with the original award and re-appreciate facts. The committed date of offer of possession having already been arrived at and having not been set aside or modified either by the State Consumer Disputes Redressal Commission, Punjab, or by the National Consumer Disputes Redressal Commission, the said issue cannot now be re-agitated or reopened as it would amount to going behind the award and re-appreciating the merits that have already been considered



by the Fora. Thus, this Court would refrain from re-opening the said issue that has already been finally settled in the original complaint and affirmed in the subsequent proceedings and have already attained finality.

21. The same now leads to the issue as to whether the date of offer of possession has to be computed as 11.06.2014 when the offer was claimed to have been made or 05.04.2016 or it has to be seen as 31.03.2018 as has now been computed by the Executing Court.

22. So far as the date of offer of possession i.e. 11.06.2014 is concerned, the said aspect had already been considered by the Consumer Fora and it was found that the basic amenities were lacking at site and that the said offer of possession was only a paper possession and the amenities as proposed and promised had not been made available. The said document having not been accepted by the Consumer Fora in either the original proceedings or in the subsequent Appellate and Revisional jurisdiction cannot now be accepted as the actual date of physical possession being offered notwithstanding that the petitioner-Trust has laid much emphasis on the completion certificate claimed to have been issued in the year 2013. The finding having been concurrently affirmed by the Consumer Fora cannot now be re-opened at this stage as the said issue has already been settled.

23. The next date viz. 05.04.2016, which is claimed by the petitioner to be the date when the amenities had been made available as the electricity connection had been released at the site on 23.02.2016; the submission is taken with a pinch of salt. The amenities which are required



to be provided for utilization, enjoyment and occupation of a premise require basic infrastructure i.e. water supply, road, sewerage, storm water and electricity connection to be made available before possession can be offered.

24. Undisputedly, the water and sewerage connection had not been provided at the site even on 05.04.2016. The documents about status of works were called upon by the District Consumer Disputes Redressal Forum, Patiala, on 05.01.2017. It would be necessary to refer to the order passed by the District Consumer Disputes Redressal Forum, Patiala, in the Executing Petition as to how the issue has been dealt with. It was observed by the District Consumer Disputes Redressal Forum that respondent No.1- Sheela Gupta, claimed the date of possession as 31.03.2018, while the petitioner-Trust insisted that the date of delivery of possession was 05.04.2016. The Fora had directed both the parties to submit their respective proofs regarding the delivery of possession, but no document regarding factum of delivery of actual possession was brought before the Fora by the petitioner-Trust as well. The parties chose to maintain their respective stands, unsupported by any corroborating document. It was observed by the District Consumer Disputes Redressal Forum, Patiala, that the date of possession could be best ascertained from the record, however, the petitioner-Trust withheld the relevant record about availability all the basic amenities at site for ascertaining so that the date of actual delivery of possession from the record. In the absence thereof, the District Consumer Disputes Redressal Forum, Patiala, was left with no other option but to



determine the date of delivery of actual possession from the document/pleadings available on record.

25. It was noticed that the first order was passed by the Court on 16.03.2017 wherein a direction was given to the petitioner-Trust to handover the actual physical possession of the flat in question, complete in all respects, as per the scheme/ brochure against which an appeal was filed on 29.09.2017 before the State Consumer Disputes Redressal Commission, Punjab, which was also dismissed on 29.09.2017. It was noticed that it was not the case set up by the petitioner-Trust before the Appellate and Revisional Courts that the possession, complete with all amenities and basic facilities, had been offered for delivery to the consumer. It was thus concluded that the possession had not been delivered by the petitioner-Trust to the consumer even till 29.09.2017 when its appeal was dismissed by the State Consumer Disputes Redressal Commission. The Revision filed by the petitioner-Trust before National Consumer Disputes Redressal Commission was also dismissed on 05.06.2018 and even at that point, no document reflecting offer of possession, on completion of all the basic amenities and facilities, had been filed. There was thus no finding recorded about the actual offer or delivery of possession. It was noticed that the Forum directed the petitioner-Trust to place on record the documents regarding providing the basic amenities on 07.11.2016 but the petitioner-Trust did not place the record qua providing basic amenities and facilities at site. It was also noticed that the Execution Petition was adjourned vide order dated



09.11.2017 with a direction to the petitioner-Trust to produce the completion certificate by 28.12.2017, however, the same was still not produced by the petitioner-Trust. It was hence concluded that it would be incomprehensible that the petitioner-Trust would not be in possession of the said documents or the details in relation to providing basic amenities and facilities as also delivery of possession and that it deliberately withheld the same. It was under the said circumstances and considering that the State Consumer Disputes Redressal Commission dismissed the appeal preferred by the petitioner-Trust on 29.09.2017; the Revision filed on 28.12.2017 and the National Consumer Disputes Redressal Commission dismissed the Revision Petition on 05.06.2018 and no documents established delivery. It was hence as a balance that the date of actual delivery of physical was computed as 31.03.2018 since no claim of actual delivery was established at the time of filing of Revision in December, 2017 or decision of Revision in June, 2018.

26. The objections/claim of the petitioner-Trust against computing the date of delivery of possession was re-appreciated in the First Appeal by the State Consumer Disputes Redressal Commission and it agreed with the reasoning given by the District Consumer Disputes Redressal Forum, Patiala, and dismissed the said appeal. The petitioner also withheld the requisite documents and no satisfactory explanation has been given about failure to produce the same in support of establishing providing of the basic amenities and facilities at site and delivery of actual physical possession.

27. The petitioner-Trust cannot claim itself to be a victim when it



has withheld the best document in its possession, despite being given repeated opportunities by the Consumer Forum/Commission and also having availed the opportunities to produce the requisite document before the Executing Court as also before this Court at the time of preferring the instant writ petition. The plea of the petitioner-Trust that the assessment arrived at by the Consumer Fora was not based on the consideration of the documents thus cannot be accepted at this juncture.

28. Consequently, there was no other way with the Fora but to ascertain the date of physical possession on the basis of contemporaneous evidence and the circumstances including the contemporary proceedings that were initiated at the behest of the petitioner-Trust before the Appellant as well as the Revisional Commission. Under the given circumstances, it cannot be accepted that the date of offer of possession as 05.04.2016, as claimed by the petitioner, is the date of offer of actual physical possession. Hence, no benefit of doubt can be extended to the petitioner-Trust and all such benefits have to enure in favour of the allottee.

29. The High Court while dealing with the issue pertaining to matters arising from the Consumer Fora, which have already been appreciated and verified in an Appeal by the Appellate Authority and revision does not sit as a Court of Appeal. If a discretion has been exercised by the Consumer Fora on the totality of circumstances, and such discretion is not illegal, perverse or untenable or is based upon gross misreading of documents on record, the High Court, in exercise of its powers of judicial



review, does not substitute its own opinion for that of the competent authority.

30. Under the totality of the circumstances and considering that no document has been produced by the petitioner to contradict the finding recorded, determination of date of offer of actual possession as 31.03.2018 by the Executing Court cannot be said to suffer from any illegality or stated to be contrary to the documents already on record. Hence, **the present petitions are liable to be dismissed.**

31. **Ordered accordingly.**

(VINOD S. BHARDWAJ)
JUDGE

21.05.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No