

2024.PHHC.140965



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-14082-2024 (O&M)
Date of Decision: 15.10.2024**

FUTURE CITY DEVELOPERS PRIVATE LTD.

... Petitioner

VERSUS

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION,
NEW DELHI AND OTHERS.**

... Respondents

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

Present: Mr. Arpit Chawla, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

CM-15152-CWP-2024

Allowed as prayed for.

The Annexures P-10 to P-13 are ordered to be taken on record subject to all just exceptions. Registry is directed to tag the same at appropriate place of the paper book and page mark the same.

MAIN CASE

Challenge in the present petition is to the Award dated 20.03.2024 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short 'National Commission') whereby it has allowed the appeal preferred by respondents No.3 and 4-complainants and modified the Award dated



28.02.2022 passed by State Consumer Disputes Redressal Commission, Punjab, Chandigarh (for short 'State Commission') in their favour, to the extent that while the State Commission had directed a refund of Rs.36,79,200/- alongwith interest @ 9% per annum from the date of deposit of the amount alongwith compensation, the National Commission has directed delivery of possession of the flat in question to respondents No.3 and 4-complainants failing which the penal interest has been levied on the petitioner.

Briefly summarized, the facts of the present case are that the petitioner-developer has approached this Court impugning the Award passed by the National Commission and claiming that it had obtained licence from the Competent Authority to develop a residential project in Sector 115, Kharar-Landran Highway, Tehsil Kharar and District Mohali by the name as 'Casa Homes'. It is averred that as per Section 14 of the PAPRA Act, 1995, it is the obligation/responsibility of the builder-promoter to obtain Completion/Occupation Certificate from the Competent Authority, within a reasonable time, after the completion of the development works, as per the terms and conditions of the licence.

The respondents No.3 and 4-complainants had jointly applied for a flat in the said project vide application dated 21.03.2018, whereupon they were allotted Apartment No.D-2 having Carpet Area of 1350 Sq. Feet, Type 3BHK on ground floor in Tower/Block/Building No.D in the above project vide allotment letter dated 07.04.2018 against a total cost of Rs.40,88,000/-. An agreement for sale was thereafter executed between the parties in respect of the



Unit on 08.04.2018. The possession of the said Unit was to be handed over on or before 31.03.2018 which could be extended upto 31.07.2018.

The respondents No.3 and 4-complainants hence got a loan sanctioned for Rs.38,99,000/- from the Punjab National Bank and also paid a sum of Rs.36,79,200/- but despite the abovesaid payment having been made, the possession of the dwelling unit was not handed over even till the extended period i.e. by September, 2018. Repeated requests were made by the respondents No.3 and 4-complainants to deliver the possession of the apartment alongwith Completion/Occupation Certificate, after obtaining the same, but to no avail. The respondents No.3 and 4-complainants also requested the petitioner-developer to remove the deficiencies but even the same were not resolved. Despite the same and despite the non-removal of the defects, the possession letter dated 03.03.2019 was sent, however, no Completion/Occupation Certificate had been obtained by even till then. Hence, offer of such possession letter is not a valid offer in law as the allottee is in no position to shift to the premises.

Having failed to secure any relief from the petitioner, the respondents No.3 and 4-complainants instituted a Consumer Complaint No.483 of 2019 before the State Commission praying for delivery of possession of the apartment after obtaining necessary Completion/Occupation Certificate and also to pay compensation for the delay in offer of possession and to pay interest on the same.



The petitioner-developer entered appearance and raised its various objections including that the projected date of completion of projection was 20.11.2020 and that the respondents No.3 and 4-complainants are not consumers since the apartment in question was purchased for a profit motive. The petitioner-developer, however, admitted that the respondents No.3 and 4-complainants had purchased the apartment in question and also admitted of the issuance of allotment letter executed between the parties and also did not dispute the payment received by it. It was, however, alleged that lastly 15% amount was remitted by the respondents No.3 and 4-complainant only in August 2018 and as such, the possession could not have been delivered by 31.07.2018. It was alleged that balance amount is still outstanding and that respondents No.3 and 4-complainants were themselves deficient in complying with the contractual obligations.

The parties led their respective evidence in support of their respective claims and contentions. On consideration of the same, the State Commission allowed the complaint filed by the respondents No.3 and 4-complainants and directed the petitioner-developer to deliver possession of the apartment after obtaining Completion/Occupation Certificate from the Competent Authority and subject to the respondents No.3 and 4-complainants paying the balance 10% sale consideration, or in the alternative, in the event the petitioner-developer fails to deliver the possession of the flat/apartment after removing the defects and after obtaining Completion/Occupation Certificate, it was directed to refund the entire amount of Rs.36,79,200/- along with interest



@ 9% p.a. with effect from the date of its payment till its actual realization.
The operative part of the Award dated 28.02.2022 passed by the State Commission in Consumer Complaint No.483 of 2019 is extracted as under:

“13. Consequently, we allow the complaint of the complainant against OPs No.1-3 and dismiss qua OP No.4-Bank, as Bank is perform party in this case and issue the following directions to OPs No.1-3:-

i. to deliver the possession with occupation/completion certificate of the apartment/flat, in question to the complainants after removing the above noted defects/discrepancies; and complainants are directed to pay 10% remaining amount of basic sale price.

OR

If OPs No.1-3 fail to deliver the possession of the apartment/flat after removing the defects and after issuing completion/occupancy certificate then they are directed to refund the amount of Rs.36,79,200/- along with interest @ 9% per annum, w.e.f. the dates of payments till realization.

ii. to pay an amount of Rs.50,000/- as compensation for causing harassment and mental agony.

iii. to pay an amount of 5,000/- as litigation expenses.”

Still aggrieved of the said Award, the respondents No.3 and 4-complainants preferred First Appeal No.287 of 2022 before the National Commission claiming that the option given to the petitioner-developer to refund the entire amount alongwith interest @ 9% p.a. was detrimental to their interest



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and that the petitioner-developer should be asked to obtain the Completion/ Occupation Certificate and to deliver the possession of the plot.

The point for consideration which came up before the National Commission is extracted as under:

“7. The short point that falls for our consideration is whether the order of the State Commission is in line with the prayer of the Appellants insofar as the delivery of possession with Occupation/Completion Certificate of the Apartment in question, after removal of defects as pointed out by them and whether the direction in the alternative to refund the amount of Rs.36,79,200/- alongwith interest @ 9% p.a. from the dates of payment till realization alongwith Rs.50,000/- for harassment and mental agony and Rs.5.000/- as litigation costs is in order.”

It had been argued before the National Commission on behalf of respondents No.3 and 4-complainants that even as per the case of the respondent (petitioner-developer herein), the construction of the building was already complete and it had already initiated the process of obtaining the Completion/ Occupation Certificate and that as per the judgment of Hon'ble Supreme Court in the matter of ***Wing Commander Arifur Rahman Khan Versus DLF Southern Homes Pvt. Ltd. and others*** reported as ***(2020) 16 SCC 512*** as well as in the matter of ***Experion Developers Pvt. Ltd. Versus Sushma Ashok Shiroor, bearing Civil Appeal No.6044 of 2019*** decided on ***07.04.2022***, an allottee is entitled for possession, alongwith compensation for delay in possession. Since the petitioner-developer had claimed that the construction is



already complete and it has already submitted an application for getting a Completion/Occupation Certificate, hence, primary relief of possession ought to have been protected.

Learned counsel for the petitioner-developer, on the other hand, had raised an argument before the National Commission that respondents No.3 and 4-complainants are entitled to seek possession of the apartment under Punjab Apartment and Property Regulation Act (PAPRA), 1995 only on payment of full sale consideration and that as per Section 14 (1) of PAPRA, 1995 even an allottee of the apartment may apply for Completion/Occupation Certificate from the concerned Authority. It was contended that since the petitioner-developer is no more at fault, hence, he cannot be forced to obtain a Completion/Occupation Certificate since said aspect is solely within the domain of the concerned Authority and not under the control of the petitioner-developer and that it is still ready and willing to refund the entire amount, as directed by the State Commission, alongwith interest.

After noticing the rival contentions of the respective parties, the National Commission allowed the appeal filed by the respondents No.3 and 4-complainants and directed the petitioner-developer to offer possession of the apartment in question within 45 days from the date of order after obtaining the Completion/Occupation Certificate and subject to the respondents No.3 and 4-complainants paying the balance 10% amount of the sale consideration. A further direction to compensate respondents No.3 and 4-complainants for delay in handing over the possession @ 6% simple interest was also issued to the



petitioner-developer. It was specifically noticed by the National Commission that no prayer for refund of the amount was even made by the respondents No.3 and 4-complainants and that the sole prayer before the Consumer Fora was that the possession of the apartment be delivered to them. The operative part of the Award passed in Appeal by the National Commission is extracted a sunder:

"10. From the foregoing, it is apparent from the facts of this case, it is manifest that the Appellants did not make a prayer of refund. The primary direction in the impugned order is to deliver possession with Occupation Certificate after removal of defects subject to Appellants paying 10% of the Basic Sale Price. It is not the contention of the Respondent that the project or the Apartment in question has not been completed. The order of the State Commission in directing the Opposite Parties No.1 to 3 to refund the amount of ₹36,79,200/- along with interest 9% p.a. from the dates of payment till realization is the alternative direction, in case possession of the Apartment after removal of defects along with Completion/Occupation Certificate does not fructify. The moot issue is of delivery of the Apartment with rectifications of defects along with Occupation/Completion Certificate in order to convey complete legal title. The impugned order has primarily ordered the same. There is also merit in the contention of the Appellants that neither any time frame for such delivery after rectification of defects along with Occupation/Completion Certificate has been prescribed nor any compensation for the period of delay ordered by the State Commission in the Impugned order even though delay is held as established. Once deficiency in service under Section 13 of the Act has been determined, any direction in line with the prayer should necessarily be accompanied with the prescription of



a definite time for compliance in order to ensure that the provisions of Section 14 are achieved.

11. In the instant case, while directing possession with Occupation/Completion Certificate after removal of the defects, the State Commission has omitted to prescribe a timeline for the compliance of this direction thereby making the direction open ended and without binding the Respondent to comply with the order in a prescribed period of time. Instead it has chosen to provide an alternative remedy, which had not been prayed for. Even this direction is without prescription of any timeline. There is no direction with a timeline with regard to the Completion Certificate also. The contention of the Respondents that the Appellants as allottees are required to apply to the concerned Authorities to obtain the Completion Certificate cannot be accepted. It is the duty of the Builder to not only apply for and obtain the sanctioned building plan, but also to obtain the Occupation/Completion Certificate from the concerned Town and Country Planning Authority/ Municipal Authority certifying that the Apartment/Flat built by it confirms to the requisite building plan and the building regulations in force. It cannot, at this stage, require the allottee/Appellant to knock the doors of various departments for the same. Such an argument is contrary to the relevant laws pertaining to Urban Development and is an evidence of an unfair trade practice on the part of the Builder/Respondent.

12. Its other argument that since the Agreement was not a registered document under the PAPRA, the appellants cannot claim any relief with regard to delay in completion of the project, appears to be an attempt to try and escape from the liabilities of the Agreement with regard to the penalties it is liable for. The registration of any document under the Act is a responsibility cast



upon the builder and it cannot seek to extricate itself from the liabilities thereunder on this unconscionable pretext.

13. *In the instant case, the delay in completion of the project is evident from the fact that the offer of possession was issued on 03.03.2019 whereas the Agreement dated 08.04.2018 had clearly stated that the OPs had agreed to deliver possession by 31.03.2018, extendable upto 31.07.2018. Significantly, this possession was to be along with basic amenities and Occupation Certificate. It is not the case of the Respondents that the project was delayed on account of any attenuating force majeure circumstances. The only ground urged is that the Appellants were defaulters in making the payments. Notwithstanding the same, demand notices were issued by the Respondent for payments. There was no cancellation of allotment also. Therefore, the contentions of the Respondents failed to convince us and are accordingly, not acceptable.*

14. *The direction in the impugned order to deliver possession with Occupation/Completion Certificate of the Apartment after removing all the defects subject to Appellants paying the balance sale consideration cannot be found fault with. We find merit in the Appellants' reliance on **Arifur Rehman Khan (supra)** and **Sushma Ashok Shiroor (supra)**. However, as held by the Hon'ble Supreme Court in **DLF Homes Panchkula Limited vs. D. S. Dhanda etc., Civil Appeal No.4910-4941 of 2019**, decided on 10.05.2019 that awarding of compensation under multiple heads for a single deficiency in service is not justified.*

15. *In view of the arguments above, we see merit in the impugned order of the State Commission. The impugned order is liable to be upheld with certain modifications. Consequently, the impugned order is affirmed with the modifications as below:*



- (i) *the Respondent shall comply with the direction of the State Commission to offer possession of the flat in question within 45 days of this order and hand over possession of the flat within 45 days thereafter;*
- (ii) *the Appellants shall make the payment of the final instalment of 10% dues along with other statutory and other charges payable at the time of possession within 30 days of receipt of such a demand being made by the Respondent who shall also execute the Sale Deed and Deed of Conveyance;.*
- (iii) *the Respondent shall compensate the Appellant for the delay in handing over possession @ 6% p.a. simple interest on the deposited amount from the extended date of promised possession, i.e., 31.07.2018 till the date of offer of possession along with the Occupation Certificate within 8 weeks failing which it shall attract a penal rate of interest of 9% p.a.*
- (iv) *Respondents shall also pay the litigation expenses of ₹25,000/- to the Appellants.*
- (v) *The direction to refund the amount deposited with interest @ 9% p.a. is set aside.*

16. *Pending IAs, if any, stand disposed of with this order."*

Aggrieved thereof, the petitioner-developer has approached this Court.

The prime argument raised by the counsel for the petitioner-developer is that the petitioner-developer has undertaken/performed its part of obligation by submitting an application for grant of Completion/Occupation



Certificate on 02.03.2021. It has also been argued that vide letter No.360 dated 26.02.2021 issued by M.C., Kharar, a demand of Rs.41,78,516/- was conveyed to it, which such amount is also claimed by the petitioner-developer to have been deposited on 01.03.2021. It was contended that the petitioner-developer having performed its part of the obligation, it cannot thereafter be bound down to obtain the Completion/Occupation Certificate since the same is not within his dominion and is required to be issued by the M.C., Kharar. It is thus argued that the direction to obtain Completion/Occupation Certificate and to thereafter handover possession cannot be complied with by the petitioner-developer and that it is still ready and willing to refund the amount as per the directions given by the State Commission.

It is also argued by the counsel for the petitioner-developer that as per the provisions of Section 14 (1) of the PAPRA Act, 1995, even an allottee can apply for Completion/Occupation Certificate and that respondents No.3 and 4-complainants cannot bind the petitioner-developer to obtain the Completion/Occupation Certificate as a pre-requisite of the delivery of possession and that in the event of a deficient action by the petitioner-developer, the allottee can initiate the process of issuance of Completion/Occupation Certificate at his own.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.



I do not find myself in agreement with the arguments advanced by the counsel for the petitioner-developer. As many as five opportunities had been granted by this Court to the petitioner-developer to establish that it had complied with the formalities and directions issued by the M.C., Kharar. By virtue of a misc. application bearing No.CM-15152-CWP-2024, certain additional documents have been placed on record by the petitioner-developer, as per which a communication for a sum of Rs.41,78,516.12/- was sent by the M.C., Kharar to the petitioner-developer for compoundable construction, which it claims to have been paid. The petitioner-developer has withheld the details of the submission of application and subsequent correspondence, that may have been issued by the M.C., Kharar. Even the terms and conditions for Completion/Occupation Certificate, as were required to be fulfilled, have not been informed. The petitioner-developer has also chosen to withhold whether all development works (internal and external) have been completed by it as are necessary to be completed before grant of a Completion/Occupation Certificate.

During the course of hearing, counsel for the petitioner-developer made a reference to a deposit receipt for a sum of Rs.41,78,516/-, however, even the mode of payment of said money has not come forth. On a specific query posed to the counsel for the petitioner-developer as to when and by which mode, the abovesaid amount was paid to the M.C., Kharar, he is not in a position to refer to any document, on the strength whereof transfer of said amount can be deemed to have been established.



A specific query was also posed to the counsel for the petitioner-developer as to what steps were taken by the petitioner-developer for ensuring that the Completion/Occupation Certificate is issued, in case the petitioner-developer was not in default of any of the terms and conditions of the licence granted and had undertaken all the development works as were required to be done by him. He has failed to give any explanation for the petitioner-developer in not taking any action and instead awaiting the pleasure of the M.C., Kharar to issue of a Completion/ Occupation Certificate.

I am *prima facie* of the opinion that the concealment of the entire correspondence pertaining to the grant of Completion/Occupation Certificate despite the order passed by this Court on 01.08.2024, leads to an adverse inference to be drawn against the petitioner-developer. This Court is thus constrained to come to a conclusion that the petitioner-developer itself has dishonestly managed that the Completion/Occupation Certificate is not issued and the same is being unnecessarily delayed. The failure on the part of the petitioner-developer in not initiating due action as per law for seeking Completion/Occupation Certificate (in case all the conditions have already been fulfilled by the petitioner-developer) does not inspire any confidence and rather, persuades this Court to come to a conclusion that the misconduct/deficiency is on the part of the petitioner-developer itself.

Now adverting to the second argument of counsel for petitioner-developer to the effect that an allottee himself is at liberty to apply for Completion/Occupation Certificate, I find that such an argument itself stems



from a defiant and deficient developer, who wants to pass its responsibility on an allottee to deny relief to the allottee. There is also no specific averment or evidence to establish that the necessary terms and conditions of the licence for issuance of Completion/Occupation Certificate had been fulfilled by the petitioner-developer. Under the given circumstances, it would be difficult for this Court to accept that despite deposit of the fee, which is claimed to have been paid on 01.03.2021, the petitioner-developer would not take any steps against the Authorities for issuance of Completion/Occupation Certificate, more so, when the allottees are striving hard for seeking delivery of possession after issuance of Completion/Occupation Certificate and the petitioner-developer claims that it has been defending itself in the said proceedings with full force. Despite the same, the failure of the petitioner-developer to initiate prudent steps, which any genuine person would have taken under such circumstances, raises a doubt against the intent of the petitioner-developer. I find that the institution of the present petition is only a further attempt on the part of the petitioner-developer to harass the respondents No.3 and 4-complainants still further by instituting frivolous complaints instead of performing its part of obligation.

The present petition is accordingly dismissed in *limine* imposing a further cost of Rs.1,00,000/-, in addition to the directions already issued by the National Commission, to be deposited by the petitioner-developer with the Poor Patients Welfare Fund, PGIMER, Chandigarh. It is further ordered that in case the possession is not delivered by the petitioner-developer to the respondents

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No.3 and 4-complainants after obtaining Completion/ Occupation Certificate within a period of 45 days from the date of receipt of certified copy of this order, the petitioner-developer shall be liable to pay an additional costs to the tune of Rs.1,00,000/- for every three months' delay in delivery of possession and the said costs shall also be deposited with the Poor Patients Welfare Fund, PGIMER, Chandigarh.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

15.10.2024.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No