

2024:PHHC:119662



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

237

**CWP-18905-2022 (O&M).
Date of Decision: 11.09.2024.**

KAMAL GROVER

.. Petitioner

Versus

MONA TOWNSHIP PVT. LTD. AND OTHERS

... Respondents

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

Present: Mr. Gaurav Chopra, Sr. Advocate, with
Mr. Reshabh Bajaj, Advocate,
for the petitioner.

None for respondents No.1 to 3.

Mr. Tejasvi Sheokand, Advocate,
for respondent No.4.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the order dated
25.04.2022 (Annexure P-1) passed by respondent No.5-National Consumer
Disputes Redressal Commission, New Delhi in First Appeal No.609 of
2020 titled as 'MTPL and another Vs. Kamal Grover and others and First
Appeal No.730 of 2020 titled as 'Vishwanath Gupta @ Bitti Vs. Kamal

2024:PHHC:119662



Grover' to the extent of illegal modification done in the directions issued to respondents No.1 to 3.

2 It is averred that while upholding the findings of the State Consumer Disputes Redressal Commission in toto with respect to the deficiency in service, the respondent No.5-National Consumer Disputes Redressal Commission, New Delhi, has modified the relief granted to the petitioner by the State Consumer Disputes Redressal Commission by denying the benefit of recovery of pre-EMI/EMI installment on the respondent developer as per the terms of the agreement (Annexure P-5). The relief for compensation to the petitioner for harassment as well as litigation expenses has also been taken away without assigning any reason. Thus, the order passed by respondent No.5-National Consumer Disputes Redressal Commission, New Delhi, to the extent of modification of the relief granted to the petitioner is illegal. The operative part of the said order reads thus:-

“17 After analyzing the facts and facts and circumstances of the case, we find that there is no doubt to the fact that the Appellants/Builder has only given paper possession of the Unit to the Respondent-1/Kamal Grover vide registration dated 05.01.2018 as it has not obtained Occupancy Certificate till date. The Agreement was signed on 22.08.2017 and as per clause 29(c) of the Agreement the Unit was to be delivered by 07.10.2017 and if we add the additional grace period of 120 days, the Unit was to be delivered on 06.02.2018. It is pertinent to note that even after lapse of more than 4 years from the proposed date of possession, the Appellants/Builder failed to

2024:PHHC:119662



*obtain Occupation Certificate, which clearly indicates deficiency of service on their part in this regard attention is drawn to the recent Order of Hon'ble Supreme Court in **Samruddhi Co- Operative Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction Pvt. Ltd. in Civil Appeal 4000 of 2019, decided on 11th of January, 2022**, wherein, it was held as under:-*

"In the present case, the respondent was responsible for transferring the title to the flats to the society along with the occupancy certificate. The fallure of the respondent to obtain the occupation certificate is a deficiency in service for which the respondent is liable. Thus, the members of the appellant society are well within their rights as 'consumers' to pray for compensation as a recompense for the consequent liability (such as payment of higher taxes and water charges by the owners) arising from the lack of an occupancy certificate".

Further, absence of Occupancy Certificate indicates that the Project/Building is not complete.

18 In view of the discussion above, we are of the considered view that the Order of the State Commission does not suffer from any illegality. We find that there is no merit in the Appeal as no question of law is involved. We, therefore, dismiss both the Appeals by partly upholding the Order of the State Commission by modifying the directions given to the Opposite Parties No 1 to 3 as under:-

2024:PHHC:119662



- a) *To deliver the actual and physical possession of the unit, in question, i.e. J-704, Mona Greens II, Gazipur Road, Zirakpur, complete in all respects with Completion/Occupation Certificate, subject to payment of balance sale consideration by Complainant, if any, without interest and penalty thereon.*
- b) *To pay compensation at the rate of Rs. 5/- per sq.ft. per month on the total area of the flat from the stipulated date of possession i.e. 06.02.2018 till the handing over of the possession as per relief (i).*

3 Aggrieved thereof, the present writ petition was filed wherein notice of motion was specifically issued after noticing the contention of the petitioner that no reasons have been assigned by respondent No.5-National Consumer Disputes Redressal Commission, New Delhi in modifying the relief mentioned at Sr. No.(iii) and (iv) while upholding the award passed by the State Consumer Disputes Redressal Commission.

4 Although Mr. Arun Chandra, Advocate and Mr. N.S. Jagdeva, Advocate, had entered appearance on behalf of respondent No.2 but they stopped appearing since 27.04.2023. Respondents No.1 to 3 were eventually proceeded against ex parte vide order dated 22.05.2024 and the matter was adjourned for awaiting appearance on behalf of the said respondents, however, even today there is no representation on behalf of the said respondents. The matter has accordingly been heard ex parte.

5 Learned senior counsel appearing for the petitioner has contended that no reasoning has been given by the NCDRC in para No.17 of the order extracted above. The National Consumer Disputes Redressal

2024:PHHC:119662



Commission, while upholding the order passed by the State Consumer Disputes Redressal Commission has rather given a finding that the said order does not suffer from any illegality, however, the appeal filed by the respondents has been partly allowed and the relief granted under (iii) and (iv) have been denied. The relief granted by the State Consumer Disputes Redressal Commission is extracted thus:-

(i) to deliver the actual and physical possession of the unit, in question, i.e. J-704, Mona Greens II, Gazipur Road, Zirakpur, complete in all respects, along with agreed facilities and amenities with Completion / Occupation Certificate, subject to payment of balance sale consideration by complainant, if any, without interest and penalty thereon.

(ii) to pay compensation at the rate of Rs.5/- per sq. ft. per month on the total area of the flat from the stipulated date of possession i.e. 06.02.2018 till the handing over of the possession as per relief (i).

(iii) to pay pre-EMI/EMI on the loan amount from the date of disbursal till the handing over of the possession as per relief (i) as per undertaking, Ex.C-3.

(iv) to pay Rs.50,000/- as compensation on account of mental agony and harassment as well as litigation expenses.”

6 The contesting respondent has chosen to abstain from the proceedings. Perusal of the order passed by the National Consumer Disputes Redressal Commission, New Delhi, shows that it fails to give any

2024:PHHC:119662



reason or explanation for modifying the relief already granted to the petitioner, I find that the contentions raised by petitioner in the present writ petition have remained uncontroverted and unrebutted. The present writ petition thus deserves to be allowed.

7 The order passed by the National Consumer Disputes Redressal Commission, New Delhi, dated 25.04.2022, denying the relief granted by the State Consumer Disputes Redressal Commission, under Para no.17 (iii) and (iv) of the relief is held to be bad and is set aside. The award as announced by the State Consumer Disputes Redressal Commission, Punjab, Chandigarh dated 24.02.2020, is affirmed.

September 11, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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