

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

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2024:PHHC:165576-DB



LPA Nos.2782, 2785, 2787, 2788 and 2791 of 2024

Date of Decision: 11.12.2024

Improvement Trust Chotti Bardari, Patiala and anotherAppellant(s)

Versus

K.K. Sachdeva and othersRespondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Ms. Kavita Arora, Advocate,
for the appellants.

G.S.SANDHAWALIA, J. (Oral)

Refiling Applications

Applications for condonation of delay of 50 days in refiling the appeals are allowed, in view of averments made in the applications duly supported by affidavits.

Delay condoned.

CMs stand disposed of.

Filing Applications

Applications for condonation of delay of 53 days in filing the appeals are allowed, in view of averments made in the applications duly supported by affidavits.

Delay condoned.

CMs stand disposed of.

Main Cases

1. Challenge in the present letters patent appeal is to the order dated 21.05.2024 passed by the learned Single Judge in *CWP-6912-2024, Improvement Trust, Chotti Baradari, Patiala and another vs. Sheela Gupta and others* and four other connected matters whereby, the writ petitions were dismissed while upholding the orders of The District Consumer Disputes Redressal Forum, Patiala and The State Consumer Disputes Redressal Commission, Punjab dated 06.08.2021 and 02.02.2022 in execution proceedings.

2. In detailed order, the learned Single Judge came to the conclusion that there was nothing on the record to show that water and sewerage connection had been provided on the site on 05.04.2016, which is the date claimed by the Improvement Trust for completion of the project as such and resultantly, the learned Single Judge upheld the findings of the Forums below that the date of actual delivery of possession was 31.03.2018. Resultantly, the liability as such to pay interest from 31.03.2018, as directed by the Courts below, has been upheld.

3. The dispute arose on account of the culmination of the proceedings in the revision petitions on 05.06.2018 (Annexure P-4) filed by the appellant-Improvement Trust before the National Consumer Disputes Redressal Commission whereby the revision petitions were allowed but the benefit of the interest was given to the allottees at the rate as awarded by the Courts below i.e. @12% p.a. 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 of

Judge recorded that water and sewerage connection had not been provided on the site even on 05.04.2016 and the documents and the status of the delivery of possession were called for by the District Forum on 05.01.2017 and the parties have been directed to submit their respective proofs regarding the delivery of possession. Nothing was brought before the Fora and resultantly, the determination of the date of delivery of actual possession was done from the documents and the pleadings available on the record. It was noticed that the first order was passed on 16.03.2017 (Annexure P-2) and directions were given to the petitioner-Trust to hand over the actual physical possession of the flat in question, complete in all respects. The appeal before the State Consumer Disputes Redressal Commission, Punjab had been dismissed on 29.09.2017 (Annexure P-3), which eventually led to the revision being disposed of on 05.06.2018 (Annexure P-4) and it was noticed that no finding was recorded till then that there was an actual offer of delivery of possession. It was noticed that the execution petition was adjourned vide order dated 09.11.2017 with directions to produce the completion certificate, which was apparently during the pendency of the revision before the National Commission, and on account of the same not being produced, the learned Single Judge has upheld the order as such fixing the date as 31.03.2018 for the purposes of calculating the interest element, which was the date claimed by the complainants. Resultantly, it was held that the Trust also withheld the requisite documents and no satisfactory explanation was given about the failure to produce the same in support of establishing of providing of the basic amenities and facilities at the site and delivery of actual physical possession.

4. In such circumstances, the learned Single Judge came to the conclusion that no benefit of doubt could be extended to the petitioner-Trust to

accept the date as 05.04.2016 and the benefit has, thus, to enure in the favour of the allottee. It was held that while dealing in writ jurisdiction, the discretion which had been exercised by the Consumer Forum on the totality of circumstances was not illegal, perverse or untenable, which would be a ground as such to exercise the powers of judicial review under Article 226 of the Constitution of India and, therefore, the determination of the date of offer of possession as 31.03.2018 by the Executing Court was held to be no suffering from no infirmity or illegality.

5. Counsel for the appellant has vehemently tried to dislodge the findings recorded by the learned Single Judge.

6. We have gone through the paper book carefully and with the assistance of the counsel for the appellant and the order passed by the Executing Court at the District level dated 06.08.2021 (Annexure P-5), which is subject matter of consideration, which would go on to show that finding was recorded that the Trust, though claiming the date of delivery of possession as 05.04.2016, has not produced any documents in support of its claim. Resultantly, it was noticed that in spite the directions given on the first instance on 16.03.2017 (Annexure P-2) to hand over the physical possession of the flat in question, complete in all respects as per the scheme and brochure, it was not done. It was, thus, rightly held that it would have come on record as such that the possession had already been given on a date prior on 05.04.2016, which is now sought to be propounded. The District Forum's order dated 16.03.2017 is the first order which was the subject matter of appeal and in the revision, it would have been clarified at that point of time the date when possession was given and it would not have directed to hand over physical possession of the plot in question,

The appeal having been dismissed on 29.09.2017 (Annexure P-3) would have clarified this aspect which was at the instance of the present appellants and having failed to do so and only having got partial relief in the revision petition, now they cannot claim that the date of handing over of possession is 05.04.2016. The needful could have been again projected before the National Commission when the revision was disposed of on 05.06.2018.

7. It is in such circumstances, we are of the considered opinion that the allottees as such had claimed the benefit of interest from 31.03.2018, though initially, they had claimed benefit of interest from 07.11.2012. It is apparently in such circumstances, the complainants in the revision, had stated that they have no objection if the revision petitions are disposed of in terms of the earlier orders and the benefit of interest is only given from the committed date of delivery of possession. Thus, apparently, on 05.06.2018, having got the possession which is now claimed, which was stated by them to be 31.03.2018, they gave up their claim as such in the revision petition and consented to the orders, as directed by the National Commission. It is also to be noticed that the State Commission, while dealing with the appeals and the execution proceedings, had come to the conclusion that the scope is very limited and the Consumer Forum will not be required to call for any evidence and also came to the conclusion, as noticed by us also, that the District Commission has given a categorical finding that possession was not delivered till 29.09.2017. It was noticed that if any wrong finding had been recorded, which was upheld by the National Commission, it could have been brought to the notice by filing the revision petitions and no modifications have been got done.

above, we are of the considered opinion that the claim as such of 05.04.2016 to be the correct date as such by the appellant-Trust for the purposes of calculating the interest is without any basis in the absence of any material placed on record. The Executing Court has, thus, rightly fixed the date which has been accordingly duly considered by the learned Single Judge by passing a detailed order by referring to all the dates.

9. Accordingly, we are of the considered opinion that the present appeals as such are liable to be dismissed there being no illegality or irregularity in the orders passed by the learned Single Judge or the authorities below.

(G.S. SANDHAWALIA)
JUDGE

11.12.2024
shivani

(MEENAKSHI I. MEHTA)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No