2025 INSC 1149

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3988 OF 2023

RAJNESH SHARMA ... APPELLANT

VS.

M/S. BUSINESS PARK TOWN PLANNERS LTD. ... RESPONDENT

J U D G M E N T

DIPANKAR DATTA, J.

THE APPEAL

1. This appeal assails an order dated 13th January, 2023, passed by the National Consumer Disputes Redressal Commission, New Delhi[1] disposing of a consumer complaint lodged before it by the appellant.

FACTS

2. Facts in brief, necessary for the disposal of the present appeal, are as follows:

a. On 10th March, 2006, the appellant booked a plot[2] in a project of the respondent named Park Land for a total sale consideration of Rs. 36,03,692/- (basic price - Rs. 30,87,000/-). As

[1] NCDRC
[2] Plot bearing no. 2, Block G-4, Phase -2 admeasuring 343 square yards

advance/registration charges, Rs. 7,86,218/- was paid on the same day.

b. On 11th December, 2007, a plot buyer agreement[3] was executed between the parties.

c. As per clause 22 of the AGREEMENT, the possession of the plot was to be handed over within 24 months of sanction of service plans of the entire colony. Furthermore, clause 12 provided that time is of the essence, and in case of default by the buyer, late payment charges at 18% p.a. on the due amount, compounded at the time of every succeeding instalment or three months, whichever is earlier, would be levied by the respondent.

d. By April, 2011, the appellant had paid a sum of Rs. 28,79,065/-. On 13th April, 2011, more than 5 (five) years after the first payment, the respondent informed the appellant that due to changes in the layout plan, it had decided to allot an alternative plot to the appellant. Since the new plot was 7 sq. yards larger than the original plot, the respondent further demanded a sum of Rs. 2,30,784/- as an additional amount. Accordingly, an addendum to the AGREEMENT was executed between the parties on 13th April, 2011. Clause 7 of the AGREEMENT (discussed in the latter part of the judgment) provided for allotment of an alternative plot if a change in layout plan was required by any statutory authority.

[3] AGREEMENT

e. The appellant on 11th March, 2015, paid a sum of Rs. 83,377.67, out of which Rs. 83,300.76 was towards interest @ 18% p.a. charged by the respondent for the appellant's default in making the payments.

f. As per the statement of accounts dated 23rd March, 2015 prepared by the respondent, the appellant had paid a sum total of Rs. 43,13,312.67/-.

g. Aggrieved by the respondent's inaction in allotting the plot, the appellant terminated the AGREEMENT with the respondent *vide* letter dated 27th March, 2017.

h. Thereafter, on 27th March, 2017, the appellant issued a legal notice informing the respondent about such termination and seeking a refund of Rs. 43,13,212/- along with 24% interest p.a. and a sum of Rs. 72,30,000/- on account of loss of appreciation of property.

i. Ultimately, in April 2018, the appellant lodged the consumer complaint[4] before the NCDRC referred to in the opening paragraph.

j. After the lodging of the complaint, the respondent offered the possession of the plot on 8th May, 2018, subject to payment of a further amount of Rs. 7,60,900.33/-.

k. *Vide* the impugned order, the consumer complaint was disposed of with directions to the respondent to refund the entire principal amount of Rs. 43,13,212/- along with simple interest @ 9% p.a.

[4] Consumer Case No. 885 of 2018

from the date of each payment till the date of refund. Additionally, Rs. 25,000/- was awarded towards litigation costs to the appellant.

l. The said order is under challenge before this Court in this appeal at the instance of the partly successful complainant.

IMPUGNED ORDER

3. During the course of hearing before the NCDRC, learned counsel for the respondent offered to repay the principal amount with 9% simple interest per annum. This weighed with the NCDRC, and it ordered accordingly without going into the merits of the case. It is imperative to mention that the impugned order nowhere records that the appellant accepted such an offer. Rather, the NCDRC disposed of the matter merely based on the offer made by the counsel for the respondent.

SUBMISSIONS ON BEHALF OF THE APPELLANT

4. It was submitted by Mr. Vivek Malik, learned counsel appearing for the appellant, that the impugned order is liable to be set aside for more than one reason. *Inter alia*, it was urged that:

4.1 The NCDRC erred in forcing upon the appellant refund of the principal amount paid by him with a meagre simple interest of 9% p.a.

4.2 The appellant paid a total sum of Rs. 43,13,313/-, in instalments, as and when demands were raised by the respondent. Despite booking the plot in the year 2006, the possession thereof was not

delivered until 2018. In such view of the facts, interest @ 9% p.a. was insufficient causing huge loss to the appellant.

4.3 Various additional costs were wrongly charged by the respondent, because of which the appellant ended up paying Rs. 43,13,313/-, whereas the initial sale consideration was Rs. 36,03,692/-. *First*, after allotting an alternative plot in 2011, the respondent demanded a sum of Rs. 2,30,784/-, whereas since the alternative plot was larger by only 7 sq. yards, the correct amount should have been Rs. 73,283/- [Rs. 9,000 (basic rate) x 7 + Rs. 1024 (EDC) x 7 + Rs. 445 (IDC) x 7]. *Secondly,* the developer charged Rs. 4,81,600/- under the head "Enhanced EDC", which is over and above the EDC[5] and IDC[6] specified in the AGREEMENT. *Thirdly*, on 11th March, 2015, four years after the last payment was made in the year 2011, the respondent demanded a sum of Rs. 83,300.67/- towards "interest" on delayed payment without giving any details as to how such an amount was arrived at. The appellant paid the amounts, as demanded, as he did not want to be embroiled in a dispute with the respondent.

4.4 After filing the consumer complaint, the respondent offered possession of the plot on 8th May, 2018, but demanded a further sum of Rs. 7,60,900.33/- [interest of Rs. 83,302/-, electricity and STP charges of Rs. 3,13,250/-, utility connect charges of Rs.

[5] External Development Charges
[6] Infrastructure Development Charges

15,000, GST of Rs. 59,086/-, previous dues of Rs. 70,262.33/- and stamp duty charges of Rs. 2,20,000]. After inviting our attention to the payment plan contained in Schedule I (Schedule of Costs) to the AGREEMENT, which contains details of all the charges payable by the buyer, it was submitted that electricity and STP charges do not find mention in the table and hence could not have been demanded. Furthermore, the respondent sought to charge GST, which was introduced in the year 2017, whereas all the payments were made prior to 2012.

4.5 Preferential location charges (PLC) of Rs. 75,000/-, payable as per Schedule I to the AGREEMENT, was paid by the appellant. However, the respondent, in the offer letter dated 8th May, 2018, sought to charge a sum of Rs. 3,15,000/-, which is unexplained.

4.6 Even after the passing of the impugned order, when the respondent did not make payments within the timeline prescribed by the NCDRC, the appellant (through his power of attorney) approached the respondent for compliance with the impugned order; however, the respondent refused to give money, questioning the authenticity of the power of attorney.

4.7 Thus, the conduct of the respondent has been full of blemishes throughout.

4.8 Finally, the respondent charged the appellant interest @ 18% p.a. whereas agreed to give back to the appellant the principal amount with 9% interest, which is in defiance of logic and reason.

Respondent, for its default, should have been judged by the same standard and made to pay back 18% interest.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

5. *Per contra*, learned senior counsel for the respondent Mr. Nayyar with considerable vehemence supported the impugned order and made fourfold submissions:

5.1 *First*, it was submitted that for grant of relief under the Consumer Protection Act, 1986[7], it is imperative for the consumer to prove actual loss or injury to him due to neglect of the other party. Reference was made to section 14 of the Act, which reads thus:

> 14. Finding of the District Forum.-
> (l) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:-
> (a) …;
> (b) …;
> (c) …;
> (d) to pay such amount as may be awarded by it as compensation to the consumer **for any loss or injury suffered by the consumer** due to the negligence of the opposite party;
> ***
>
> (emphasis supplied by counsel)

Therefore, evidence must be led to prove actual loss suffered by the consumer before the grant of compensation. Grant of compensation cannot be beyond actual loss and cannot venture into the territory of gain-based remedies. In the present case, while the respondent's claim for charging interest @ 18% on

[7] the Act

default is supported by the AGREEMENT, the appellant's claim for grant of interest @ 18% cannot be sustained, as he did not lead evidence to prove actual loss. In support of this proposition, reliance was placed on the judgment of this Court in ***Ghaziabad Development Authority v. Balbir Singh***[8] and ***Fortune Infrastructure v. Trevor D'Lima***[9].

5.2 *Secondly*, a consumer cannot, as a matter of routine, be awarded compensation at the rate charged by the builder under the contract. This Court has consistently granted a 9% interest rate to the consumers for deficiency in services.

5.3 *Thirdly*, this Court has consistently rejected the claims of consumers who claimed parity with builders in the interest charged on delayed payments. Reliance was placed upon the judgment of this court in ***IREO Grace Realtech (P) Ltd. v. Abhishek Khanna***[10] where this Court held:

> 51. We have considered the rival submissions made by both the parties. The delay compensation specified in the apartment buyer's Agreement of Rs 7.5 per square foot which translates to 0.9% to 1% p.a. on the amount deposited by the apartment buyer cannot be accepted as being adequate compensation for the delay in the construction of the project. At the same time, we cannot accept the claim of the apartment buyers for payment of compound interest @ 20% p.a., which has no nexus with the commercial realities of the prevailing market. We have also taken into consideration that in IREO Grace Realtech (P) Ltd. v. Subodh Pawar [IREO Grace Realtech (P) Ltd. v. Subodh Pawar, 2019 SCC OnLine SC 1937] , this Court recorded the statement of the counsel for the developer that the amount would be refunded with interest @ 10% p.a. A similar order was passed in IREO Grace Realtech (P) Ltd. v. Surendra Arora [IREO Grace Realtech (P) Ltd. v. Surendra Arora, 2019 SCC OnLine SC

[8] 2004 5 SCC 65, para 8
[9] 2018 5 SCC 442, paras 19 and 25
[10] (2021) 3 SCC 241

1943] . However, the order in these cases were passed prior to the outbreak of the pandemic.

(emphasis supplied by the counsel)

Similarly, in ***Vidya v. Parsvnath Developers Ltd.***[11], this Court held:

19. Shri Jain therefore submitted that, applying the principle of parity, the learned Commission ought to have awarded the interest @ 24% p.a. It is submitted that, in any case the interest at the rate of only 9% p.a. is not sustainable in law.
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22. However, we find that, insofar as award of interest @ 9% p.a. is concerned, the learned Commission was not justified in the facts of the case to award a lesser interest than even the one agreed upon in the agreement. Undisputedly, the facts of the case show that the project was delayed inordinately. The appellant complainants were made to suffer for long, for no fault of them. In spite of making the entire payment, they were deprived of the possession within the stipulated time.
23. In our view, the learned Commission, at least, ought to have awarded interest @ 12% p.a. in view of Clause 7(b) of the agreement.
24. In the result, the appeal is partly allowed. The direction made by the learned Commission for refund of the entire amount deposited by the appellant complainants is upheld. However, the direction with regard to interest is modified to the extent that it shall be paid @ 12% p.a. from the date of respective deposit till the date of refund. The unpaid amount in terms of the aforesaid shall be paid within a period of three months from the date of this judgment [Vidya v. Parsvnath Developers Ltd., 2022 SCC OnLine NCDRC 522].

In ***Kolkata West International City Pvt. Ltd. v. Devasis Rudra***[12], the builder-buyer agreement imposed an interest rate of 18% on the buyer for its delay in making payments, while the interest rate imposed on the developer was the equivalent of the prevailing savings bank interest of SBI. This Court found

[11] (2024) 9 SCC 651
[12] (2020) 18 SCC 613

the said agreement to be one-sided and modified the NCDRC's order by reducing the interest rate from 12% p.a. to 9% p.a. The relevant passage is reproduced below:

> **7.** It is the above clause which is pressed in aid by the developer. Under the aforesaid clause, any delay beyond 30-6-2009 would result in the developer being required to pay interest at the prevailing savings bank interest of State Bank of India. Interestingly, where the buyer is in default, the agreement stipulates that interest @ 18% from the date of default until the date of payment would be charged for a period of two months, failing which the allotment would be cancelled by deducting 5% of the entire value of the property. The agreement was evidently one-sided. For a default on the part of the buyer, interest @ 18% was liable to be charged. However, a default on the part of the developer in handing over possession would make him liable to pay interest only at the savings bank rate prescribed by SBI. There is merit in the submission which has been urged by the buyer that the agreement was one-sided. The clause which has been extracted in the earlier part of this order will not preclude the right and remedy available to the buyer to claim reasonable interest or, as the case may be, compensation.
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> ******
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> **10.** Having regard to all the facts and circumstances of the case, we modify the order [*Kolkata West International City (P) Ltd.* v. *Devasis Rudra*, 2016 SCC OnLine Ncdrc 2411] of NCDRC by directing that the appellant shall pay interest @ 9% p.a. to the respondent instead and in place of 12% as directed by NCDRC. Save and except for the above modification, we affirm the directions of NCDRC.

Similarly, in ***Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan***[13], this Court upheld an order of the NCDRC which awarded simple interest of 10.7% even though, as per the agreement, the builder was entitled to charge 18% on delay in payments by the buyer.

[13] (2019) 5 SCC 725

5.4 *Fourthly*, if the builder-buyer agreement is found to be one-sided, it cannot be enforced, even at the instance of the buyer.

5.5 *Lastly*, the appellant's allegation of demand of excessive amount is unsustainable because: (i) the PLC was increased on account of allotment of an alternative plot which was on a wider road and had potential of commercial usage; (ii) the interest amount of Rs. 83,300/- was charged on account of delayed payment by the appellant for the period of 2007-2011, and no further interest was charged; (iii) the electrification and STP charges were payable in terms of clause 2.5 (b) and 2.5 (c) of the AGREEMENT; and (iv) GST was charged only for the eligible charges levied for the first time on 8th May 2018 (letter of offer of possession).

ISSUE

6. Whether on facts and in the circumstances of the present case, *viz.* the terms of the agreement, the delay in offering possession, the conduct of the respondent and the interest rate charged by the respondent for default in payment by the appellant, the NCDRC erred in awarding delay compensation @ 9% p.a. instead of a higher rate?

ANALYSIS

7. We start by analyzing the arguments raised by the respondent.

8. It was argued that this Court has consistently rejected the claim of parity raised by buyers. Various judgments of this Court, which were cited, have been noted. On perusal thereof, we find that in all such cases this

Court did not give elaborate reasons for rejecting the claim for parity but reduced/increased the rate of interest based on other factors peculiar to the facts and circumstances of each case, such as the prevailing market conditions, lockdown due to COVID, *et cetera*.

9. To discuss a few, in ***IREO Grace Realtech Pvt. Ltd.*** (supra), this Court did not consider the issue as to whether the buyer can claim parity with the builder in interest rate for default. The buyer claimed interest @ 20% p.a.; however, this Court denied the same finding it to be excessive as per the prevailing commercial realities. Similarly in ***Vidya*** (supra), this Court granted an interest rate of 12%, not by applying the principle of parity but after finding that the grant of an interest rate of 9% by the NCDRC, even when the agreement provided for a grant of interest of 12%, was very low.

10. Therefore, it cannot be said that this Court has always rejected the claim of parity.

11. Suffice it to say, there is no principle of law that interest in default charged by the builder can never be granted to the buyer.

12. Law is well settled that the amount of interest should be reasonable. What is reasonable varies from case to case. The same is to be granted considering the facts and circumstances of each case. The series of judgments cited by the respondent to buttress its argument that this Court has consistently granted interest @ 9% p.a. will make no difference to the decision in this *lis*, as all the said cases were decided in light of the peculiar facts of each case.

13. We now proceed to determine if the grant of interest awarded by the NCDRC was reasonable considering the facts and circumstances of the present case.

14. As per clause 22 of the AGREEMENT, possession of the plot was to be handed over within 24 months of sanction of service plans of the entire colony. Admittedly, no offer for possession was made until the year 2018. The conduct of the respondent in the interregnum is also worthy of a discussion.

15. In April, 2011, the respondent invoked clause 7 of the AGREEMENT, and allotted an alternative plot to the appellant. The reason cited for such allotment was "due to changes in the layout plan". Clause 7 of the AGREEMENT reads as follows:

> The Seller/Confirming Party is in the process of developing Parklands in accordance with tentative and consolidated layout plan for the entire colony, as submitted to the Statutory /Competent Authority for final approval, which have been explained to and understood by the Purchaser(s).
> However, if any changes in the said layout plan and/or drawings are required by any statutory authority(s) of Govt., Or otherwise, the same may be effected suitably, to which the Purchaser(s) hereby agrees and has given his consent to the Seller to carry out the same.
> Provided, however, if as a result thereof, there by any change in the location, preferential location, number, boundaries or area of the said Plot, the same shall be valid and binding on the Purchaser(s). Further, if there is any increase or decrease in the area of the said Plot, revised price shall proportionally be determined by the Seller/Confirming Party on the basis of the original price.
> If any preferentially located Plot, ceases to be so located, the Seller/Confirming Party will be liable only to refund without interest such extra charges paid by the Purchaser(s), for such preferential location. The Purchaser shall not raise any objection and shall have no claim monetary or otherwise of any nature whatsoever in this regard.

16. Clause 7 provides that the location of the plot may be changed if the government or any statutory authority requires a change in the existing layout plan. During arguments, we enquired of Mr. Nayyar for the

respondent to show the basis for invoking clause 7 of the AGREEMENT, i.e., to show us that the layout plan was sought to be changed by the government or statutory authority. In answer thereto, it was submitted that the alternative allotment was made in the year 2011; however, till 2018, the appellant raised no demur as regards the same. The answer is neither here nor there. Whether or not the appellant raised a demur is not relevant for validation of the respondent's conduct. Also, the basis for offering such alternative allotment has not been disclosed in the written submissions filed by the respondent.

17. Be that as it may, the possession of the alternative plot (allotted in the year 2011) was offered only in the year 2018.

18. Having noted thus, we agree with Mr. Nayyar that before compensation can be granted by the NCDRC, actual loss must be proved to have been suffered by the consumer. The objective of granting compensation cannot be altered such that it amounts to a windfall gain to the other party. Proof of actual loss would require evidence to be tendered, for, it is a guiding lamp for grant of compensation. Be that as it may, in this case, we are not deciding the actual loss suffered by the appellant. We are only concerned with deciding the rate of interest to be awarded to the appellant on the principal amount paid by him to the respondent.

19. Keeping in mind the overall conduct of the respondent: the delay caused by it in offering the plot, the fact that the respondent charged the appellant delay compensation @ 18% p.a. on the due amount, and the long wait that the appellant had to endure over a period of a decade,

causing harassment and anxiety, which are writ large, we find that this is an appropriate case where refund of the principal amount with interest @ 9% p.a., as awarded by the NCDRC, will not serve the ends of justice.

20. In view of the conduct of the respondent, it cannot be permitted to escape with a nominal liability for its default, while it charged interest @ 18% on default committed by the appellant. Although, the rate of interest charged by the builder cannot be granted to the buyer as a rule of thumb, however, in the present case, equity and fairness demands that the respondent be put to the same rigours for charging 18% interest and face consequences similar to those imposed on the appellant for default committed by him. If we hold otherwise, we will be perpetuating a manifestly wrong bargain.

21. We, therefore, substitute the rate of interest awarded by the NCDRC and increase it from 9% to 18% per annum, while keeping the other terms intact. Respondent shall refund the requisite amount within a period of two months from date.

22. The appeal is, accordingly, partly allowed, without any order for costs.

.....J.
(DIPANKAR DATTA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
SEPTEMBER 24, 2025.