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WHETHER COMPENSATION CLAUSE STIPULATED BY DEVELOPER IN FLAT BUYERS AGREEMENT, FOR DELAY IN POSSESSION WILL APPLY WHEN THE CONSUMER IS SEEKING REFUND?

Recently, the National Consumer Dispute Redressal Commission, in the case of **Puneet Malhotra and Ors. V. Parsvnath Developers Ltd.** [Consumer Complaint Nos 232, 233 and 293 of 2014 and IA/9215/2014] decided on, **29.01.2015** heard three complaints against Parsvnath Developers Limited ('Developer') together in this matter. In all three complaints, the complainants had booked a flat in different projects by the Developer in Greater Noida and paid 95% (Ninety Five percent) of the total sale consideration. The complainants in all three complaints took loan from banks for the purpose of making the sale consideration and are paying interest on the loan amounts. In all three complaints the flat-buyers agreements were executed in the time span of 2007-2008 with a promise to complete construction in 36 months. However, till the date of filing the complaint, i.e. in the year 2014, the construction was nowhere near completion.

On account of this alleged inordinate delay in construction, the complainants were no longer interested in waiting to avail possession of the apartments and sought refund of the sale consideration paid by them with an interest at 18% or 24% per annum.

Since the Developer refused the demands of the complainants, the Complainants approached the National Commission to avail the refund along with interest for the delayed period.

The Developer resisted the demands of the complainants on the grounds that the interest rate sought were excessive and should be refunded amounts and compensation in terms of the flat-buyers agreement. The Commission held that the clause for compensation in the flat-buyers agreement may apply only in cases where construction of flat is delayed and despite the delay the buyer is willing to accept possession. Thus, the clause regarding compensation will not be applicable to the complaints in the current case as the complainants are not interested in the flat at all and are seeking refund.

Regarding the percentage of interest to be paid to the complainants, the Commission opined that ideally, since the Developer demands an interest at the rate of 24% in case of delay on the buyers' part, in the event of delay on the Developer's part, the rate of interest should be 24%. However, the Commission decided that keeping in mind the

escalation of the price of land and other factors, the rate of interest at 18% would be sufficient compensation, in these cases, along with refund of the sale consideration paid by the complainants.

Relevant Excerpts of the order:

"In our opinion, the aforesaid Clause applies only in a case where construction of the flat is delayed but despite delay, the buyer accepts possession of the said flat from the seller, and consequently, accounts have to be settled between the parties. At that stage, the buyer would pay the agreed holding charges to the seller, who will pay the agreed compensation on account of delaying the construction of the flat. The aforesaid Clause, in our opinion would not apply to a case where the buyer, on account of the delay on the part of the seller in constructing the flat, is no more interested in the flat subject matter of the agreement and wants to take refund of the amount, which he had paid to the seller. In any case, such a clause, where the seller, in case of default on the part of the buyer, seeks to recover interest from him at the rate of 24% per annum will amount to an unfair trade practice since it gives an unfair advantage to the seller over the buyer. We may note here that the enumeration of the unfair trade practices in Section 2(r) of the Act is inclusive, not exhaustive.

10. The next question which arises for our consideration is as to how much interest the opposite party should pay to the complainants on the amount, which they had deposited with it. Admittedly, as per the agreement between the parties, the complainant was required to pay interest @ 24% per annum in the event of delay on his part in making payment to the opposite party. Logically, if the seller is charging interest from the buyer @ 24% per annum, it should have no hesitation in paying the interest at the same rate to him in the event of its failure to complete the construction of the flat within the time frame agreed between the parties. Moreover, we cannot be oblivious to the fact that had the opposite party not agreed to construct the flat in question within the time stipulated in the Flat-Buyers Agreement, the complainants who were in need of residential accommodation would have looked for alternative accommodation instead of tying their funds with the opposite party. It can hardly be disputed that there has been steep appreciation in the market value of the land and the cost of construction of the residential flats in Greater Noida in the last about 7-8 years and consequently, presently the complainants cannot get a comparable flat either at the same price from which the opposite party agreed to charge from them or even at the aforesaid agreed price plus interest thereon @ 18% per annum..."

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