

ITEM NO.123

REVISED
COURT NO.11

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 9164/2019

EXPERION DEVELOPERS PRIVATE LTD.

Appellant(s)

VERSUS

SANJEEV RAMPAL

Respondent(s)

(IA No. 184833/2019 - PERMISSION TO FILE LENGTHY LIST OF DATES
IA No. 184832/2019 - STAY APPLICATION)

WITH C.A. No. 3771/2020 (IA No. 81956/2020 - STAY APPLICATION)

Date : 13-07-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE SANJAY KAROL

For Appellant(s) Mr. Gagan Gupta, AOR
Ms. Namitha Mathews, Adv.
Ms. Poorva Pant, Adv.

For Respondent(s) Mr. Siddharth Mittal, AOR
Mr. Kshitiz Chauhan, Adv.
Mr. Prabhat Kumar, Adv.
Mr. Vaibhav Tomar, Adv.
Mrs. Shilpa G Mittal, Adv.

Mr. Pradeep Mahajan, Adv.
Mr. Sudhir Mahajan, Adv.
Mr. Tushar Mahajan, Adv.
Mr. Bhavan Mahajan, Adv.
Mr. Ajit Kumar Ekka, AOR

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal No.9164 of 2019 is partly allowed and
Civil Appeal No.3771 of 2020 is dismissed in terms of the
signed order.

Pending applications also stand disposed of.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER

(Signed order is placed on the file.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s).9164 OF 2019

EXPERION DEVELOPERS PRIVATE LTD.

Appellant(s)

VERSUS

SANJEEV RAMPAL

Respondent(s)

WITH

CIVIL APPEAL NO.3771 OF 2020

Civil Appeal No.3771/2020

1. Heard the learned counsel appearing for the parties.
2. The appellant is a builder and developer who was the opposite party before the National Consumer Disputes Redressal Commission (for short 'the Commission'). Facts are simple. An agreement was executed by and between the appellant and the respondent on 12th March, 2013 under which the appellant agreed to sale an apartment to the respondent. It is not in dispute that the construction was to be completed within forty two months from the date of the execution of the agreement. There was a provision for the grace period of six months. It is an admitted position that before the expiry of grace period, the

appellant did not offer possession to the respondent for the simple reason that the Occupancy Certificate was granted after the expiry of the grace period on 3rd April 2017.

3. Therefore, the respondent approached the Commission with two prayers in the alternative. The first one was for the refund of the consideration already paid and the second one was for the grant of possession of the apartment.

4. From the impugned order, we find that at the time of hearing of the complaint before the Commission, the respondent opted for one of the two alternative prayers for grant of refund with interest.

5. The submission of the learned counsel appearing for the appellant is that the respondent suppressed the fact that before filing the complaint, the appellant had offered him possession of the apartment. She submitted that the complaint proceeds on a completely erroneous basis that the appellant has not carried out any construction. Her submission is that the respondent is a defaulter and the respondent did not take possession though offered by the appellant by addressing a letter.

6. It is an admitted position that the appellant could not deliver possession of the apartment agreed to be sold to the respondent within the outer limit specified under

the agreement. As stated earlier, the appellant obtained Occupation Certificate after the expiry of the period provided in the agreement for the delivery of possession.

7. Therefore, we find no error when the Commission ordered refund of the amount paid by the respondent towards the consideration of the apartment. In fact, we find that the Commission has taken a charitable view by directing deduction of a sum of Rs.7,00,000/- (Rupees seven lakhs) which was stated to be earnest money, though it is not the case of the appellant that earnest money was forfeited by it. However, we are not saying anything further about it as the respondent has not challenged that part of the impugned judgment. In the facts of the case, the grant of interest at the rate of 10 per cent is reasonable as the Commission has granted interest only from the date of the impugned judgment and order.

8. Therefore, we find no merit in the appeal and the same is accordingly dismissed.

Civil Appeal No(s). 9164/2019

9. After having heard the learned counsel appearing for the parties, *prima facie*, we were of the view that there was no choice but to pass an order of remand directing the Commission to hear the complaint afresh. We found that the complaint is of the year 2017 and from the

facts, we could gather that the dispute was going on much prior to that. Therefore to avoid prejudice to both the parties and, in particular, the respondent who has been litigating for a long time, we suggested to the parties that a modification can be made to Paragraph 11 of the impugned judgment by substituting the amount of Rs.33,19,586/- (Rupees thirty three lakhs nineteen thousand five hundred eighty six) by Rs.27,00,000/- (Rupees twenty seven lakhs) and the interest should be made payable from the date of forfeiture. After consulting their respective clients, the learned counsel appearing for the parties have fairly agreed to the suggestion made by the Court.

10. Accordingly, we dispose of the appeal by modifying Paragraph 11. The appellant shall be liable to pay a sum of Rs.27,00,000/- (Rupees twenty seven lakhs) to the respondent along with the interest as directed under the impugned judgment. However, the interest will be payable from 27th April, 2017 as the forfeiture was invoked by the appellant on that date. We clarify that the rate of interest will be as specified in Paragraph 11.

11. The appeal is accordingly partly allowed.

12. We direct the appellant to pay the amount as mentioned in paragraph 10 to the respondent within a period of one month from today.

13. The Advocate for the respondent shall provide the bank account details and a copy of cancelled cheque of respondent's account to the Advocate for the Appellant. The appellant shall transfer the amount payable in terms of this judgment to the account of the respondent within the time stipulated above.

14. We make it clear that we have not dealt with the question of law, if any, which may arise in this appeal, and the same is kept open.

.....J.
(ABHAY S.OKA)

.....J.
(SANJAY KAROL)

NEW DELHI;
July 13, 2023.

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