

## NBCC (INDIA) LTD. v. SHRI RAM TRIVEDI; CASE ANALYSIS

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**Monika Gurjar\***

### FACTS OF THE CASE

The appellant proposed a project for a communal dwelling in Sector 89 in 2012. Gurgaon. A notice seeking potential flat purchasers was published. On March 14, 2012, the respondent made an application for the allocation of a housing unit in the "NBCC Heights" project. A standard form contained the allotment terms and conditions which include the condition of payment of purchasing price in installments under a time-linked plan. The respondent received an allotment letter for dwelling unit F-402 in the project on June 30, 2012.

#### Clause 20

1. In addition to the terms of this application or agreement, the applicant is required to pay the total price, stamp duty, and other charges due and payable in accordance with the scheduled plan that applies to the applicant.
2. NBCC shall "endeavor" to complete the construction of the flat within two and half years from the date of issuance of the allotment letter.
3. If the completion of the dwelling unit is delayed due to force majeure, then NBCC shall be entitled to an extended period of one year. NBCC agrees to pay compensation of Rs 2 per square foot for the use of an area of the unit per month for the period of delay beyond one year of extension if the applicant had fulfilled all the terms of this application.
4. NBCC will offer the housing unit to the applicant for his or her occupation and use after receiving a certificate of occupation and/or use from the competent authorities, provided that the applicant has fulfilled all terms and conditions of the agreements.
5. The Applicant will be responsible for all costs associated with the Dwelling Unit and will be required to pay NBCC R\$2 per square foot of the super area per month (for maintaining the complex) as compensation in the event that the Applicant fails to pay all outstanding debts, including any applicable interest, and/or take possession of the Dwelling Unit within

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30 days of receiving written notice from NBCC. This payment shall be in addition to any other obligations or claims for interest under the conditions of the sale or allocation.

The respondent filed a consumer complaint before NCDRC on January 2017 since the possession of the property was not transferred. The appellant obtained the letter of occupation and use from the concerned authorities on 19-7-2017. The appellant on the same day issued the notice informing that the occupation certificate is received and requested to clear all their dues before taking possession.

On September 2, 2018, a letter of possession was given to the respondent. The respondent paid a portion of the fifth and sixth installments on February 28, 2018, and the whole amount on March 3, 2018. The final delivery of possession to the respondent was made on September 2, 2018, in exchange for an indemnity, as instructed by NCDRC in its order dated July 6, 2018.

NCDRC ordered the appellant to pay compensation of 10% p.a. on the sum deposited by the purchaser from June 2015 till the actual date of delivery of the property in its impugned order dated 20-9-2019. In addition, the respondent received Rs. 2,000,000 in compensation for lost rent and associated expenses. The deadline for payment was set four weeks after receiving a copy of the order, beyond which 12% interest would be due.

## LEGAL ISSUES

The appellant proposed a group housing project at 89, Gurgaon in 2012.

- Whether the terms of the agreement between buyer and seller are one-sided which constitute unfair trade practice?
- Whether the dispute between the developer and the neighbouring landowner constitute force majeure?
- Whether the compensation granted by NCDRC to the buyer for the delay in delivery of possession is justified?
- How the term “Endeavour” in the contract should be interpreted?

## ARGUMENTS OF THE APPELLANT

1. A residential unit had been assigned to the respondent as part of a time-linked plan that called for payments to be made according to the predetermined schedule. While

the first four installments were paid as per the time limit decided, the fifth installment, which was to be paid on December 30, 2014, was not paid in a timely manner. While the last installments were payable on the issuance of the letter of possession. Therefore, the award of interest is not justified as the respondent was late with the fifth installment.

2. In clause 20, there was no absolute promise of delivery of possession on a certain date; instead, the appellant argued that it would "endeavor" to finish the project in two and a half years from the date of allocation.
3. According to the same clause, the appellant was entitled to the benefits given as the delay in the completion of the project was caused by force majeure.

## JUDGEMENT

The argument of the appellant was that it had only agreed to "endeavor" to deliver the possession within 2 .5 years was rejected by NCDRC. It held that the word "endeavor" indicates that the appellant would work hard to transfer possession by that deadline under clause 20 of the letter. It says that even if does not mention a specific date of delivery of possession, it would not mean an indefinite period or left at the discretion of the respondent as it would leave the appellant at the mercy of the respondent. Therefore, the term must be interpreted in the context of the entirety of the clause and the developer is required to show the reasonable steps taken to comply with the duty to handover the possession by the pre-decided time, which is December 2014 from June 2012 (when the letter of allotment issued) as calculated by NCDRC. It ordered the payment of interest at a rate of 10% p.a. from July 2015 to the precise moment that possession was transferred, with an additional six months of grace given to the appellant. In addition to that it also granted compensation of 2,00,000 for the loss of rent.

It held that the requirement of paying Rs 2 per square foot of the housing unit's total area as compensation each month for delays that last longer than a year from the specified date is unjust and constitutes unfair trade practices. As the buyer is required to pay a 12% interest rate in case of delay in contrast the seller only had to pay Rs 2 per square foot. Also, the contract is in standard form, thus the buyer had no choice but to sign it. Such one-sided clauses in an agreement constitute an unfair trade practice under section 2(1) (r) of the Consumer Protection Act.

The argument of the appellant that the respondent delayed in paying the fifth installment on September 2014, with the final installment on December 2014, therefore the award of interest to the respondent by NCDRC is not justified and is rejected. Since the appellant itself was not in a position to deliver the dwelling unit within the stipulated date. Thus, the requirement of paying the installment in September 2014 must be looked at from that perspective.

NCDRC rejected the argument of the appellant to get the benefits of the force majeure under clause 20. The dispute with the contractor over termination and a boundary wall dispute with the neighboring landowner does not constitute force majeure as it is a normal incident and the appellant being an experienced developer must be conscious of routine delays. Therefore, the appellant is required to compensate the respondent.

**Sec. 56 of ICA, 1872** talks about, “A contract to do an act which after the contract is made becomes impossible or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.”<sup>1</sup>

The Supreme Court uphold NCDRC’s decision to pay 10% p.a. on the amount deposited from July 2015 as compensation for the delay rather than the amount that was agreed upon in the contract. However, it had made some changes to the decision.

First, it says that according to the agreement the period of 2.5 years came to an end on December 2014 and the additional period of one year came to an end on December 2015, Therefore the interest should be payable from 1<sup>st</sup> January 2016.

Secondly, the rate of interest awarded was too high in light of prevailing market conditions. Thus, it should be reduced from 10% p.a. to 7% p.a.

Third, the court set aside the award of compensation of Rs 2,00,000 for the loss of rent in addition to the interest as it is not justified.

Four, within one month of receiving a certified copy of this ruling, the appellant shall cooperate in completing all necessary formalities for completing the documentation (including procedures for registration) in regard to the housing unit that has been sold to the respondent. Within a month, interest must also be paid in accordance with the above statement.

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<sup>1</sup> Indian Contract Act 1872, S 56

## THE PRECEDENT REFERRED TO IN THIS CASE

*DLF Home Developers Ltd. V. Capital Greens Flat Buyers Assn.*<sup>2</sup> – A delay in the approval of building plans is a normal incident and it is not uncertain.

*Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*<sup>3</sup>– Similar facts are dealt with in this case where a clause similar to that of this case is declared as unfair.

*Arifur Rahman Khan v. DLF Southern Homes Ltd.*<sup>4</sup>– It deals with a similar breach of contract.

## RATIO OF THE CASE

In this case, the court held that Force majeure under section 56 of the Indian Contract Act does not include normal incidents of delay in completing the paper formalities.

When a contract includes a term that is ambiguous and uncertain, then it should be interpreted in the context of the entirety of the clause.

## RELEVANCE

In the contemporary scenario, most of the contracts are made in the standard form by the companies in which the other party is in a weaker position. To provide a remedy to the party at a weaker position several clauses such as section 2(1)(r) – Unfair trade practice under the Consumer Protection Act, 1986. These companies find another way to exempt themselves from liability and to serve their interest by using ambiguous terms in the contract. This can be corrected by interpreting clauses in the context of entirety, as held in this case.

## CONCLUSION

It can be concluded from the above case that the term impossibility should not be interpreted to include regular or normal faults but it should be used in cases of unenforceable or unexpected situations.

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<sup>2</sup>DLF Home Developers Ltd. v Capital Greens Flat Buyers Assn. [2021] SCC (5) 537

<sup>3</sup> Pioneer Urban Land & Infrastructure Ltd. v Govindan Raghavan [2019] SCC (5) 725

<sup>4</sup> Arifur Rahman Khan v DLF Southern Homes (P) Ltd. [2020] SCC (16) 512