

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO 8418 OF 2022

Santhosh Narasimha Murthy & Ors

... Appellants

Versus

M/s Mantri Castles Private Limited & Anr

... Respondents

WITH

CIVIL APPEAL NO _____ OF 2023
 (Diary No 1490/2023)

ORDER

Civil Appeal No 8418 of 2022

- 1 A set of sixty-two home buyers instituted a consumer complaint claiming that the first respondent had failed to deliver possession of the flats which had been purchased by them under home buyer agreements.
- 2 The National Consumer Disputes Redressal Commission¹ granted permission to sue in a representative capacity under Section 12(1)(c) of the Consumer Protection Act 1986 on 1 December 2020. As a consequence, the complaint assumed the character of a class action. The NCDRC found that there was a delay on the part of the developer in handing over possession. It partially allowed the complaint in the following terms :

“... The opposite parties are directed to obtain ‘Occupancy Certificate’ and offer possession complete in all respect as per specification to the complainants within three months from the date of this judgment. While offering possession, the opposite parties shall give Statement of Account to the complainants, strictly in terms of the agreement, adjusting

1 “NCDRC”

delayed compensation in the shape of interest @ 6% per annum on the deposit of the complainants from 28.02.2018 till the offer of possession, giving at least one month time to deposit the balance amount, if any. On deposit of the amount, the opposite parties shall execute conveyance deeds in favour of the complainants and handover possession to them."

- 3 Appeals have been filed against the order of the NCDRC by the sixty-two home buyers. A cross appeal has been filed by the developer.
- 4 During the pendency of these proceedings, an order was passed by this Court on 13 February 2023 recording the statement of the first respondent that possession would be handed over before the next date of listing to all flat buyers who had paid all their outstanding dues in terms of the agreements. The Court directed that this would also apply to purchasers who would pay their outstanding dues before the next date of listing and that upon their making payment, possession shall be handed over.
- 5 On 13 March 2023, this Court recorded the statement of Mr Shekhar G Devasa, counsel appearing on behalf of the respondent that possession has been offered to the appellants in the Civil Appeal. This was accepted by Mr Gopal Sankaranarayanan, senior counsel appearing on behalf of the appellants. In pursuance of the previous order dated 13 February 2023, the developer was directed to hand over possession to all those flat buyers who have made full payment of their outstanding dues in terms of the agreement. A tabulated position indicating the names of the flat buyers and the date on which possession was handed over was to be placed on the record on affidavit by the next date of hearing.
- 6 We have heard Mr Ajit Sinha, senior counsel appearing on behalf of the home buyers, Mr Shekhar G Devasa, counsel appearing on behalf of the first

respondent and Mr D K Devesh, counsel appearing on behalf of the land owner.

- 7 During the course of the hearing, Mr Ajit Sinha, senior counsel appearing on behalf of the home buyers states that in pursuance of the previous orders of this Court, possession has been handed over to all the sixty-two home buyers who have executed agreements and full payment has been made. This aspect is not in dispute.
- 8 Two surviving issues remain, which form the subject matter of the submissions before the Court :
- (i) Payment of compensation for the delay in handing over of possession at the contractual rate; and
 - (ii) Award of interest on the payments which were deposited by the home buyers from the due dates.
- 9 Clause 14.5 of the buyer agreements is in the following terms :
- “In the event of delay in handing over possession of the Apartment beyond the time mentioned in Clause 6.1 and subject to the provision under Clause 6.4, the Develop shall pay a compensation of Rs.3/- (Rupees Three Only) per sq.ft. Of Saleable Area per month from the date agreed for delivery / handing over of possession, till the actual date of announcement of possession, subject to there being no delay or defaults in paying all the Installments as per Schedule B hereunder, throughout the tenure of this Agreement. However, for calculating the compensation, the number of days delayed as per Clause 6.4 shall be deducted and compensation shall be paid for the actual number of delayed days.”
- 10 Clause 6.1 of the agreement stipulates that the developer shall construct for the purchaser, the apartment which was contracted for and possession would be handed over in terms of Annexure B-1. Clause 6.4 contains a force majeure clause. Annexure B-1 contains the assured date of possession.

- 11 For the purpose of these proceedings, counsel appearing on behalf of the home buyers and the first respondent-developer have proceeded on the basis of the dates of possession as indicated in Annexure P-14 to the Civil Appeal. Having due regard to Clause 14.5 of the agreements, each of the sixty-two home buyers is entitled to compensation at the rate of Rs 3 per square foot per month for the delay of nearly six to seven years in granting possession. The compensation shall be payable for each home buyer from the date on which possession was assured (as reflected in Annexure P-14) until 19 February 2023 when possession was handed over by the developer.
- 12 The NCDRC has awarded interest at the rate of 6% per annum on the deposits made by the complainants with effect from 28 February 2018 till the offer of possession. This has been questioned on behalf of the home buyers on the ground that they are entitled to interest with effect from the respective dates on which the deposit of consideration was made with the developer. Moreover, it has been submitted that interest at the rate of 6% per annum must be enhanced to 9% per annum.
- 13 On the other hand, counsel for the developer submits that the developer had, in addition, paid EMIs on behalf of the home buyers.
- 14 The home buyers have submitted that the EMIs were paid in terms of the scheme which was agreed upon and were paid only for some of the home buyers.
- 15 The home buyers are entitled to interest with effect from the assured dates of possession until the offer of possession was made on 19 February 2023.
- 16 In the facts of the present case, we affirm the award of interest at the rate of 6%

per annum by the NCDRC subject to the modification that interest shall be payable with effect from the respective dates prescribed in the agreements for delivery of possession.

17 We accordingly allow the appeal filed by the home buyers in the following terms :

- (i) The home buyers shall be paid compensation on account of delayed possession at the rate of Rs 3 per square foot per month in terms of clause 14.5 of the buyer agreements.
- (ii) For computing the amount due under clause 14.5 in terms of (i) above, the assured dates of possession, as reflected in Annexure P-14, shall be the dates with effect from which the payment would be computed. The compensation shall be payable until 31 January 2023.
- (iii) The home buyers shall be entitled to interest at the rate of 6% per annum with effect from the respective dates fixed for handing over possession, as reflected in Annexure P-14; and
- (iv) The amounts which are due and payable in the above terms shall be paid over on or before 30 September 2023.

18 The appeal is accordingly allowed.

19 Pending applications, if any, stand disposed of.

Civil Appeal No Diary No 1490 of 2023

20 Delay condoned.

21 The appeal is disposed of in terms of the order passed in Civil Appeal No 8418 of

2022.

22 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
July 25, 2023
GKA

ITEM NO.15

COURT NO.1

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). 8418/2022

SANTHOSH NARASIMHA MURTHY & ORS.

Appellant(s)

VERSUS

M/S MANTRI CASTLES PRIVATE LIMITED & ANR

Respondent(s)

(IA No. 180523/2022 - APPLICATION FOR PERMISSION IA No. 2117/2023 -
 APPROPRIATE ORDERS/DIRECTIONS)

WITH

Diary No(s). 1490/2023 (XVII-A)

(IA No.43746/2023-CONDONATION OF DELAY IN FILING and IA
 No.43747/2023-EX-PARTE STAY and IA No.43748/2023-EXEMPTION FROM
 FILING O.T. and IA No.43751/2023-CONDONATION OF DELAY IN REFILING /
 CURING THE DEFECTS)

Date : 25-07-2023 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
 HON'BLE MR. JUSTICE J.B. PARDIWALA
 HON'BLE MR. JUSTICE MANOJ MISRA

For Appellant(s) Mr. Ajit Kumar Sinha, Sr. Adv.
 Mr. Govind Jee, AOR
 Mr. Omanakuttan K K, Adv.
 Mr. Parul Dhurve, Adv.
 Mr. Naveen Soni, Adv.
 Mr. Ayush Mishra, Adv.

Mr. Shekhar G Devasa, Adv.
 Mr. Manish Tiwari, Adv.
 Ms. Thashmitha Muthanna, Adv.
 Mr. Prashant Dixit, Adv.
 Mr. Vishwanath Chaturvedi, Adv.
 Mr. Shashi Bhushan Nagar, Adv.
 M/S. Devasa & Co., AOR

For Respondent(s) Mr. Ajit Kumar Sinha, Sr. Adv.
 Mr. Govind Jee, AOR
 Mr. Omanakuttan K K, Adv.

Mr. Shekhar G Devasa, Adv.
 Mr. Manish Tiwari, Adv.

Ms. Thashmith Muthanna, Adv.
 Mr. Prashanth Dixit, Adv.
 Mr. Viswanath Chaturvedi, Adv.
 Mr. Shashi Bhushan Nagar, Adv.
 M/S. Devasa & Co., AOR

Mr. D. K. Devesh, AOR
 Ms. Snehal Uday Kanzarkar, Adv.
 Mr. Shailja Nanda Mishra, Adv.
 Mr. Harsh Singh Rawat, Adv.

Mr. Bishwajit Bhattacharyya, Sr. Adv.
 Mr. Chandrachur Bhattacharyya, Adv.
 Mr. Sahil Tagotra, AOR

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

Civil Appeal No 8418 of 2022

- 1 The appeal is allowed in terms of the signed order operative part of which reads as follows :

“17 We accordingly allow the appeal filed by the home buyers in the following terms :

- (i) The home buyers shall be paid compensation on account of delayed possession at the rate of Rs 3 per square foot per month in terms of clause 14.5 of the buyer agreements.
- (ii) For computing the amount due under clause 14.5 in terms of (i) above, the assured dates of possession, as reflected in Annexure P-14, shall be the dates with effect from which the payment would be computed. The compensation shall be payable until 31 January 2023.
- (iii) The home buyers shall be entitled to interest at the rate of 6% per annum with effect from the respective dates fixed for handing over possession, as reflected in Annexure P-14; and
- (iv) The amounts which are due and payable in the above terms shall be paid over on or before 30 September 2023.

18 The appeal is accordingly allowed.

19 Pending applications, if any, stand disposed of.”

Civil Appeal No Diary No 1490 of 2023

- 2 Delay condoned.
- 3 The appeal is disposed of in terms of the order passed in Civil Appeal No 8418 of 2022.
- 4 Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(RENU BALA GAMBHIR)
(COURT MASTER (NSH))

(Signed order is placed on the file)