

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Miscellaneous Application No 567 of 2021 in
Civil Appeal No 3623 of 2020**

**Mantri Castles Pvt Ltd Now known as
Castles Vista Pvt Ltd & Ors**

...Appellant(s)

Versus

R V Prasannakumaar & Ors

...Respondent(s)

WITH

**Miscellaneous Application No 566 of 2021
in
Civil Appeal No 3623 of 2020**

ORDER

- 1 The Miscellaneous Applications arise from an order dated 3 November 2020 passed by this Court.
- 2 By an order dated 11 February 2019, this Court issued the following directions while disposing of a batch of Civil Appeals¹:
 - “(i) The liability of the developer to pay interest at the rate of 6 per cent per annum shall continue to operate until the date on which each of the respective flat purchasers is offered possession;
 - (ii) The order passed by the NCDRC confining the award of interest for the period from 1 February 2014 to 31 July 2016 is modified in terms of the directions issued in clause (i) above;

1 Civil Appeal Nos 1232 of 2019 and 1443-1444 of 2019

- (iii) The NCDRC in execution of the impugned order as modified by the present order, shall verify with reference to each flat purchaser the date on which an offer of possession has been made. The liability to pay interest at the rate of 6 per cent per annum shall cease on the date when an offer of possession has been made to each of the flat purchasers."

3 The National Consumer Disputes Redressal Commission², in an execution application, rendered a decision on 17 August 2020 in which, a tabulated statement of the dates on which offers of possession were made to 39 complainants was recorded. The NCDRC directed the payment of interest at the rate of 6% per annum from 1 February 2014 till the dates on which offers of possession were made to the purchasers. The order of the NCDRC in the course of the execution proceedings was the subject matter of a challenge in Civil Appeal 3623 of 2020 in which this Court passed its order dated 3 November 2020.

4 In the course of its order dated 3 November 2020, this Court noted that the only issue which survived for determination was the correctness of the submission of the flat purchasers that they had made the entire payment to the developer, save and except for the final payment which was due and payable in terms of the flat purchase agreements, at the time of the delivery of possession. This was the matter which was directed to be verified, for which Mr R V Easwar, Senior Counsel was appointed as Court Commissioner. Paragraph 8 of the order of this Court dated 3 November 2020 is extracted below:

- "8 The only issue which now survives for determination is the correctness of the submission which has been made on behalf of the flat purchasers that they had made the entire payment to the developer, save and except for the final payment which was due and payable in terms of the agreements at the time of the delivery of possession. In our view, this is a matter which should be verified so as to put a seal on the controversy once and for all."

²"NCDRC"

The above extract clearly indicates that the only issue which was required to be verified by the Court Commissioner was whether (as submitted by the flat purchasers) they had made the entire payment to the developer (save and except for the final payment which was due and payable in terms of the agreements at the time of the delivery of the possession).

- 5 By consent, while appointing the Court Commissioner, the following directions were issued:

“10...(i) Mr R V Easwer, Senior Counsel, is appointed as a Commissioner to verify, in terms of the order passed by this Court on 11 February 2019, with reference to each flat purchaser, the date until which the liability to pay interest at 6% per annum shall continue to subsist. The Commissioner shall in making the determination be guided by the following :

(a) The dates on which possession has been offered to the flat purchasers will be as tabulated in the impugned order of the NCDRC dated 17 August 2020;

(b) Flat purchasers who had made the payments due to the developer in terms of their flat purchase agreements, save and except for the final payment which was payable at the time of the handing over of possession, would be entitled to the payment of interest at the rate of 6% per annum, as directed in terms of the previous order of this Court dated 11 February 2019 and compensation;

(c) The issue as to whether only the payment of the final instalment against possession remained due and payable to the developer by each of the complainant - purchasers shall be determined on the basis of the provisions contained in the agreements with the flat purchasers; and

(d) The determination shall be carried out on a verification of the statement of accounts to be furnished to the Commissioner;”

The parties agreed that the determination of the Commissioner shall be binding and shall not be called into question.

- 6 The Commissioner submitted his report dated 3 January 2021. In the course of the verification which has been carried out by the Commissioner, the following finding has been arrived at:

“VERIFICATION:

It may be recalled that the learned counsel for the developer had pointed out that there are 3 categories of flat-buyers/respondents: (i) those who had admittedly paid in accordance with the schedule of payments and had made payments even by the promised date of possession as per the agreement; (ii) those who had not adhered to the schedule of payments, though they had paid 95% at the time when possession was offered and (iii) those who had not only not adhered to the payment schedule but had also not paid 95% of the price when possession was offered. This categorisation of the respondents was not disputed by the learned counsel for the flat-purchasers; their contention (as already noted) however was that non-adherence to the payment schedule in terms of the agreements does not affect the right to claim interest if the flat-buyers had paid 95% of the total price (cost of construction + cost of UDS, excluding all other deposits or charges or payments which are to be paid only on handing over possession) when possession was offered. I have already held that this contention is not acceptable in view of the mandate to the Commissioner that the verification should be whether the payments were made in terms of the agreements. Therefore, the position which emerges is that only 5 respondents (R-10, R-17, R-22, R-37 and R-39) who have made payments strictly in accordance with the payment schedule envisaged in the agreements are entitled to the interest at the rate of 6% from 1.2.2014 till the dates on which they were offered possession as per the dates tabulated in the order of the NCDRC dated 17th August, 2020 plus compensation at Rs.3/- per s.ft. of saleable area, per month of the delay. The other 34 respondents who have either not adhered to the terms of the agreements in making payments to the extent of 95% to the developer or have not paid 95% of the price of the flat on the dates on which possession was offered to them are not entitled to any interest or compensation.

The calculation of the amount of interest and compensation in respect of the above 5 respondents has been made and placed before me by the learned counsel for the flat-buyers, according to which they would be entitled to receive the following amounts:

S.No.	Resp No	Name	Amount: Rs.
1.	R-10	Damodaran Subramanian	21,22,205
2.	R-17	Vishal Pillai	22,49,696
3.	R-22	Veena Prakash	21,05,744
4.	R-37	Prabhav Narasimha Rao	37,39,592

5.	R-39	Srikanth Ramaswamy	26,52,838
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It may be added that these calculations were not disputed on behalf of the builder/developer.

The other 34 respondents will not be entitled to any interest or compensation, as they have not paid the instalments of the purchase price (COC plus UDS) in terms of the Schedule 'C' to the agreements.

As regards compensation at the rate of Rs.3 per s.ft. of saleable area per month from the date of agreed delivery of possession to the date of actual handing over possession, as contemplated in clause 14.5 of the agreement for cost of construction, the said clause says that the payment of compensation is "subject to there being no delay or defaults in making the Installment payments as per Schedule C, hereunder, throughout the tenure of this Agreement". In arriving at the determination, this clause has also been kept in view so far as compensation is concerned .

CONCLUSION /FINDING: Only 5 out of the 39 respondents, as set out above, are entitled to claim interest and compensation consequent to the verification carried out by the undersigned, in the amounts mentioned above. The other 34 respondents, for the reasons set out above, are not entitled to any interest or compensation."

- 7 Consequently, out of 39 flat purchasers, only five have been held to be entitled to claim interest and compensation, consequent to the verification.
- 8 Mr Prashant Bhushan, learned counsel appearing on behalf of the flat purchasers, submitted that the only issue which survived for determination, in terms of the order of this Court dated 3 November 2020, was whether the flat purchasers had made the entire payment to the developer, save and except for the last payment which was due and payable at the time when possession was handed over. It was urged that this being the only issue which was referred to the Commissioner, there was no justification for the Commissioner to interpret the order of this Court to mean that it was only those flat purchasers who had made the payment of instalments on schedule in terms of their agreements would be entitled to the payment of interest. Learned counsel submitted that

the observation in the order that the finding of the Commissioner will not be called into question will not bar the flat purchasers in moving this Court when the Commissioner has mis-interpreted the order of this Court.

- 9 On the other hand, Mr Guru Krishnakumar, learned Senior Counsel appearing on behalf of the developer, has laid stress on the directions contained in paragraph 10(i)(b) and (c) of the order of this Court dated 3 November 2020, extracted above. Learned counsel submitted that the above directions indicate that the Commissioner was also required to verify whether the payments which were made by the flat purchasers were in terms of the respective flat purchase agreements. The consequence, it was urged, is that those buyers who had delayed in making payments must be deprived of the payment of interest.
- 10 A crucial fact which needs to be noticed, at this stage, is that the directions of this Court dated 11 February 2019 in Civil Appeal No 1232 of 2019 and Civil Appeal Nos 1443-1444 of 2019 specifically confirm the liability of the developer to pay interest at 6% per annum until the date on which each of the flat purchasers was offered possession. Consequently, the order of the NCDRC which had confined the award of interest for the period from 1 February 2014 to 31 July 2016 was modified to that extent. In other words, the flat purchasers were held to be entitled to the payment of interest at 6% per annum until the date on which actual offers of possession were made. This was the sole aspect which fell for verification since there was a dispute which again travelled before this Court, arising out of the execution proceedings before the NCDRC. The order of this Court dated 3 November 2020 which arose from execution proceedings must be read consistent with the main order which was passed by this Court on 11 February 2019. The subsequent order which arose out of execution proceedings does not alter the terms of the original order of this Court. Paragraph 8 of the order of this Court dated 3 November 2020 clarified

that the only issue which remained for verification was whether the flat purchasers had made the entirety of the payments, save and except for the final payment which remained due and payable at the time of handing over of the possession. Hence, the directions contained in paragraph 10(i)(b) and (c) in terms of which a verification was required must be read in that context. This would not justify the Commissioner to launch into an enquiry as to whether the flat purchasers had made their payments of instalments to the developer on schedule. Such a construction, in our view, is also reasonable having regard to the fact that it is an admitted position that no penal interest was charged to the flat purchasers by the developer at least among this group of 39 purchasers. The report of the Commissioner has not interpreted the order of this Court correctly which is the reason why the intervention is once again warranted by this Court. The binding character of the determination by the Commissioner was to attach to the verification made on the basis of accounts. But here, there has been an obvious error in interpreting the order of this Court.

- 11 To obviate any ambiguity and in view of the above discussion, we direct as follows:
- (i) The flat purchasers would be entitled to interest computed until the date on which the offer of possession was made by the developer;
 - (ii) Interest shall be paid at the rate of 6% per annum from 1 February 2014 until 31 December 2018;
 - (iii) For all instalments which have been paid after 1 February 2014, interest shall run from the date of the respective deposits;
 - (iv) Flat purchasers who had not made the entire payment (save and except for the last payment of instalments which was due and payable at the

time of handing over of the possession), namely, category (iii) in the verification carried out by the Commissioner, would not be entitled to the payment of interest;

- (v) The amount which is due and payable towards interest to each of the 34 flat purchasers shall be recomputed and shall be paid over within a period of four weeks from the date of this order; and
 - (vi) The five persons who have been held entitled to the payment of interest by the Commissioner will not be affected by the present order which relates to the remaining 34 persons.
- 12 The Miscellaneous Applications stand disposed of in the above terms.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[M R Shah]

**New Delhi;
August 23, 2021
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ITEM NO.36 Court 4 (Video Conferencing) 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

Miscellaneous Application No. 567/2021 in C.A. No. 3623/2020

MANTRI CASTLES PVT. LTD.
NOW KNOWN AS CASTLES VISTA PVT. LTD. & ORS. Appellant(s)

VERSUS

R.V. PRASANNAKUMAAR & ORS. Respondent(s)

(FOR ADMISSION and IA No.25883/2021-APPROPRIATE ORDERS/DIRECTIONS)

WITH

MA 566/2021 in C.A. No. 3623/2020 (XVII-A)
(FOR ADMISSION and IA No.29934/2021-APPROPRIATE ORDERS/DIRECTIONS)

Date : 23-08-2021 These applications were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. S. Guru Krishnakumar, Sr. Adv.
 Mr. Shekhar G Devasa, Adv.
 Mr. Manish Tiwari, Adv.
 Mr. Shashi Bhushan Nagar, Adv.
 Ms. Sanhita Chauriha, Adv.
 For M/s. Devasa & Co

For Respondent(s) Mr. Prashant Bhushan, Adv.
(applicants) Mr. Chandrachur Bhattacharyya, Adv.
 Mr. Sahil Tagotra, AOR

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

The Miscellaneous Applications are disposed of in terms of the signed order.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)