
(2024) 11 NCDRC CK 0018

National Consumer Disputes Redressal Commission

Case No: Revision Petition No.. 1743 OF 2019

Chairman/President & 2 Ors

APPELLANT

Vs

Brahm Datta Vyas

RESPONDENT

Date of Decision: Nov. 13, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(b)

Hon'ble Judges: Dr. Inder Jit Singh, Presiding Member

Bench: Single Bench

Advocate: K.L. Janjani, Sanyat Lodha, Shivani Mehta

Final Decision: Dismissed

Judgement

Dr. Inder Jit Singh, Presiding Member

1. The present Revision Petition (RP) has been filed by the Petitioners against Respondents as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 09.05.2019 of the State Consumer Disputes Redressal Commission, Rajasthan (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 903 of 2018 in which order dated 05.09.2018 of District Consumer Disputes Redressal Forum, Jaipur (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 691 of 2015 was challenged, inter alia praying for setting aside the order dated 09.05.2019 of the State Commission.

2. While the Revision Petitioner(s) (hereinafter also referred to as OP No. 1, 2 and 3) were Appellants before the State Commission and OP No. 1, 2 and 3 before the District Forum, the Respondent (hereinafter also referred to as Complainant) was Respondent before the State Commission and Complainant before the District Forum.

3. Notice was issued to the Respondent on 27.09.2019. Parties filed Written Arguments on 12.01.2024 (Petitioner) and 11.01.2024 (Respondent) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that: -

(i) The respondent/complainant applied for a Middle Income Group (A) house in Pratap Apartment, Sector-29, Pratap Nagar, Jaipur, under the self-financing scheme, submitting application form No. 717 and depositing Rs.40,000/-. He was successful in the lottery draw, receiving a reservation letter from the Rajasthan Housing Board dated 04.02.2008.

(ii) On 30.06.2011, the Petitioner/ Housing Board issued an allotment letter for House No. MP-I/205 for Rs.8,81,695/-. Subsequently, a complaint from the respondent regarding discrepancies in the allotment, the petitioner acknowledged the error and issued a modified allotment letter dated 24.10.2011, modifying the amount to Rs.2,16,124/- and demanding Rs.19,927/- as interest/penalty.

(iii) Dissatisfied, the respondent filed a complaint before the District Forum, alleging that the petitioner had not adhered to the terms and conditions mentioned in the brochure. The respondent requested various compensations, including:

- o Interest at 18% on Rs.11,60,658/- from 24.10.2011.
- o Refund of Rs.2,53,658/- with 18% interest from 28.12.2011.
- o Refund of parking charges of Rs.27,625/- and penalty interest of Rs.19,921/- with 18% interest.
- o Rectification of construction defects and provision of promised amenities.
- o Compensation for social and mental distress amounting to Rs.5,00,000/-.
- o Reimbursement of Rs.1,00,000/- for expenses incurred in addressing the issue.
- o Coverage of legal costs amounting to Rs.21,000/-.

(iv) The District Forum passed order in favour of the Respondent, ordering the Petitioner to provide the necessary infrastructure and amenities and to pay Rs.1,00,000/- within two months, along with Rs.5000/- for litigation costs.

(v) Aggrieved by the decision of District Forum, the petitioner filed an appeal with the State Consumer Disputes Redressal Commission, which dismissed the appeal.

5. Vide Order dated 05.09.2018, in the CC no. 691 of 2015 the District Commission has passed the following order:

“Resultantly, the dispute of the Complainant is admitted against opposite parties and order is to be passed that the opposite parties shall make available outer infrastructure and amenities to the Complainant, issue allotment letter of the plot in question and pay Rs.1,00,000/- as security for allotment/possession within two months from today.

In addition to the above, the opposite parties should pay the registration amount of Rs. 40,000/- deposited as per column no. 3 of the revised allotment letter dated 04.10.2011 Annexure-5 for the flat in question as per the revised allotment letter and the installment amount of Rs. 8,57,766/-, thus totaling Rs. 8,97,766/- at the rate of 6% per annum for the period from 04.08.2010 to 04.10.2011 amounting to Rs. 62,843.44 round off Rs. 62,844/- (words Rupees Sixty Two Thousand Eight Hundred Forty Four only) along with interest at the rate of 9% per annum from the copy dated 04.10.2011 till payment within two months from today and also pay Rs. 5,000/- (words Rupees Five Thousand Only) as litigation expenses within two months from today.

In case of non-compliance of this order within two months, opposite parties are liable to pay interest at the rate of 12 percent yearly to the Complainant.

In case of non-compliance of this order within two months, the opposite parties will be liable to pay interest to the complainant on all the said amounts at the rate of 12% per annum from the date of this order till payment.

The remaining prayers of the complainant are rejected.”

6. Aggrieved by the said Order dated 05.09.2018 of District Commission, Petitioner(s) appealed in State Commission and the State Commission vide order dated 09.05.2019 in FA No. 903 of 2018 dismissed the appeal.

7. Petitioner(s) have challenged the said Order dated 09.05.2019 of the State Commission inter alia on following grounds:

i. The Fora below have not considered that as per the brochure the petitioner/board have clearly mentioned regarding the estimated cost and it has never been said full and final because it is always depend upon the progress of construction time taking increase in cost during the construction escalation charges etc.

ii. The Fora below ought to have considered the terms and condition of allotment mentioned in brochure. It was specifically said in clause 14 that successful allottees can see and verify the progress of construction at the time of construction. Despite of that when the Respondent has been afforded a right of verification and objection he never came forward for the objection of poor construction and infrastructure.

iii. The Appellate Authority as well as District Fora has completely ignored the written submission filed by the Petitioner/board in which it was specifically averred each and every doubt of the complaint. The Petitioner/board has provided all possible infrastructure like separate 33 KV electric grid sub station, lift, proper water supply, security of complete boundary wall all around the society, gardens and play grounds, elevators, stilt and outer parking with 24 hours security guards etc. Therefore, the extra charge which he has alleged is baseless and without merit.

iv. The State Fora has erred in law in dismissing the appeal of the petitioner despite the fact that infrastructure & facilities were provided as per the terms and condition of booklet/brochure. After receiving the amended allotment letter on 24.10.2011 and making voluntary payments for demanded money and packing amount etc. acquired possession of the flat on 02.04.2012 after complete satisfaction.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

8.1 In addition to the averments made under the grounds (para 7), the petitioner contended that an additional amount of Rs.19,927/- to be deposited as interest/penalty for delay in depositing the installments beyond the prescribed time limit. Further, the Respondent/Complainant took over the possession of the house after declaration and complete satisfaction on 02.04.2012 and after complete inspection.

8.2 After a gap of more than two years from taking possession of house, Respondent filed a complaint before the District Forum on 26.09.2014 and the lower fora erroneously allowed the complaint. Petitioner further contended that as per Clause 14 of the brochure it is stated that the allottees can see and verify the progress of construction at the time of construction. But the Respondent never came forward to inspect the same and even after taking the possession in 2012 without raising any objections he filed the complaint in 2014 at a belated stage being an afterthought and with malafide intention.

8.3 On the other hand Respondent contended that first allotment letter dated 30.06.2011 was issued to the Respondent erroneously recording the remaining payment to be made at Rs.8,81,695/-. Pertinently, this letter was issued after a delay of delay of approximately 12 months as per the terms and condition laid down in paragraph 14 of the booklet issued with application form.

8.4 The delay in payment of the installments by the Respondent as alleged by the Petitioner/Board is attributable to the Petitioner/Board issuing the modified allotment letter only on 24.10.2011. Further, Respondent contended that the Petitioner/Board did not make available Pratap Apartment and amenities relating to the flat for five years

leading to the escalation of price of the apartment. The Petitioner recovered money of 'A' class construction of flat but provided inferior construction.

9. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. In this case, there are concurrent findings of both the fora below against the Petitioner herein as regards deficiency in service and unfair trade practices are concerned. The Respondent has contended that the earlier allotment letter dated erroneously recorded the remaining payment to be made as Rs.8,81,695/-, subsequently realizing this mistake, the Petitioner Board issued a modified allotment letter dated 24.10.2011 for Rs.2,16,124/- The delay in payment of the instalments by the Respondent as alleged by the Petitioner Board is attributable to the Petitioner Board issuing the modified allotment letter only on 24.10.2011. The Petitioner Board admits having issued a modified letter as submitted by the Respondent herein and states that the modified letter was issued due to the fault of the Respondent/Complainant as he had failed to deposit the copies of the challan with the Petitioner and submitted the details only in September, 2011. Therefore the revised allotment letter had to be issued. These reasons are not found convincing as prima facie we find that the earlier allotment letter mentioned amount as Rs.8,81,695/- was wrongly issued while the actual amount was only Rs.2,16,124/-. Further, it is clear that the amenities were not provided within the timeline stated in the brochure which is evident even from the late issuance of the tenders for the yearly maintenance and some other amenities like water supply, sewer line etc. The plot in question was to be allotted within 30 months from the date of the issuance of the reservation letter dated 04.02.2008 i.e. latest by 04.08.2010 but the modified allotment letter was issued only on 04.10.2011. It was held by Hon'ble Supreme Court in Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. vs DLF Southern Homes Pvt. Ltd. & Ors. (2020) 16 SCC 512, **"failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within the contractually stipulated period, amount to deficiency"**. In Ireo Grace Realtech Pvt.Ltd. Vs. Abhishek Khanna & Anr. (2021) 3 SCC 241, Hon'ble Supreme Court held **"Developer cannot compel apartment buyers to be bound by one-sided contractual terms contained in apartment buyers agreement"**

10. Both the State Commission and District Forum have given well-reasoned orders duly addressing the contentions of both sides and we do not find any reason to interfere with their findings. As has been held by Hon'ble Supreme Court in catena of judgments[Ruby (Chandra) Dutta vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269, Sunil Kumar Maity vs. State Bank of India and Ors. (2022) SCC OnLine SC 77, Lourdes Society Snehanjali Girls Hostel and Another Vs. H & R Johnson (India) Limited and Ors, (2016) 8 SCC 286, T. Ramalingeswara Rao (Dead) Through Legal Representatives and Anr. Vs. N. Madhava Rao and Ors. (2019) 4 SCC 608, Rajiv Shukla Vs. Gold Rush Sales

and Services Limited and Anr. (2022) 9 SCC 31] that revisional jurisdiction of the National Commission is extremely limited, it should be exercised only in case as contemplated within the parameters specified in the provision i.e. when State Commission had exercised a jurisdiction not vested in it by law or had failed to exercise jurisdiction so vested or had acted in the exercise of its jurisdiction illegally or with material irregularity. It is only when such findings are found to be against any provisions of law or against the pleadings or evidence or are found to be wholly perverse, a case for interference may call for at the second appellate (revisional) jurisdiction. In exercising of revisional jurisdiction, the National Commission has no jurisdiction to interfere with concurrent findings recorded by the District Forum and the State Commission, which are on appreciation of evidence on record. We find no illegality or material irregularity or jurisdictional error in the orders of the State Commission, hence the same is upheld. Accordingly, RP is dismissed.

11. The pending IAs in the case, if any, also stand disposed off.