

**(2015) 05 NCDRC CK 0056**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** 2737 of 2011

Arindam Roy And Ors.

APPELLANT

Vs

Deepak V. Karia

RESPONDENT

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**Date of Decision:** May 15, 2015

**Citation:** 2015 2 CPR 773

**Hon'ble Judges:** V.K. Jain, B.C. Gupta

**Advocate:** Petition Dismissed

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**Judgement**

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 03.08.2010, passed by the Maharashtra State Consumer Disputes Redressal Commission (hereinafter referred to as the State Commission) in Appeal No. 1372/2008, "Arindam Roy and Anr. vs. Deepak V. Karia" and cross Appeal No. 1587/2008 "Deepak V. Karia and Ors. vs. Arindam Roy and Ors.", vide which, while dismissing both the appeals, the order dated 30.09.2008, passed in consumer complaint No. 337/2006 by the District Forum Thane, partly allowing the said complaint, was upheld.

2. BRIEFLY stated, the facts of the case are that the complainants/petitioners Arindam Roy and his wife Mamta Roy purchased a flat Unit No. 3, first floor, Plot No. 17, Sector 10, Koparkhairane, Navi Mumbai for a total amount of 10,75,000/- from the OP builder. An agreement to sell is stated to have been entered between the parties on 30.04.2004, a copy of which has been placed on record. As per the agreement, the built-up area of the said flat was to be 640 sq. ft. and super built up area has been stated to be 800 sq. ft. The complainants have alleged in their complaint, inter alia, that they had been given less area than agreed as per the

agreement and therefore, they should be given compensation for the same. The complainants also alleged that they were prevented from going on the terrace because OPs had made some construction of permanent nature on the terrace. The OPs had also made encroachment on the ground floor as well, because of which they were not able to use the ground floor properly. The District Forum vide their order dated 30.11.2007, partly allowed the said complaint and ordered that a compensation of 5,000/- should be given to them alongwith 2,000/- as cost of litigation. The District Forum also ordered that an association or society should be registered for the daily maintenance of the building. Aggrieved against this order, the petitioners/complainants filed an appeal before the State Commission, which was allowed vide order dated 24.03.2008 of the State Commission and the case was remanded to the District Forum for reconsideration. The State Commission also directed that an expert should be appointed to measure the built-up area of the flat. In pursuance of this order, the District Forum vide order on 12.05.2008, appointed Sh. Jagdish Ramchandra Sabnis, an architect as "Court Commissioner", and he was asked to submit his expert report before 20.06.2008. Placing reliance on the expert report, the District Forum decided the consumer complaint vide their order dated 30.09.2008 and came to the conclusion that the complainants had been given a built-up area of 594.81 sq. ft. in place of 640 sq. ft. as mentioned in the agreement, meaning thereby that they had been given area less by 46 sq. ft. The District Forum made calculations for the shortfall, based on the value of the flat and ordered that a sum of 77,280/- be given as compensation to the complainants alongwith 10% interest p.a. with effect from 30.04.2004. A sum of 5,000/- was also ordered to be given as compensation for mental harassment and 2,000/- as cost of litigation.

3. BEING aggrieved against this order, both the parties filed appeals before the State Commission which have been decided vide impugned order dated 03.08.2010. The State Commission dismissed both the appeals and upheld the conclusion of the District Forum that the complainants had been given less built-up area by 46 sq. ft. for which they are entitled to compensation of 77,280/- on proportionate basis alongwith interest. It is against this order that the present petition has been made by the complainants only. The OP builders have not challenged the impugned order of the State Commission, meaning thereby that the said order has become final qua them.

The complainant Arindam Roy appeared in person and was heard. He stated that the OP builder had indulged in deficiency in service and adopted unfair trade practice in providing him a flat with area less than that stated in the agreement to

sell. According to the complainant, he was supposed to be given 800 sq. ft. of area, whereas the area mentioned in the O.C. Certificate was only 416.24 sq. ft., meaning thereby that a less area of 383.76 sq. ft. had been given to him. The complainant stated that he should either be given a structure of equivalent area or he should be compensated for less area as per the market rates. The learned counsel for the respondents/OPs, however, stated that the revision petition was time -barred and should be dismissed on this ground alone.

4. WE have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us. The first point for consideration is whether the revision petition in question is barred by limitation or not. The copy of the order of the State Commission was issued on 13.01.2011, but the petitioners say that they received the said copy in May 2011. In support of their version, they have produced a copy of the envelope, received from the State Commission which indicates that the said copy was received by them in May 2011. In view of the said document produced by the petitioner, it is held that the revision petition has been filed within the permissible time.

5. THE main point for consideration in the case is whether the contention of the petitioner/complainant that the OP builders have indulged in deficiency in service and unfair trade practice by providing them a flat of area less than that contemplated in the agreement to sell, and if it is so, how much compensation they are entitled for. It is clear from the material on record that on the directions of the State Commission given on 24.03.2008, the District Forum appointed an expert as court commissioner to measure the area of the flat provided to them and to submit report. It is stated in the order passed by the District Forum on 30.09.2008 that as per the report of the court commissioner who was an architect, the total area of the disputed flat was 494.81 sq. ft. After adding 20% additional area to this figure, the total built up area of the flat came to be 594 sq. ft. The District Forum held that there was a shortfall of 640 sq. ft. - 594 sq. ft. = 46 sq. ft. of the built up area provided to the complainants. The District Forum, therefore, allowed compensation of 77,280/- for the said shortfall, based on the total value of the flat, which was 10,75,000/- for built -up area of 640 sq. ft. The District Forum also allowed interest @10% p.a. on the figure of 77,280/- so calculated. In appeals before the State Commission, the said

order has been confirmed.

6. BASED on the material before us and the position explained above, we do not find any illegality, infirmity, irregularity or jurisdictional error in the concurrent findings returned by the District Forum and State Commission, which may merit any interference at revisional stage. The compensation has been allowed to the petitioners based on the actual measurement of the area of the flat on the spot. There is no material on record to dispute the measurements given by "court commissioner", which were made in the presence of the complainant Arindam Rao and Deepak V. Karia, opposite party.

7. IT has been held by the Hon"ble Supreme Court in "Mrs. Rubi (Chandra) Dutta Vs. M/s. United India Insurance Co. Ltd. [ : II (2010) CPJ 19 (SC)] " that the revisional powers derived from section 21(b) of the Consumer Protection Act, 1986 can be exercised by the National Commission only, if there is some prima -facie jurisdictional error in the impugned order. In the present case, looking at the concurrent findings of the State Commission and the District Forum, we do not find any jurisdictional error or perversity in the same, which may merit the exercise of such power.

8. IN accordance with the discussion above, it is held that there is no merit in this revision petition and the same is ordered to be dismissed and the orders passed by the State Commission and District Forum are upheld with no order as to costs.