

**(2003) 02 NCDRC CK 0068**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

LODHA DEVELOPERS (P) LTD.

APPELLANT

Vs

SUSHMA SUHAS SHEDGE

RESPONDENT

**Date of Decision:** Feb. 11, 2003

**Citation:** 2003 4 CPJ 220 : 2004 1 CPR 122

**Hon'ble Judges:** M.S.Rane , R.N.Varhadi J.

**Final Decision:** Appeal disposed of

**Judgement**

1. MR. B.S. Nikumb, Advocate for the respondent undertakes to file appearance on behalf of the respondent. We record the said statement.

2. WE are proceeding to dispose of this appeal to the stage of its admission itself on perusal of the material available before us and on hearing the learned Advocates for the parties and by and large, we find that the order of the District Forum is just and reasonable needing no interference. However, we are considering one point because of the persistent and insistence on the part of the learned Advocate for the appellant on the rate of interest that the Forum has awarded on the amount payable by the appellant to the respondent. (appellant hereinafter is referred "Builder" and respondent as "Flat purchaser"). Few relevant facts- 2. Appellant is the builder and has taken exception to the order dated 18.5.2002, whereby the District Forum has held the builder deficient in not completing the construction work within agreed time and handing over possession of the flat to the flat purchaser and also non-refund of the amount paid by the flat purchaser towards the consideration to the builder when the project was not completed.

The material clearly shows as is available in this appeal paper book, that the flat purchaser and builder had entered into a deal as early as in the month of March, 1996 and the flat purchaser from time to time, since then paid the substantial amount towards the consideration to the extent of Rs. 1,97,002/- . First payment has been made by the flat purchaser on 29.3.1996 and last instalment on 22.12.1997. Builder has passed receipts for the same.

As till June, 1998 there was no satisfactory progress noticed by the flat purchaser in the construction of the building where flat was to be provided vide his letter dated 25.6.1998, copy whereof is at page No. 14 of the appeal paper book, the flat purchaser recorded the fact that there was delay on the part of the builder to hand over the possession and that being so, flat purchaser was compelled to cancel the agreement and claim the refund of the amount with interest.

3. SINCE, however, there was no positive response, on the part of the builder that the complaint was filed. District Forum has examined all these aspects and taking into consideration the receipts issued by the builder, evidencing payment followed by issuance of allotment letter, it held as having established that there being a deal between the parties. It also stood proved that the builder could not complete the project and hand over the possession of the flat. Furthermore, despite demand by the flat purchaser for refund of the amount there was no positive response.

Such acts and omission on the part of the builder would constitute deficiency within the meaning of Section 2(1)(g) of the Consumer Protection Act, 1986. There is one factor militating against the builder that despite receipt of substantial consideration of the flat from the flat purchaser, he has not executed the Agreement which was a statutory obligation under the provisions of Maharashtra Flat Ownership Act, 1963. That being so, findings of the District Forum as recorded are well merited needing no interference. Since the District Forum has awarded a sum of Rs. 5,000/- as cost, in our view interest provided at the rate of 18 per cent per annum would need our reconsideration. In the facts and circumstances, interest at the rate of 14 per cent per annum would be just and fair. We modify the order to that extent. Appeal disposed of.