

(2011) 03 NCDRC CK 0020

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**Case No:** NonePrabin Gupta And
Associates

APPELLANT

Vs

Niketa Park Apartments
CondominiumRESPONDENT

Date of Decision: March 23, 2011**Citation:** 2011 0 NCDRC 157 : 2011 2 CPJ 34**Hon'ble Judges:** Ashok Bhan , Suresh Chandra J.**Final Decision:** Petition allow

Judgement

1. BRIEFLY stated, the facts of this case are that the complainant no.1 is an association of apartment holders consisting of 12 members including complainants 2 & 3. These members purchased their respective apartments, possession of which was given to them in the year 1988-89. However, the OP, petitioner herein, executed the deed of declaration on 06.04.1992 thereby forming condominium of the dwelling units constructed by the OP. The complainants lodged the complaint with the District Forum alleging that the OP had converted the garage into a residential unit with sanitary block attached to it, various metallic and other objects were stored in stilt parking area, non-provision of automatic water level controller to monitor the switch on or off facility for the water pump, non-development of garden, improper installation of electric wiring in the staircase and landings and some other deficiencies noted in the complaint. The District Forum vide its order dated 06.01.1998 dismissed the complaint both on the grounds of limitation as well as on merits by observing that the possession of the units was taken in the year 1998-99 whereas the consumer complaint was filed on 01.02.1994 and hence the same was barred by limitation. Aggrieved by the order of the District Forum, the respondents challenged the same by filing an appeal before the State Commission which by its impugned order dated 18.01.2007, held that the complaint of the respondents cannot be said to be barred by limitation and partly allowed the appeal by directing the petitioners to pay an amount of Rs.75,000/- towards damages on account of the deficiencies enumerated in para 8 of the impugned order. Aggrieved by this order of the State

Commission, the OPs have filed this revision petition.

2. WE have heard the petitioner in person and the counsel for the respondents. The main contention of the petitioner is that the possession of the flats in question having been admittedly delivered to the respondents in 1989-89, a consumer complaint in respect of the deficiencies in the dwelling units enumerated in the complaint, filed in the year 1994 was clearly barred by limitation and hence could not be entertained by the Fora below. In the circumstances, the District Forum taking note of this infirmity had rightly dismissed the complaint by its order dated 06.01.1998. He submitted that the State Commission committed a grave error by treating the same as within limitation on the ground that the conversion of garage into dwelling unit is a continuous cause of action. He further submitted that so far as deficiencies in respect of the dwelling units pointed out in the consumer complaint are concerned, the period of limitation will start from the date of handing over of the possession to the respondents in 1988-89 and hence the period of two years available under the law expired in the year 1991. According to the complainant, the deed of declaration in question executed on 06.04.1992 cannot be the basis for extending the limitation period because the garage in question as referred to in the deed of declaration was constructed by the petitioners through their own resources and was not offered for sale and hence is not relevant for the purpose of the agreement under which the dwelling units were handed over to the respondents. In any case, all the grievances which were made out by the respondents through the complaint filed on 01.02.1994 should have been noticed at the time of possession in 1988-89 and hence the same cannot be entertained after lapse of two years period which is prescribed as limitation period for the purpose under law. In view of this, it would be wrong to assume that there was any continuous cause of action and cause of action, if any, had arisen at the time of handing over of the possession of dwelling units in 1988-89 and complaint, if any, in regard to these units should have been filed within a period of two years from that date. The impugned order of the State Commission, therefore, is illegal and hence deserves to be set aside.

We have perused the orders of the District Forum and the State Commission. The State Commission while overruling the view of the District Forum regarding the question of limitation has made the following observations in para 7 of the impugned order: There is no dispute that the possession of the flats were handed over to the complainants in 1988-89. There is also no dispute that the deed of declaration was executed by the opponents on 6/4/92. There is also no dispute that the Garage is converted into dwelling unit. It is also apparent that the notice to the opponents was given by the complainants on 29/7/92. The opponents have replied the notice. Opponents have mentioned that unit no.15 i.e. Garage converted into dwelling unit has been allotted to Mr. A. Gupte. It is also

apparent that the Corporation had sanctioned the permission for Garage for the purpose of parking car and not a family unit. The change of user by the respondent was without the written consent of the flat purchasers. Certainly the conversion of Garage into family unit is the deficiency in service on the part of the opponents. The conversion of Garage into dwelling unit is a continuous cause of action. Complaint cannot be said to be barred by limitation. It is also contention of the opponents that they are storing some material into parking area in the allotted plot without the permission of Mr. A. Gupte. Thus cause of action is continuous day to day till the deficiency in question has been rectified by the respondent. We have mentioned that the deed of declaration is executed by the opponents in 1992. Thus the complaint filed by the complainant cannot be said to be barred by limitation. Forum erred in holding that complaint is barred by limitation.

We do not agree with the view taken by the State Commission in regard to the question of limitation. All the grievances mentioned by the respondents in their complaint pertained to the dwelling units constructed by the OP and handed over to the respondents. Since the petitioners handed over their possession in 1988-89, the period of limitation as per law will have to be counted from the date of the possession and the same expired in 1991. The deed of declaration is a different document altogether and the same cannot extend the period of limitation in respect of the deficiencies in question. The State Commission committed a mistake in assuming that there was continuous cause of action because of the alleged conversion of the garage into dwelling units, which was not part of the agreement between the two parties. We agree with the view taken by the District Forum that the complaint of the respondents was barred by limitation having been filed beyond the statutory period of two years and hence the same was rightly dismissed. We, therefore, allow the revision petition, set aside the order of the State Commission and dismiss the complaint by upholding the order of the District Forum.