

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 618 OF 2021

(Against the Order dated 28/12/2020 in Complaint No. 165/2000 of the State Commission
Uttar Pradesh)

1. VICE CHAIRMAN, LUCKNOW DEVELOPMENT
AUTHORITY & 2 ORS.

.....Appellant(s)

Versus

1. ALOK SRIVASTAVA

.....Respondent(s)

FIRST APPEAL NO. 654 OF 2021

(Against the Order dated 19/07/2021 in Complaint No. 5/2021 of the State Commission Uttar
Pradesh)

1. VICE CHAIRMAN, LUCKNOW DEVELOPMENT
AUTHORITY & 2 ORS.

.....Appellant(s)

Versus

1. ALOK SRIVASTAVA

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT :

Dated : 02 August 2024

ORDER

For the Appellants

Mr Abhishek Chaudhary, Advocate

For the Respondent

Mr Anant Prakash, Advocate

ORDER

PER MR SUBHASH CHANDRA

1. This appeal assails the order dated 28.12.2020 in Consumer Case no. 165 of 2000 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (in short, 'the State Commission') holding that there are reasonable and sufficient grounds to establish deficiency in service on the part of the appellant and therefore, directing payment of Rs.6,82,500/- with 10% interest from the date of filing till realisation as compensation for

construction, Rs.10 lakhs for harassment and mental agony within 3 months or with 10% interest till payment and litigation cost of Rs.10,000/-.

2. This order will also dispose of FA no. 654 of 2021 arising from the order of the State Commission in RA no. 05 of 2021 by which the RA had been allowed with regard to return of the deposited money through payment by cheque. For the sake of convenience FA no. 618 of 2021 is taken as the lead case.

3. In brief, the facts of the case are that the appellant, which is a Development Authority engaged in the development of housing projects on behalf of the Government of UP had, in a scheme announced by it in 1990, allotted an MIG Duplex House no. 5/1184, Viram Khand-5, Gomti Nagar Scheme, Phase I, Lucknow to the respondent vide allotment letter dated 20.09.1991 after receiving Rs.20,000/- on 08.10.1990 towards registration and another amount of Rs.20,000/- on 27.04.1991 towards allotment as per demand letter dated 04.02.1991. The consideration was Rs.2,55,000/- to be paid in instalments. On 03.12.1992, the appellant conveyed by letter that the project was near completion and the final cost was conveyed as Rs.3,76,800/-. An amount of Rs.81,800/- was accordingly paid by the respondent to the appellant over and above the cost of Rs.2,55,000/-. However, the said house was not constructed and handed over on purported grounds of negligence by the contractor and instead the appellant sought to refund the amount of Rs 2,77,564/- by cheque which was refused by the respondent.

5. Vide complaint no. 165 of 2000 preferred before the State Commission, the respondent prayed for possession or alternate MIG house along with interest @ 24% on Rs.3,76,800 paid by it to the appellant with effect from 06.01.1995 till the date of handing over the house. The prayer was subsequently amended to possession or payment of Rs. 7 lakhs for construction with interest @ 24% per annum and Rs. 10 lakhs as compensation and Rs.3 lakhs for harassment and mental agony. Thereafter, following the amendment to the Consumer Protection Act in 2002 the claim was enhanced to Rs. 56 lakhs for construction, compensation to Rs.20 lakhs and compensation for harassment, mental agony to Rs.9 lakhs.

6. The State Commission, vide order dated 20.06.2015, directed that the matter be heard by the District Forum in view of pecuniary jurisdiction. This order was challenged in First Appeal No. 595/2015 before the National Commission which was disposed by order dated 16.02.2016. The matter then travelled to the Hon'ble Supreme Court through Civil Appeal (S) no. 749 of 2020, which remanded the matter to the State Commission. The State Commission's order in CC No. 165 of 2020 dated 28.12.2020 is assailed before us by the appellant (Lucknow Development Authority).

7. We have heard the learned counsel for the parties and given thoughtful consideration to the material on the record.

8. The appellant admitted that it had allotted Duplex House no. 5/1184, Viram Khand-5, Phase I, Gomti Nagar to the respondent and received Rs 3,76,800/- towards consideration, including the escalation in construction cost intimated subsequently. Its case is that the project could not be completed due to the negligence of the contractor and hence it offered a

refund of Rs 2,77,564/- after deducting costs incurred by it. As the cheque was not accepted by the respondent, the amount was credited to his bank account. In view of negligence ascribed to the contractor, liability towards deficiency in service was denied. It has contended that the State Commission had erred in burdening the appellant to bear the cost of construction and to pay damages to the respondent and had exceeded the relief asked for by the respondent regarding compensation for monetary loss, mental agony and harassment as Rs 10 Lakhs had been awarded against Rs 9 Lakhs asked for. It is also argued that the State Commission erred in awarding Rs 6,82,500/- with interest @ 10% as the estimated cost in 2000 as the cost was without reasonable basis. Reliance was placed on **Ghaziabad Development Authority Vs. Balbir Singh**, Appeal (2004) 5 SCC 65, (Civil) no.7173 of 2002 decided on 17.03.2004. It was contended that the cost of Rs.3,76,800/- as on 06.01.1995 deposited by the respondent for the land measuring 112.50 sq m worked out to Rs 650 per sq m. or Rs.73,125/-. After adding other costs of development, the cost worked out to RS 94,290/-. Hence the refund of Rs 2,77,564/- was a fair value since the cost of land with charges for free hold fee, water and sewer charges was Rs 3,000/- per sq m. It was admitted that a letter dated 03.12.1993 was issued by it to the respondent stating that it was about to complete construction in support of its earnest to hand over the house as per schedule. It was averred that the respondent had amended his complaint which was rightly disallowed as the quantum of relief sought had been exorbitantly enhanced without basis. It was therefore prayed that the appeal be allowed and the impugned order dated 28.12.2020 be set aside with any other order(s) deemed appropriate.

8. *Per contra*, the respondent contended that as admitted by the appellant, construction of the Duplex House No. 5/1184, Viram Khand-5, Gomti Nagar, Lucknow allotted to him had not been completed by the appellant despite payments of the full sale consideration and that as per present ground position the incomplete building had been rendered entirely unbuildable due to passage of time. The appellant did not hand over the possession of the Duplex House by January 1995 despite regular follow up and despite assurances of possession, and representations by the respondent dated 13.05.1995, 11.07.1995 and 01.09.1995. Respondent contends that he sent a notice to the appellant on 14.09.1998 and was again assured of early completion of construction. The appellant while admitting that the expenditure incurred on the civil construction was Rs 8990/-, had also admitted that the construction could not be completed due to negligence of the contractor who had abandoned the project and sought to transfer liability of deficiency to the contractor which was not justifiable. The respondent thereafter prepared an estimate based on the PWD Schedule of Rates (SR), 1997 and estimated the construction cost at Rs 6,82,500/- which the appellant contested as the cost of construction estimated by it in 1993 was Rs 3,86,800/-.

9. The respondent contended that the State Commission erred in holding that the appellant had refunded Rs 2,77,564/- in 2007 which was 12 years after the appellant was required to hand over possession and that it was not possible to construct a house in 2007 for that sum of money. The appellant's case is that the State Commission had rightly upheld the appellant's reasoning that it was not responsible for the contractor's fault. Respondent contends that cost of construction in 2007 had greatly escalated due to exponential rise in the cost of both material and labour. It was contended that the State Commission awarded damages considering the fact that the damages sought of Rs 9 lakhs was in 2000 whereas the order came to be passed in 2020. The compensation sought was justified by the respondent on the

grounds that the appellant failed to respond to his representation in 2000 seeking details of construction and keeping in view the servicing of the loan and rent paid by him in the intervening period. The estimate prepared by him was justified on the ground that it was prepared by a PWD engineer based upon the PWD's SR for the year 1997, especially since the appellant had failed to provide any evidence of value or cost. As the appellant was required to provide both land and the house, the option of seeking a refund was not available to the respondent. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Haryana Urban Development Authority Vs. Darsh Kumar***, (2005) 9 SCC 449 wherein it was held that non-profit statutory authorities are also covered under the Consumer Protection Act and are liable for deficiency in service.

10. From the record, it is evident that as per the scheme devised and implemented in Viram Khand-5, Phase I, Gomti Nagar, Lucknow by the appellant Development Authority, three types of houses were proposed to be constructed on plots developed by it and were offered to applicants of various categories. Payment schedules were prescribed and the appellant undertook to hand over the same after completion of construction as per specifications specified. It is not denied that the respondent was allotted a MIG Duplex House No. 5/1184 in the scheme and the consideration determined by the appellant was received by the appellant. It is not in dispute that the appellant received a sum of Rs.2,55,000/- from the respondent. It is not denied that the cost of the house had been revised to Rs 3,76,800/- in 1993 and the same was intimated vide letter dated 03.12.1993 and that the escalated consideration of Rs. 81,800/- also received. Having received the consideration and having allotted a house, the cancellation of the allotment without either accommodating the respondent in any other scheme or adequately compensating him on the grounds of admitted deficiency in service on the part of its contractor, is therefore, both deficiency in service as well as unfair trade practice.

11. In ***Darsh Kumar*** (supra) the Hon'ble Supreme Court held that public authorities are liable for deficiency in service. The appellant cannot escape its liability on the specious argument that its contractor was liable. It was required to complete the project through alternative options, including the engaging of a new contractor at the risk and cost of the defaulting contractor. It has not brought on record any evidence to indicate steps taken by it to rectify the situation, especially since it had addressed the respondent that the construction was proceeding apace and was likely to be completed early. This letter is admitted by the appellant.

12. The Hon'ble Supreme Court, in ***Meerut Development Authority vs Mukesh Kumar Gupta*** IV (2012) CPJ 12 decided on 09.05.2012 laid down that "*failure to deliver possession of the plot, constitutes recurrent / continuing cause of action*". It has also been laid down by the Hon'ble Supreme Court in a catena of judgments, notably in ***Fortune Infrastructure & Anr. Vs. Trevor D'Lima & Ors.***, (2018) 5 SCC 442 and ***Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra***, (2020) 18 SCC 613 that an allottee/consumer cannot be expected to wait indefinitely for a plot or flat. In ***Pioneer Urban Land and Infrastructure Ltd. Vs. Govindan Raghavan***, in CA No. 12238 of 2018 decided 02.04.2019, (2019) 5 SCC 725 the Apex Court held that an allottee/consumer has the right to terminate an agreement in case the builder does not hand over possession after a reasonable period of time. In its judgment in ***Ghaziabad Development Authority vs Balbir Singh*** in Appeal (Civil) no.7173 of 2002 decided on 17.03.2004 the Hon'ble Apex Court has held that compensation has to be

decided on a case-to-case basis and in ***Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, C.A. No. 6044 of 2019 decided on 07.04.2022***, held that compensation by way of interest should be both compensatory and restitutionary. In case of handing over of possession of a plot or flat, the Apex Court laid down ***Wg Cdr Arifur Rahman Khan & Ors. Vs. DLF Southern Homes Pvt. Ltd. & Ors.***, Civil Appeal No. 6239 of 2019 decided on 24.08.2020, (2020) 16 SCC 512 that where an allottee receives a flat or plot, although delayed, he would also benefit from the appreciation in its valuation and therefore, compensation for delayed possession @ 6% is equitable.

13. In view of the foregoing discussions, it is apparent that the appellant is liable for deficiency in service and unfair trade practice in arbitrarily refunding the amount received by it towards the house allotted by it to the respondent. It is notable that the cancellation was done without even a letter setting out the reasons and/or steps taken by it to suitably rectify the situation. There was a complete abdication of its responsibility and lack of transparency in keeping the respondent informed of the reasons for the same. There was an arbitrariness in the manner of refund after deducting some developmental costs which were charged to the respondent even while seeking to refund the amount received. It is noteworthy that statutory authorities which works on a non-profit basis are not exempt from liabilities under the Consumer Protection Act and therefore the appellant's appeal to be exempted from any liability *qua* the respondent before us does not merit consideration in view of discussion above. The respondent had no privity of contract with the contractor who was engaged by the appellant. As a public authority it was incumbent upon the appellant to ensure execution of its commitment to the respondent for which a consideration had been accepted. It was open to it to execute the project at the risk and cost of the contractor or by any other means. Mere refund after deductions after lapse of nearly 12 years and 10 months has been rightly refused by the respondent who has waited for the house to be handed over.

14. During oral submissions it was stated by the parties that possession of the plot of land was handed over to the respondent in May 2023. Considering the fact that the MIG house was booked in 1990 and the full payment as demanded by the appellant was paid by the respondent in 1992, the handing over of the plot with an incomplete construction that has no structural value, the only issue that remains is the quantum of compensation.

15. The State Commission has considered the cost of construction, based upon the Schedule of Rates of the PWD for the year 1997 as a valid and reasonable basis. However, this valuation, which may be reasonable, is not based on any estimate by either a Court Commissioner or any expert authority appointed by the State Commissioner. The same cannot, therefore, be considered. The undisputed amount of deposit by the respondent towards construction by the respondent is Rs 3,76,800/-. It would be fair to take this as the basis for calculating the quantum of compensation, even though the appellant states that it refunded the amount in 2007. The refund was not accepted by the respondent who sought the handing over of the Duplex house, or, in lieu, an alternate house or plot of similar size and value.

15. The Hon'ble Supreme Court has held, in ***DLF Homes Panchkula Pvt. Ltd., vs D S Dhanda*** (2020) 16 SCC 318, that multiple compensations for a singular act of default is not justified. The award of compensation of Rs 10 Lakhs for monetary loss, mental agony and harassment is therefore set aside. However, as compensation by way of interest covers

compensation, it is necessary to consider a higher rate of interest in view of the chequered history of this case and in view of the fact that the respondent has agitated this matter before several *fora* over several years in pursuit of justice. A rate of interest of 7.5% from the date of deposit is considered appropriate. The cost of litigation of Rs.10,000/- awarded by the State Commission is also enhanced to Rs.1,00,000/-.

16. For the aforesaid reasons and in the facts and circumstances of the case the respondent is liable for deficiency in service and unfair trade practice, the appeal is partly allowed and is disposed of with the following directions:

- (i) Appellant shall compensate the respondent for the deficiency in service and unfair trade practice in not handing over possession of a constructed duplex house as promised and refund the amount of Rs 3,76,800/- with interest @ 7.5% p.a. with effect from the respective dates of deposit within 8 weeks failing which with interest @ 10% p.a. till realization;
- (ii) Direction of the State Commission regarding payment of Rs 10 Lakhs compensation for monetary loss, mental agony and harassment is set aside;
- (iii) Appellant shall pay the respondent litigation cost of Rs.1,00,000/-.
- (iv) There shall be no deductions on any account on the payments as directed above.

17. Pending IAs stand disposed with this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**