

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 422 OF 2023

(Against the Order dated 26/10/2022 in Complaint No. 36/2015 of the State Commission
Telangana)

1. MACROTECH DEVELOPERS LTD.

LODHA EXCELUS, APPOLO MILLS COMPOUND, N.M.
JOSHI MARG, MUMBAI-400011

.....Appellant(s)

Versus

1. A. SYAMALA REDDY

W/O P.V. RAMANA REDDY, R/O H.NO.393, PLOT NO.28,
VIVEKANAND ENCLAVE, ROAD NO.2, BANJARA HILLS,
HYDERABAD

NEW DELHI-110001

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT : MR. RAHUL KRIPALANI, ADVOCATE WITH
MS. SUPRAJA V., ADVOCATE
MR. ADITYA CHAUHAN, ADVOCATE

FOR THE RESPONDENT : MR. ALABHYA DHAMIJA, ADVOCATE WITH
MR. RANJEET MISHRA, ADVOCATE
DR. ARUNA GUPTA, ADVOCATE

Dated : 19 August 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (for short "the Act") by Macrotech Developers Ltd. (hereinafter referred to as the "builder company") assailing the order dated 26.10.2022 passed by the State Consumer Disputes Redressal Commission, Telangana (hereinafter referred to as the "State Commission") in complaint no. 36 of 2015 whereby the complaint was partly allowed.

2. There is a delay of 121 days in filing the present appeal.

In the interest of justice and considering the reasons mentioned in the application for condonation of delay, the delay in filing the appeal is condoned.

3. The brief facts of the case are that the respondent (hereinafter referred to as the 'complainant') applied for Villa no. 600, 4 BHK on the 6th floor of the Bellezza Benicia

project by Lodha Healthy Constructions and Developers Pvt. Ltd., for a total consideration of Rs.2,28,38,517/-. On 25.04.2011, the complainant paid Rs.4,50,000/- by cheque to secure the allotment. The application forms issued by the builder company, including the complainant, specified a payment schedule linked to construction progress. The builder company promised to complete the construction on or before 30.06.2013 but pressured the complainant to make payments without commencing construction and under the compelling circumstances, the complainant paid Rs.50 lakhs by cheque dated 10.08.2011. In all, the complainant had paid a total amount of Rs.54,50,000/-. It is alleged that the builder company sent a draft agreement of sale on 19.9.2011, which the complainant found objectionable due to unreasonable conditions in clauses 7, 8, 11, 14, 23 to 30, 36, 38, and 44 and sought modifications. Despite repeated requests for amendments, the builder company did not accommodate her concerns, which amounted to unfair trade practice. On 22.12.2011, the complainant informed builder company that without a signed agreement of sale, there is no binding contract and hence, she had no obligation to make further payments. The builder company replied on 16.03.2012 ignoring her requests for clause modifications. On 25.10.2011, the builder company emailed to the complainant stating that only typographical errors would be corrected, refusing further modifications. On 22.12.2011, the complainant notified the builder company of her decision not to proceed with the purchase and requested for refund of the deposited amount. Despite several demands for a refund, the builder company unilaterally deducted Rs.29,72,000/- from the amount (Rs.54,50,000/-) paid by the complainant and refunded only Rs.24,78,388/-. The complainant asserts that the actions of the opposite parties were illegal and the entire project violated several Acts including the A.P. Housing Board, Land Acquisition Act, 1894, AP Land Revenue Act, and A.P. Apartments (Promotion of Construction and Ownership) Act, 1987 and the deduction of Rs.29,72,000/- under Clause 7 of the allotment letter is contested as unlawful.

4. Being aggrieved, the complainant filed a complaint before the State Commission with the following prayer to direct the builder company to pay, jointly and severally, :-

(a) a sum of Rs.29,71,612/- with interest @18% per annum from the date of payment i.e. 10.08.2011 till realization;

(b) to pay a sum of Rs.5,00,000/- (Rupees Fifty lakh only) punitive damages;

(c) to pay sum of Rs.5,00,000/- (Rupees Fifty lakh only) towards compensation for subjecting the complainant for mental agony and harassment;

(d) to award costs of Rs.25,000/-;

(e) and pass such other order or orders as this Hon'ble High Court may deem fit and proper in the circumstances of the case..

5. The builder company contested the complaint by filing written version raising the preliminary issues, firstly, that the complaint is barred by limitation and secondly, that the complainant is not a 'consumer' within the ambit of Section 2(1)(d) of the Act. It is further

stated that the complainant defaulted in making the payment as demanded by the builder company and there was no deficiency on the part of the builder company.

6. After appreciation of the facts of the case, the State Commission partly allowed the complaint with costs of Rs.25,000/- and directed the builder company to refund Rs.25,66,136/- to the complainant with interest @12% p.a. from 10.08.2011 till the date of realization and also to pay compensation of Rs.50,000/- for causing mental agony. Complaint against opposite parties no. 3 and 4 is dismissed.

7. The builder company has filed the present appeal before this Commission seeking setting aside of the impugned order dated 26.10.2022 passed by State Commission, Telangana.

8. Before this Commission, the learned counsel for the builder company strongly contended that the State Commission lacked the pecuniary jurisdiction to entertain and grant relief in the complaint, as the cost of the property in question was for a total consideration of Rs.2,28,38,517/-. In support of his contention, he placed reliance on the decision of the larger bench in case of ***Ambrish Kumar Shukla v. Ferrous Infrastructure Pvt. Ltd., 2016 SCC OnLine NCDRC 1117***. In that case, it was established that the amount agreed upon by the consumer at the time of transaction, including any compensation claimed in the complaint, determines the pecuniary jurisdiction of the Consumer Forum.

Further, in ***Renu Singh v. Experion Developers (P) Ltd., 2021 SCC OnLine NCDRC 978***, a larger bench of this Commission affirmed that the principles laid down in ***Ambrish Kumar Shukla (supra)*** apply comprehensively, even when the complaint seeks refund of the amount deposited by the complainant.

9. It is noteworthy that the judgment in ***Ambrish Kumar Shukla (supra)*** was delivered subsequent to the filing of the builder company's written version, specifically in October 2016. Therefore, the builder company could not raise this ground at the time of submitting the written version but it was incumbent upon the State Commission to correctly determine its pecuniary jurisdiction before delving into the merits of the case.

10. Further, it was contended that the application form dated 30.04.2011, involving a total consideration of Rs.2,28,38,517/-, took the form of the agreement and upon reviewing the same, it is evident that it constitutes a standalone contract duly signed by the complainant. A legally binding agreement was thereby established, obligating the customer to adhere to the payment schedule outlined across 17 stages in the Payment Plan. The essential elements of a valid contract i.e. offer and acceptance, are satisfied by the terms set forth in the application form dated 30.04.2011. Had the parties not constituted a contract, the complainant would have had no obligation to remit any payments to the builder company. Moreover, it was contended that the complainant failed to fulfill her obligations under the payment schedule stipulated in the Application Form. The builder company issued multiple demands for payment according to the terms and conditions outlined in the Application Form, specifically on 09.05.2011, 23.08.2011, 12.09.2011, 15.10.2011, 08.11.2011, 30.11.2011, 09.12.2011, and 10.12.2011 and on 16.03.2012, the builder company sent a final notice to the complainant requesting settlement of outstanding payments, cautioning that failure to comply would result in cancellation of her booking and a forfeiture of 10% of the total consideration amount, in

accordance with clause 7 of the application form. It is further argued that the payment schedule was agreed to by the complainant and there was no compulsion upon the complainant to execute the application form for purchase of the Flat and the complainant on his own choose to buy the villa in question. The builder company requested the complainant on numerous occasions to clear overdue payments. The builder company needs money to complete the construction within the time limit agreed between the parties. If the instalments are not paid in time, it is not feasible for the builder company to honor its contractual obligations to the buyer. The builder company suffered on account of the failure of the complainant to adhere to the payment schedule. The complainant made only part payment and defaulted in payment of the installments due.

11. In rebuttal, learned counsel for the complainant has argued that the issue of pecuniary jurisdiction was not raised by the builder company at any stage before the State Commission and it was raised only during the appeal before this Commission. Throughout the proceedings before the State Commission, the builder company consistently acknowledged the jurisdiction of that forum without contestation. He further argued that the determination of pecuniary jurisdiction under the Consumer Protection Act, 1986 considers the consideration paid or agreed to be paid by the consumer at the time of purchasing goods or services, along with any compensation claimed in the complaint.

Placing reliance on the case of **Ambrish Kumar Shukla (supra)**, he further argued that in cases involving refunds where no further amounts are due, the consideration paid by the consumer plays a crucial role in determining jurisdiction. He emphasized that as per Section 2(1)(d) of the Consumer Protection Act, 1986, "consumer" includes amounts that are "partly paid and partly promised". Therefore, in cases seeking refunds, the consideration primarily refers to the amount already paid, excluding any promised but unpaid amounts. The complainant's demand of Rs.29,72,000/- along with 18% annual interest, does not exceed the one crore rupee jurisdictional limit. The interest sought is considered a form of compensation, and therefore, the additional demand for substantial compensation is solely to assert the jurisdiction of the State Commission.

Referring to the judgments in **Ambrish Kumar Shukla and Rajnish Bhasin vs. M/S Jaypee Infratech Ltd. CC/1980/2017**, the counsel contended that the pecuniary jurisdiction of a Consumer Complaint is assessed based on the consideration paid or agreed to be paid. In this case, the complainant has paid Rs.54,50,000/- to the builder company, of which Rs.24,78,388/- was refunded upon cancellation of the allotment, leaving a claim of Rs.29,71,612/- along with interest. Therefore, the learned counsel for the complainant argued that the matter falls within the pecuniary jurisdiction of the State Commission, as the consideration paid by the complainant is Rs.54,50,000/-. The total pecuniary value of the Consumer Complaint, including the interest sought, amounts to Rs.99,52,420/- which is less than Rs. 1 crore and hence, the complaint is within the pecuniary jurisdiction of the State Commission.

12. Further, it is argued that the complainant, being a bona fide purchaser, was forced to request for the cancellation of the allotment since the builder company had made one-sided agreement and that they were not ready to change or amend the agreement. Moreover, the builder company wanted the complainant to sign on the dotted lines of the agreement and comply with the terms and conditions of the agreement *in toto*.

13. We have heard the learned counsel for both the parties and have gone through the material available on record.
14. The question which falls for our consideration is whether there is deficiency in service on the part of the builder company.
15. The main issue before this commission is regarding the pecuniary jurisdiction of the State Commission. The builder company had not raised the issue of pecuniary jurisdiction before the State Commission. At this stage, the contention of the builder company is a technical issue and will protract the proceedings unnecessarily which in the interest of justice is being rejected; reliance has been placed on the decision of NCDRC in *M/S Omaxe Ltd. Vs. Hira Lal Mittal RP/3061/2017 (NCDRC)*. Therefore, the builder company cannot raise this issue at the appellate stage. Therefore, this contention of the pecuniary jurisdiction is rejected.
16. Considering the facts presented in the case, it is evident that the total consideration of the flat is Rs.2,28,38,517/- and the earnest money paid by the complainant is Rs.4,50,000/- . Also. she paid Rs.50 lakhs as demanded by the builder company which makes a total of Rs.54,50,000/-. The builder company cancelled the allotment of the flat after demand from the complainant to amend the clauses in the agreement, forfeiting a sum of Rs.29,72,000/- and refunded Rs.24,78,388/-. As regards the amount not refunded and forfeited by the builder company is concerned, the Hon'ble Supreme Court in *Maula Bux Vs. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136*, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of Section 74 of Indian Contract Act, 1872 are attracted and the party so forfeiting must prove actual damage. After cancellation of allotment, the flat remains with the builder company as such here is hardly any actual damage. Deduction of more than 10% of the deposit as earnest money has been held to be invalid. Reliance is placed on *Savio Gracias Vs. Tata Housing Development Company Ltd. CC No. 700 of 2020 (NCDRC)* which was upheld by the Apex Court.

“In view of the above, we are of the considered view that inspite of delay of about 5 months and a delay of 2 years in refunding the money to the Complainant, which would entitle the Complainant for a refund, ends of justice would be met if the builder forfeits the earnest money of Rs.10 lakh which was paid by the Complainant at the time of booking.

24. In view of the discussion above, the Consumer Complaint is partly allowed and the Opposite Party/Builder is directed to:

Refund the amount forfeited by it to the Complainant after deducting Rs.10 lakh along with a delay compensation of 6% per annum from 6.4.2018 (i.e. date of notice of termination of the Agreement by the Complainant) till realization, within a period of six weeks of this Order. Any delay beyond six weeks, will attract an interest rate of 9% p.a. for the same period.”

17. Keeping in view the above said decisions, in our opinion, the forfeiture of the amount of more than 10% of the cost of the flat or any amount towards the cancellation charges

amounts to unfair trade practice and it is unconscionable. Deducting another sum of Rs.2,82,284/- towards service tax on cancellation is also not maintainable. The Hon'ble Supreme Court in the case of *DLF Homes Panchkula Pvt. Ltd. vs. D.S. Dhanda*, in CA Nos. 4910-4941 of 2019 decided on 10.05.2019 has held that multiple compensations for singular deficiency is not justifiable. Therefore, the award of compensation of Rs.50,000/- for mental agony and harassment granted by the State Commission is found to be not tenable.

18. In view of the above discussion, an amount of Rs.4,50,000/- deposited as earnest money by the complainant towards allotment of the flat is liable to be deducted. The order dated 26.10.2022 of the State Commission is modified to the extent that the builder company shall refund the balance amount of Rs.22,83,852/- plus Rs.2,82,284/- = Rs.25,66,136/- along with interest at the rate of 9% p.a. from the date of deposit till realization, within period of six weeks of this Order, failing which, the rate of interest shall be enhanced to 12% p.a.

19. The appeal stands disposed of accordingly. All pending applications, if any stand disposed off.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER