

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 1307-1308 OF 2014**

(Against the Order dated 18/07/2013 in Appeal No. 1337/2011 & 1539/2011 of the State  
Commission Madhya Pradesh)

1. BABULAL GUPTA

THROUGH LEGAL HEIRS SMT KIRTI GOYAL W/O SH  
PRADEEP GOYAL R/O 18 RAVI NAGAR SECOND  
FLOOR,KHAJRANA ROAD,  
INDORE

M.P

2. ANUP GUPTA. S/O LATE SHRI BABULAL GUPTA,  
R/O 18 RAVI NAGAR SECOND FLOOR,KHAJRANA  
ROAD,  
INDORE

M.P

3. SMT.USHA GUPTA,, W/O LATE SHRI DILIP GUPTA,  
G-1/103, GULMOHAR COLONY,  
BHOPAL

M.P

4. SMT. HIMANI MITTAL, W/O SH.VAKUL MITTAL  
HOUSE NO-605,SECTOR-16,  
PANCHKULA  
HARYANA

5. SH.HITESH GUPTA, S/O LATE SHRI DILIP GUPTA  
G-1/103, GULMOHAR COLONY,  
BHOPAL

M.P

.....Petitioner(s)

Versus

1. SHANTI NAGAR GRIH NIRMAN SAHAKARI SANSTHA  
MARYADIT

TARGET CREDIT & CAPITAL PVT LTD., U.G-1 JAUHARI  
PLACE, M.G ROAD, , THROUGH ITS PRESIDENT &  
DIRECTORS,  
INDORE

M.P

.....Respondent(s)

**REVISION PETITION NO. 1309-1310 OF 2014**

(Against the Order dated 18/07/2013 in Appeal No. 1338/2011 & 1538/2011 of the State  
Commission Madhya Pradesh)

1. DILIP GUPTA

THROUGH LEGAL LINES, 1. SMT USHA GUPTA, G-1/103,  
GULMOHAR COLONY,  
BHOPAL

M.P

.....Petitioner(s)

2. SMT.HIMANI MITTAL,  
HOUSE NO-605,SECTOR- 16

PANCHKULA  
HARYANA  
3. SH.HITESH GUPTA,  
G-1/103, GULMOHAR COLONY,  
BHOPAL  
M.P

Versus

1. SHANTI NAGAR GRIH NIRMAN SAHAKARI SANSTHA  
MARYADIT  
TARGET CREDIT & CAPITAL PVT LTD, U.G-1 JAUHARI  
PALCE, M.G ROAD, THROUGH ITS PRESIDENT &  
DIRECTORS  
INDORE  
M.P

.....Respondent(s)

**BEFORE:**

**HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER**

FOR THE PETITIONER : MR. PRAVIN BAHADUR, ADVOCATE (THROUGH VC)  
FOR THE RESPONDENT : MR. DIVYAKANT LAHOTI, ADVOCATE  
MR. KUMAR VINAYAKAM GUPTA, ADVOCATE (PROXY)

**Dated : 27 August 2024**

**ORDER**

1. The present Revision Petitions (RPs) has been filed by the Petitioners against Respondents as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the orders dated 18.07.2013 of the State Consumer Disputes Redressal Commission, Bhopal (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 1337 of 2011, First Appeal (FA) No. 1539 of 2011, First Appeal (FA) No. 1338 of 2011 and First Appeal (FA) No. 1538 of 2011 in which order dated 30.07.2011 of District Consumer Disputes Redressal Forum, Indore (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 373 of 2008 and Consumer Complaint (CC) No. 377 of 2008 was challenged, inter alia praying for setting aside the orders dated 18.07.2013 of the State Commission. As the issues involved in these RPs are similar, they are taken up together. However, RP/1307-1308/2014 is taken as lead case.

2. While the Revision Petitioner(s) in RP/1307-1308/2014 (hereinafter also referred to as Complainant) were Appellant in Appeal No. 1337 of 2011 and Respondents/Non-Appellant in Appeal No. 1539 of 2011 before the State Commission and Complainant before the District Forum and the Respondent(s) (hereinafter also referred to as Opposite Party) were Respondents/Non-Appellants in Appeal No. 1337 of 2011 and Appellant in Appeal No. 1539 of 2011 before the State Commission and Opposite Party before the District Forum in Complaint No. 373 of 2008.

3. Notice was issued to the Respondent(s) on 02.12.2015. Parties filed Written Arguments on 02.08.2023 (Petitioner) and on 04.11.2019 (Respondent) respectively. Delay in filing the RPs was condoned vide order dated 22.01.2024.

4. **RP/1307-1308/2014**

Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that: -

(i) Respondent/Opposite Party had proposed a housing colony named as “Vrindavan Dham - The Garden Estate”. Respondent was giving membership and allotting plots of land to its members. Respondent allotted a plot No. E/1 to the Appellant/Complainant on 09.05.1987 of about 10,500 sq. ft. @Rs.20/- sq. ft. Cost of Rs.15,156/- paid vide cheque No. 123610 together with the Rs.15,156/- in cash (receipt in respect thereof was not issued). Subsequently, the Respondent society changed the plot of land no. E/1 to No. 73 and 80 each of measuring 50x100=5000 sq. ft. thus total 10,000 sq. ft.

(ii) Under the head of plot the Complainant paid Rs.1,60,812/- but the sale of the plot was not registered nor sale deed of the plot of land got registered in favour of the Appellant which falls in the category of deficiency of service on the part of Respondent.

(iii) On tallying the account, amount paid in respect of plot No. E/25 by Dilip Gupta (Appellant in RP/1309-1310/2014) in excess which was assured to be adjusted in plot No. E/1. Father of the Appellant has deposited Rs.1,60,812/- and after adjustment of excess amount paid with respect to plot No. E/25, Rs.16,322/- and after making total payment of Rs.1,77,134/-, he was willing to pay balance amount of Rs.22,866/-, in spite of their willingness to pay rest of the amount, Respondent did not take any step to register the plot of land.

(iv) Due to ill health of the father of the Appellant, he requested the Respondent Society to prepare and give him draft sale deed of allotted plot No. E/1 so that appropriate stamp papers be purchased get the registry done at the earliest but Chairman of the Respondent Society told that the location of Khasra number of plot no. E/1 is at a different location and asked to get the registry of another plot done but father of the Appellant denied the proposal.

(v) The father of the Appellant died on 19.01.2007 before the execution and registration of the sale deed of the above plot no. E/1 done. Being the legal heirs of the deceased Shri Babulal son of Ambaram, the Appellant again sent notice dated 31.08.2007 and dated 15.10.2007 intimating about the death of his father, further it was also requested to Chairman and Board of Directors of the Respondent Society to execute the sale deed, even after sending the notice also no reply was given by the Respondent Society.

(vi) Respondent Society orally told the father of the Appellant that the plots allotted earlier by the society are not in consonance with vastu, majority of members of the society have objection and the other plot No. 73 and 74 are nearby. Though 80% amount in respect of the said plot of land was received by the Respondent.

(vii) Repetitive requests made by the Petitioner for registration of the Plot No. E/1 and having received no response from Respondent Society, hence the Petitioner filed the complaint before the District Forum.

5. Vide Order dated 30.07.2011, in the CC no. 373 of 2008 the District Commission has allowed the complaint and passed the following order:

*“1. Opposite Parties jointly or severally if any development charges or registry fee etc. is due may receive the same and in Vrindavan Dham Colony, Indore plot measuring 100x100 equal to 10.000 sq. ft (as per proposed map plot no. 73 and 74 each 50x100 equal to 5000 sq. ft) orders be passed that plot No. E-1 be registered in favour of the Complainants from the date of the order.*

*2. If for any reason it is not possible to get registry of the above plots of land done the Opposite Parties in another developed colony will get registered plot of land of the same area in favour of the complainants.*

*3. In case in favour of Complainants it is not possible to get the plot in question or alternative plot then the Opposite Parties as per Collector's Guidelines pay current value of the plot of land to the Complainants.*

4. *The Opposite Parties jointly or severally for mental tension shall pay Rs.3000/- and cost of the complaint Rs.1000/-.*”

6. Aggrieved by the said Order dated 30.07.2011 of District Commission, both Complainant and Opposite Parties appealed in State Commission and the State Commission vide order dated 18.07.2013 in FA No. 1337 of 2011 and 1539 of 2011 has dismissed both the appeals and set aside the order of the District Forum and directed the Opposite Party shall pay to the applicants Rs.19,156/- within a period of one month from the date of receipt of the order and on this amount from the date of filing of the complaint 19.03.2008 till the date of payment with simple interest @6% per annum. Extract of relevant paras of the orders of the State Commission is given below:

“5. *On examining the record it has been found that father of the applicant's late Babulal Gupta on 9.5.87 deposited Rs.15,156/- and on 25.5.88 deposited Rs.4,000/- thus a total of Rs.19,156/- was deposited with non-applicant. Thereafter neither any amount was deposited with the institution nor was any contact made. Further, photocopies of other receipts which have been submitted by the applicants related to Vrindavan Dham - The Garden Estate. From perusal thereof it does not seem that by means of the said receipts the non-applicant has deposited money with the institution inasmuch as even the address mentioned on the receipts is different from the address of the applicant. Therefore, the said receipts cannot be relied upon. Thus lastly father of the applicant late Babulal deposited money with the institution on 25.5.88 and no other amount has been deposited. Thereafter on 19.1.07 father of the applicant Babulal Gupta died.*

6. *Under section 24 (k) of the Consumer Protection Act a limitation period of two years for filing complaint has been prescribed. Whereas in the present case after depositing an amount in the year 1988, complaint has been filed after about 20 years by the heirs of late Babulal Gupta, which is completely barred by time. In this regard the judgement rendered by the Hon'ble Supreme Court reported as Kandimalla Raghvahiya & Co. Versus National Insurance Company Ltd., and another 2009 CPJ 951 (SC) deserves perusal. Therefore, in our opinion the order passed by the District Forum is not justifiable, reasonable, and proper and deserves to be set aside.*

7. *Since father of the applicants Babulal Gupta has died on 19.01.07. Non-applicant institution did not allot any plot of land either to late Babulal Gupta or his heirs/applicants. Therefore we find it proper that the applicants be refunded Rs.19,156/- with simple interest @6 per cent per annum.*

8. *Resultantly, both the appeals are dismissed and order of the district Forum dated 30.07.2011 is also set aside and non-applicants, Shantinagar House Construction Society Ltd., is directed that they jointly and severally within a period of one month from the date of receipt of the order shall pay to the applicants Rs.19,156/- from the date of filing of the Complaint 19.03.2008 till the date of payment with simple interest @6 per cent per annum.”*

7. Petitioner(s) have challenged the said Order dated 18.07.2013 of the State Commission mainly/inter alia on following grounds:

- i. The State Commission failed to appreciate that there was no question of the complaint being barred by limitation, as neither was time fixed for performance of obligations in the terms and conditions of allotment/membership, nor did the Respondent Society ever repudiate its obligations as per the terms of allotment/membership.
- ii. The State Commission grossly erred in accepting the bald assertion of the Respondent Society that the cash receipts filed by the Complainant were forged, as the gospel truth.
- iii. The State Commission failed to appreciate that the address of the Society and the proposed housing colony was changed as many as three times, as would be evident from the record.
- iv. The State Commission failed to appreciate that the nature of the aforesaid denials itself made it clear that the said denials were false, wrongful, malafide and only aimed to frustrate and defeat the valid legal rights of the Complainant.
- v. The State Commission failed to appreciate that the Membership of the Society was only for allotment of plots in the proposed society. Under the terms printed in the Membership Application Form, the membership could be rejected within 3 months with refund of Application money. Admittedly this Application money was never refunded by the Respondent Society, therefore the denial of membership/allotment by the Respondent Society is ex-facie a lie.

8. **RP/1309-1310/2014**

Facts and issues involved in these RPs are broadly same. In this case, the Complainant was allotted a plot no. E/25, area 5250 sq. ft @ 20 per sq. ft. Father of the Complainant paid an amount of Rs.11,411/- vide cheque and other Rs.11,411/- in cash. Subsequently, the OP changed the plot no. from E25 to 80 and father of Complainant paid in total Rs.1,16,312/-. Excess amount paid was assured to be and adjusted towards plot no. E/1 (of Complainant in RP No. 1307-1308 of 2014). State Commission dismissed both the appeals. Extract of relevant paras of the orders of the State Commission is reproduced below:

“5. On examining the record it has been found that Husband of the applicant No. 1 Late Dilip Gupta and applicants No. 2 and 3 on 30.4.87 deposited Rs.11,411/- and on 29.4.88 deposited Rs.3,000/- thus a total of Rs.14,411/- was deposited with non-applicant. Thereafter neither any amount was deposited with the institution nor was any contact made. Further, photocopies of other receipts which have been submitted by the applicants related to Vrindavan Dham - The Garden Estate. From perusal thereof it does not seem that by means of the said receipts the non-applicant has deposited money with the institution inasmuch as even the address mentioned on the receipts is different from the address of the applicant. Therefore the said receipts cannot be relied upon. Thus lastly father of the applicant late Dilip gupta deposited money with the institution on 29.4.88 and no other amount has been deposited.

6. Under section 24 (a) of the Consumer Protection Act a limitation period of two years for filing complaint has been prescribed. Whereas in the present case after depositing an amount in the year 1988, complaint has been filed after about 20 years by the heirs which is completely barred by time. In this regard the judgement rendered by the Hon'ble Supreme Court reported as Kandimalla Raghvahiya & Co. Versus National Insurance Company Ltd., and another 2009 CPJ 951 (SC) deserves perusal. Therefore, in our opinion the order passed by the District Forum is not justifiable, reasonable, and proper and deserves to be set aside.

7. Since father of the applicants Dilip Gupta has died on 19.01.07. Non-applicant institution did not allot any plot of land either to late Dilip Gupta or his heirs/applicants. Therefore we find it proper that the applicants be refunded Rs.14,411/- on 19.3.08 with simple interest @6 per cent per annum.

8. Resultantly, both the appeals are dismissed and order of the district Forum dated 30.07.2011 is also set aside and non-applicants, Shantinagar House Construction Society Ltd., is directed that they jointly and severally within a period of one month from the date of receipt of the order shall pay to the applicants Rs.14,411/- from the date of filing of the Complaint 19.03.2008 till the date of payment with simple interest @6 per cent per annum.”

9. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

9.1 In addition to the averments made under the grounds (para 7), the petitioner contended that there was no time for performance specified in the Membership Application form executed between the parties. To the contrary time for registration of the plot was at the discretion of the Respondent Society. Petitioner further contended that the communications addressed by the Respondent on 12.10.1993 and 05.10.1994 were in the name of the 'Vrindavan Dham - The Garden Estate' and the address mentioned in the communication dated 05.10.1994 was the same as the address printed in the cash receipts issued to the complainants which clearly shows that the receipts filed by the Petitioner with its complaint were genuine and were issued by Respondent itself.

9.2 On the other hand Respondent contended that the Petitioner paid only Rs.15,156/- vide cheque dated 30.04.1987 and Rs.4000/- vide cheque dated 25.05.1988. Apart from these two payments, no further payment was ever deposited by Late Shri Babulal Gupta nor he complied with any schedule of payments and terms and conditions, nor contacted with the Respondent society for any purpose. Due to failure in making further payments to the Respondent Society, Late Shri Babulal Gupta was not given any allotment letter nor any share certificate of the Society. All documents in respect of correspondence placed on record by Petitioners/Complainants are false and fabricated nor have been proved before the District Forum by way of valid evidence as per law. Respondent further contended that the receipts filed by the Petitioner bear a different plot no. i.e. Plot Number 73-74 which was never applied by Late Sh. Babulal Gupta nor any such plot was ever allotted by the Respondent Society in his/his LRs favour. Respondent further strengthened its averment that there is one similar receipt bearing number 115, for an amount of Rs.5,000/-, has no date on it but in the complaint and RP no. 1309-10 (being heard together with RP no. 1307-08) its date has been mentioned as 23.05.1995. In support of its contentions, Respondent relied upon the following judgements of the Supreme Court in "***Kandimallah Raghvaiya and Company Vs. National Insurance Company and others (2009 CTJ 951 (SC), in State Bank of India Vs. B S Agriculture Industries (2009 (4) SC 191 and in Naren Pravin Sanghvi Vs. Sunray's Co-operative Housing Society decided on 15.02.2017***"

10. The main reason for dismissing the appeals and setting aside the orders of the District Forum by the State Commission is that Complaints before the District Forum were time barred. The State Commission has observed that the petitioners have paid the last installment in 1988 i.e. 20 years prior to the filing of the complaint and secondly the receipts placed on record by the petitioners bears different address from the address of the respondent and therefore cannot be relied upon. The petitioners have contended that the predecessors of the petitioner had written multiple letters enquiring about the status of the possession and registration of the allotted plots from the respondent society and the same were placed on record before the District Forum. There was no time for performance specified in the membership application form executed between the parties. The petitioners contend that failure to deliver possession being a continuous wrong, it constitutes a recurring cause of action and therefore so long as the possession is not delivered, the allottees/buyers can always approach the Consumer Forum. It is only when the sellers/builder refuse to give the possession that the period of limitation prescribed in Section 24 (a) of the Consumer



Protection Act would begin to run. Only in that situation the complaint has to be filed within two years from the date on which the seller/builder refuses to deliver the possession to the buyer. In the present case the respondent did not refuse to give possession of the plot to the Complainant/petitioners at any point of time and therefore the cause of action continues to subsist in favour of the complainant/petitioner. In support of his contentions the petitioners have relied upon the judgements of Hon'ble Supreme Court in "***Meerut Development Authority Vs. M.K. Gupta, MANU/SCOR/42885/2012***" and judgement of this Commission in "***Satish Kumar Pandey & Anr. Vs. Unitech Ltd. CC/427/2014 decided on 08.06.2015***".

11. We have carefully examined this issue in the light of judgements relied upon by the petitioner as well as judgement of the Hon'ble Supreme Court "***Samruddi Cooperative Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction Pvt. Ltd. (2022) 4 SCC 103***".

In view of the foregoing, accepting the contentions of the petitioner, we hold that it is a continuous cause of action and the complaint was well within the limitation period. Hence, the State Commission went wrong in dismissing the appeals on this ground. As regards the reliability of the receipts issued by the respondent, the petitioner has contended that after the initial payments made by cheque the balance instalments were paid by the complainant in cash and the receipts for the same were duly issued by respondent society. All the subsequent cash receipts were issued by the respondent society in the name of its proposed housing colony "Vrindavan Dham - the Garden Estate" for which the Complainants have taken a membership and allotment. In so far as the finding of the State Commission that address on the receipts were different from the address of the respondent society in the application form, the petitioners contend that at the time of submitting the membership application form the address of the respondent society was 410, Jawahar Marg, Indore. The address mentioned on the letter issued by the respondent on 05.10.1994 was 202, Progress Chamber, Sneh Nagar, Main Road, (Opposite Gujarat Sweets) Indore, M.P. and subsequent cash receipts issued by the respondents also bear the same address hence there was no occasion for the petitioner to doubt the genuineness of the receipts issued by the respondent society.

12. The petitioner further submit that pursuant to the impugned judgement passed by the State Commission, the State Commission in another matter titled as "***Shanti Nagar Co-operative Housing Society Ltd. Vs. Jugal Kishore FA/565/2014***" decided on 07.10.2015 have rejected the similar stand of the Respondent qua similar receipts. We have carefully gone through the contentions of the petitioner in this regard, and the judgement of the State Commission in Jugal Kishore's Case FA/565/2014 decided on 07.10.2015 relevant paras of which are reproduced below:

*"9. Learned counsel for the Society strenuously argued that the receipts purporting to be issued by "Vrindavan Dham The Garden Estate" from 13.12.1994 to 14.2.1996 are forged and fabricated. It has not been proved as to who issued these receipts and the address given on the said receipts "202 Progress Chamber, Sneh Nagar, Main Road, Indore" is also different. The genuine receipts issued by the Society were issued in the*

*name of "Shanti Nagar Co-operative Housing Society Ltd., 410, Jawahar Marg, Indore". It is an admitted position that "Vrindavan Dham colony is being developed by Shanti Nagar Housing Society. Even the receipts issued by the appellant / Society mentioned "Vrindavan Dham" on them. It is for the Society to issue receipts in the name and style of "Shanti Nagar Co-operative Housing Society or in the name of "Vrindavan Dham The Garden Estate". In ordinary course nobody would have objected if the receipts were issued by the appellant/Society in the name of Vrindavan Dham The Garden Estate. When the receipts were issued from the office of the Society, a member had reason to believe that they were issued by some authorized person.*

xxxx

*11. From the Audit Report it could be inferred that the appellant/Society was not working in fair and transparent manner. It was observed by the Auditors that the Society was using more than one receipt books which was not proper. It was also observed that in the receipts, signatures of different receivers were found whose designations were not clear. In our opinion, this observation by the Auditors, after examining the record submitted by the Society, reinforced the contention of the complainant that receipts issued from 13.12.1994 to 14.2.1996 were genuine and were issued by the appellant / Society.*

xxxx

*14. Besides above, the circumstances which appealed to us immensely in holding the disputed receipts genuine are firstly, had complainant forged or fabricated the receipts of deposits by printing, he could have very well adopted the proforma which was used by the appellant Society for issuing receipts to him earlier, why he would have fabricated the receipts which were altogether different; secondly, there appeared no reason for complainant to have changed the number of the allotted plot No.34 to plot No.70 and thirdly, despite the accusation levelled against the complainant by the appellant/Society that he forged and fabricated the receipts (a valuable security) for grabbing a plot, the Society did not lodge FIR or a Criminal Case against him. It is also significant to note that Vrindavan Dham The Garden Estate is admittedly a project of appellant/Shanti Nagar Co-operative Housing Society."*

**13.** The petitioner has submitted that the said judgement of the State Commission in Jugal Kishore case was challenged before this Commission vide RP/97/2016 and the same was dismissed in default. The application seeking restoration was also dismissed on 30.08.2019. The SLP bearing no. 30746 of 2019 challenging the dismissal was also dismissed as

withdrawn on 13.01.2020. The petitioners have placed on record the copies of the relevant judgements of this Commission and Hon'ble Supreme Court in this regard.

**14.** In view of the foregoing, especially considering the judgements of the State Commission in Jugal Kishore's case, which has attained finality and considering that the issues involved in present RP are exactly the same, we are of the considered view that the orders of the State Commission impugned in the present RP cannot be sustained, hence the same are hereby set aside. The matter is remanded back to the State Commission for fresh disposal in the light of its judgement in the case of Jugal Kishore (Supra). The State Commission should dispose of the matter after giving an opportunity of hearing to both sides at the earliest possible, preferably within three months from the date of this order.

**15.** RP/1307-1308/2014 and RP/1309-1310/2014 are disposed off accordingly.

**16.** The pending IAs in the case, if any, also stand disposed off.

.....  
**DR. INDER JIT SINGH**  
**PRESIDING MEMBER**