

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 2326 OF 2017**

(Against the Order dated 18/09/2017 in Complaint No. 311/2014 of the State Commission  
Telangana)

1. MALLELA MURALIDHAR

S/O. M. VENKATA RAMANA REDDY, FLAT NO. 603,  
DHURVA-II, SRINIVASA VILLAGE, YOUSUFGUDA,  
HYDERABAD-500045  
TELANGANA

.....Appellant(s)

Versus

1. M/S. LODHA HEALTHY CONSTRUCTION &  
DEVELOPERS PVT. LTD. & ANR.

REP. BY ITS MANAGING DIRECTOR, REGD. OFFICE :  
216, SHAH AND NAHAR, INDUSTRIAL ESTATE, DDR. E.  
MOSES ROAD, WORLI,  
MUMBAI-400018

MAHARASHTRA

2. M/S. LODHA HEALTHY CONSTRUCTION AND  
DEVELOPERS PVT LTD.,

REP. BY ITS MANAGING DIRECTOR, REGD. OFFICE  
LODHA BELLEZZA, EAST BLOCK, EDEN SQUARE,  
KPHB ROAD, NEAR HITECH CITY, MMTS STATION,  
HYDERABAD-500072

TELANGANA

.....Respondent(s)

**BEFORE:**

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

FOR THE APPELLANT :           MR. N. PRAMOD, PROXY ADVOCATE FOR  
MR. SREEDHAR, ADVOCATE

FOR THE RESPONDENT :       MR. RAHUL KRIPLANI, ADVOCATE WITH  
MS. SUPRAJA V., ADVOCATE

**Dated : 06 November 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") in challenge to the Order dated 18.09.2017 passed by the State

Consumer Disputes Redressal Commission, Hyderabad (hereinafter referred to as the “State Commission”) in complaint No. 311 of 2014, whereby the complaint was allowed.

2. We have heard the learned counsel for the appellant – Mallela Muralidhar (hereinafter referred to as the ‘complainant’) and the learned counsel for the respondents (hereinafter referred to as the ‘builder’) and perused the record including the State Commission’s impugned Order dated 18.09.2017 and the memorandum of appeal.

3. The brief facts of the case are that the complainant entered into an agreement of sale dated 20.05.2011 to purchase apartment No. 1800 on 18th floor BURLINGAME, building, having saleable area of 4761 sq. ft. and 3 car parking spaces for Rs.1,54,51,349/- to be paid in installments and the builder promised to deliver possession of the said residential apartment duly completed with amenities to the complainant on 31.12.2012 and with a grace period of six months (i.e. latest by 30.06.2013). The complainant at the time of entering into agreement paid an amount of Rs.30,90,217/- as earnest money towards advance. Pursuant to the amount paid, the builder issued a letter of allotment dated 10.05.2011 duly stipulating the terms and conditions of payment of balance of sale consideration while confirming the allotment. Subsequently, the complainant paid the balance of sale consideration as per the schedule stipulated by the builder in the agreement and the complainant paid a total amount of Rs.1,46,78,926/-. It is alleged that the complainant was also charged interest for the delay in making payments of certain instalments @ 18% per annum on the balance of instalments for each day of delay. The complainant has paid the entire sale consideration except 5% of total sale consideration which had been agreed to be paid at the time of delivering the possession of the apartment in question. It is alleged that the builder promised to deliver the possession of the apartment in question to the complainant by 31.12.2012. The agreement also provided for a grace period of 06 months beyond the stipulated period (i.e. on or before 30.06.2013). The apartment was not completed and the offer of possession of the apartment was not made within the stipulated period or even in the subsequent 06 months’ grace period. Therefore, the complainant was constrained to issue a legal notice on 14.08.2013 demanding delivery of the possession forthwith in accordance with the terms of agreement. Long and continuous correspondence took place between the complainants and the builder but no efforts have been made to intimate the complainant that the works have been completed and no attempts have been made for delivery of the possession of the apartment.

4. Being aggrieved, the complainant filed a complaint before the State Commission with the following prayer:-

*(a) to direct the opposite party to pay interest @18% per annum on the amount paid towards the part consideration of Rs.1,46,78,926/- (against the total sale consideration of Rs. 1,54,51,349/-) from 01.01.2013 till 30.09.2014 (634 days) of Rs. 46,11,193/-.*

*(b) to pay future interest on the consideration paid to the opposite party @ 18% p.a. till the date of delivery of possession.*

*(c) to pay compensation towards liquidated damages @ 10% on the amount of value of total consideration of the apartment Rs.1,54,51,349/- which calculated as Rs.15,45,135/-.*

*(d) to pay the interest @18% on the amount of installments of Rs.15,45,135/- which comes total Rs.2,35,452/-*

*(e) to award costs of complainant a sum of Rs.1,00,000/-.*

*(f) to grant such other or further relief*

5. After appreciation of the facts of the case, the State Commission allowed the complaint and directed the builder to pay interest on the amount paid by the complainant towards the part consideration @ 6% p.a. from 01.07.2013 till the date of filing of the complaint and thereafter @ 9% p.a. till the date of delivery of possession together with costs of Rs.5,000/-.

6. Dissatisfied with the order dated 18.09.2017, the complainant has filed the present appeal before this Commission.

7. Before this Commission, learned counsel for the complainant strongly argued that the builder has received the amounts of Rs. 15,45,134/- payable towards the installments of 15th (Brick work) and 16th (Internal plaster) in advance though as per the schedule, the same are required to be paid only on the commencement of the works but the works were not started as per the schedule. Therefore, the complainant has sent a letter to the builder in respect of the advance paid/payment towards the installments on 15-08-2013 intimating the builder to pay interest on the said amount for having collected even before the completion of the work of construction as per the schedule. He further argued that the complainant is also entitled to the interest at the rate of 18% per annum, from the date of their payment till the date of commencement of the work, on payments made by him towards the installments collected in advance without commencing the works of construction as per the stipulated schedule by the builder. Further, it was argued that the builder with malafide intention did not deliver the possession of the apartment within the stipulated time, therefore, the complainant suffered huge loss by repaying the loan amount in EMI and also the rent towards the premises being occupied and the delay on the part of the builder in not delivering the possession within the stipulated period, amounts to deficiency in service. In support of this contention, he placed reliance on the decisions rendered in the following cases:

a. ***Southern Investment Pvt. Ltd. Vs. Dr. M.Thomas Abraham and Anr. 3 (2006) CPJ83 (NC)*** decided on 23.05.2006.

b. ***Bharathi Knitting Co. Vs. DHL Worldwide Express Courier Division of Airfreight Ltd. (1996) 4 SCC 704*** decided on 9<sup>th</sup> May 1996

8. Further, it was argued that rate of interest at the rate of 18% per annum on delayed possession upon payment of sale consideration would be just and reasonable and in the agreement itself when it is laid down that in case of delay of payment, the builder was free to levy interest @ 18% p.a., reverse should also hold good when contract is silent on this point. In support of this contention, he placed reliance on following judgments:

a. ***Lucknow Development Authority v. M.K Gupta (1994) 1 SCC 243*** decided on 5th November, 1993

b. ***Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 65***

9. The learned counsel for the builder vehemently countered the complainant's claims, arguing that the builder admittedly offered the possession of the flat for fit outs on 11.02.2015. The builder again requested the complainant to take over the possession of the flat vide its letter dated 21.07.2016. The complainant finally only took possession on 24.11.2016. The delay in taking over the possession of the flat from the end of the complainant clearly indicated that the complainant was in no imminent need of an accommodation and thus no actual loss was suffered by him on account of delay. He further argued that the complainant ought not to be awarded compensation beyond 11.02.2015. Additionally, it was held that compensation for delay in handing over possession is payable only from the time of conclusion of grace period till the time of offer of possession, and a complainant cannot reap the benefit of their own delay in taking possession. In support of this contention, he placed reliance on ***Supertech Ltd. v. Rajni Goyal: 2018 SCC Online SC 2114***.

10. Further, it was argued that it is settled that the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation. In light of the above, the complainant's case lacks any reasonable grounds or circumstances which could justify the compensation already awarded to him vide the impugned order dated 18.09.2017 of the State Commission is not apt and reasonable. There has been no evidence adduced by the complainant in his complaint or the instant appeal which could substantiate any of the baseless assertions made by him with regard to the damages or loss suffered by him as a result of the act of the builder. In support of the above contention, reliance was placed on ***Kailash Nath Associates vs. Delhi Development Authority' (2015) 4 SCC 136***. Also, it was argued that the interest at the rate of 6% per annum is just and reasonable for the delay in handing over the possession of the apartment to the complainant. It is further argued that the damages awarded should not be excessive and court/tribunal needs to take a balanced approach so as to ensure right compensation. He placed reliance on the following decisions:

a. ***Bangalore Development Authority Vs. Syndicate Bank (2007) 6 SCC 711***.

b. ***Ghaziabad Development Authority Vs. Balbir Singh II (2004) 5 SCC 65***.

c. ***Fortune Infrastructure (Now Known as M/s. Hicon Infrastructure) & Anr v. Trevor D' Lima SCC (2018) 5 SCC***.

11. The question which falls for our consideration is whether there is deficiency in service on the part of the builder.

12. It is not in dispute that the agreement of sale between the complainant and the builder was executed on 20.05.2011 and according to the agreement of sale, the possession of the flat in question was to be delivered on or before 30.06.2013 including the grace period of 6 months. It is not in dispute that the complainant had paid Rs.1,46,78,926/- i.e. 95% of the total sale consideration and the balance 5% was to be paid at the time of handing over

possession of the apartment. It is seen that the builder failed to deliver the possession of the apartment to the complainant within the agreed and assured period, which clearly constitutes deficiency in service on the part of the builder.

13. The main controversy in the present appeal is with regard to the rate of interest awarded by the State Commission. The complainants have claimed interest at the rate of 18% till the date of delivery of possession of the flat. It is seen that the complainant during the pendency of the complaint before the State Commission admitted that the builder delivered the possession of the flat to the complainant along with registration of the sale deed. It is clear that there was significant delay in handing over possession of the flat. The complainant cannot be expected to wait indefinitely as the complainant has already paid a substantial amount with the expectation of timely possession. In catena of decisions, the Hon'ble Supreme Court has asserted the right of buyers to receive fair delay compensation when developers unduly and unreasonably delayed possession as per the Agreement. Hon'ble Supreme Court in ***Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 SC***, decided on 25.03.2019 has observed that:

*“.....It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by SCDRC and by the NCDRC for refund of moneys were justified.”*

14. In a similar case of the Hon'ble Supreme Court ***Wing Commander Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd., (2020) 16 SCC 512*** wherein it was held as:

*“54. .... The general appreciation in land values results in an increase in the value of the investment made by the buyers. Difficulties in determining the measure of compensation cannot however dilute the liability to pay. A developer who has breached a clear representation which has been made to the buyers of the amenities which will be provided to them should be held accountable to the process of law.”*

*“69.1. ....the first and second respondents shall, as a measure of compensation, pay an amount calculated @ 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of the occupation certificate.”*

15. It is also seen from the record that the letter dated 11.02.2015 is to initiate the process of fit out possession. From a perusal of clause 23(a) of the agreement, it is clear that the builder would provide the residential apartment to the complainant for fit out on or before

31<sup>st</sup> day of December 2012 and as per clause 23(b) of the agreement, grace period of 06 months beyond the promised date of possession i.e. 30.06.2013, was given. In our view, the fit out possession cannot be considered as complete and legal possession. As regards the contention, that the builder issued letter dated 21.07.2016 to the complainant to take over the possession but the builder has not brought the letter dated 21.07.2016 on record to prove that he had sent a letter for possession. Therefore, the contention of the builder that the letter for possession was issued on 21.07.2016 is rejected. However, letter of possession dated 24.11.2016 is on record, which has not been denied by the complainant.

**16.** In view of the above, we are of the opinion that the rate of interest at the rate of 6% per annum from the promised date of possession till the date of handing over the possession of the flat, is just and reasonable and commensurate with the loss suffered by the complainant. Hence, the Order dated 18.09.2017 of the State Commission is liable to be modified.

**17.** As such, the order dated 18.09.2017 of the State Commission is modified to the extent that the builder shall pay interest at the rate of 6% per annum on the amount paid by the complainant from the promised date of possession including the grace period i.e. 01.07.2013 till the date of handing over the possession of the flat i.e. 24.11.2016. The cost of Rs. 5,000/- awarded by the State Commission is upheld.

The order be complied with within four weeks from today, failing which, it shall carry interest at the rate of 9% per annum.

**18.** The appeal stands disposed of in above terms. All pending applications, if any, stand disposed of.

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**SUBHASH CHANDRA  
PRESIDING MEMBER**

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**DR. SADHNA SHANKER  
MEMBER**