

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 2332 OF 2017

(Against the Order dated 21/04/2016 in Complaint No. 305/2013 of the State Commission
Maharashtra)

1. DHWANI ASSOCIATE DEVELOPERS & BUILDERS &
ORS.

HAVING OFFICE AT 37/A, LARAN CENTRE, S.V. ROAD,
ANDHERI (WEST)

MUMBAI-400058

2. MR. KIRTI MURJI SHAH

RESIDENT AT SHANTI BHAWAN BUILDING, 1ST FLOOR,
J.P. ROAD, OPP. JAIN DEASAR ANDHERI (WEST),

MUMBAI-400005

.....Appellant(s)

Versus

1. RAJENDRA TALATI & ANR.

PRESENTLY RESIDING AT 303, SHRI GOVIND
APARTMENT, DATTAPADA, SCHOOL ROAD, BORIVALI
(EAST),

MUMBAI-400066

2. MR. NISHITH RAJENDRA TALATI

PRESENTLY RESIDING AT 303, SHRI GOVIND
APARTMENT, DATTAPADA, SCHOOL ROAD, BORIVALI
(EAST),

MUMBAI-400066

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT : MR. KARTIK SAUDAL, ADVOCATE WITH
 MS. RAVEENA DEWAN, ADVOCATE
 MS. ISHIKA SINGH, ADVOCATE

FOR THE RESPONDENT : MR. ANILENDRA PANDYE, 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 21.04.2016 passed by the State

Consumer Disputes Redressal Commission, Maharashtra (hereinafter referred to as the “State Commission”) in Complaint No. 305 of 2013, whereby the complaint was allowed.

2. Although the builder has filed an application for condonation of delay of 474 days in filing the appeal but as per the registry’s report, there is no delay in filing the present appeal. Hence, the appeal is within limitation period.

3. We have heard the learned counsel for the appellant (hereinafter referred to as the ‘builder’) and the learned counsel for the respondents (hereinafter referred to as the ‘complainants’) and perused the record including the State Commission’s impugned Order dated 21.04.2016 and the memorandum of appeal.

4. The facts, in brief, are that the complainants booked a flat bearing no. 503, admeasuring 1021 sq. ft. super built-up area, on the fifth floor from ‘C’ Wing in Hansa Complex, Datta Pada Road, Borivali (East), Mumbai, with the builder for a total consideration of Rs.80,35,270/-, out of which, a sum of Rs.42,35,000/- has already been paid. It is the case of the complainants that they are ready and willing to pay balance consideration. However, the builder had failed and neglected to comply with their statutory obligations under the Maharashtra Ownership Flats Act, 1963. It is alleged that despite assurances made by the builder, they have not yet delivered possession of the aforesaid flat to the complainants. According to the complainants, there was a memorandum of understanding dated 08.02.2013 with the builder, which mentions total sum of Rs.80,35,270/- as agreed consideration. The complainants paid a sum of Rs.42,35,270/- and the balance consideration would be paid at the time of handing over possession of the flat to them by the builder. The grievance of the complainants is that despite having received 50% of the total sale consideration of the flat, the builder has not handed over the possession of the flat to the complainants.

5. The complainants filed a complaint before the State Commission seeking a direction to the builder to comply their statutory obligations under Maharashtra Ownership Flat Act, (MOFA) 1963 and to hand over peaceful, quiet, vacant possession of the flat in question or in the alternative, the builder shall pay Rs.90,00,000/- as damages/compensation charges for the loss suffered and Rs. 40,000/- per month as compensation charges for acquiring alternative premises as also Rs. 1,00,000/- as legal expenses and incidental charges.

6. After appreciation of the facts of the case, the State Commission vide its order dated 21.04.2016 allowed the complaint. The order dated 21.04.2016 of the State Commission reads as under:

“Since the contentions and averments in the consumer complaint remained uncontroverted, we accept the case of the Complainants and allow the consumer complaint as prayed for. Hence, it is hereby directed that upon acceptance of balance consideration amount of Rs.38,00,000/- from the Complainants, the Opponents shall, jointly & severally, execute a registered Sale Deed in respect of the flat, which is subject matter of present consumer dispute. Since, the Opponents are guilty of deficiency in service, the Opponents shall also pay to the Complainants, an amount in sum of Rs.1,00,000/- by way of compensation towards mental agony and harassments besides costs of litigation quantified at Rs.10,000/-, However, it is hereby made clear

that in the event, Sale Deed cannot be executed by the Opponents in favour of the Complainants, for the reasons beyond the control of the Opponents, then, in that event, entire amount, which is paid by the Complainants and accepted by the Opponents, viz. an amount in sum of Rs.42,35,270/- shall be refunded to the Complainants together with interest thereon @ 18% p.a. with effect from the date of deposit of such amount till realization thereof.”

7. Against the said order dated 21.04.2016 of the State Commission, the builder has filed the present appeal before this Commission.
8. Before this Commission, learned counsel for the builder submitted that the impugned order is in contravention of the settled law laid down by the Hon'ble Supreme Court in the case of **Lakshmi Ram Bhuyan vs. Hari Prasad Bhuyan, (2003) 1 SCC 197** wherein it has been held that the decree shall contain all the issues and findings or decision thereon with the reasons therefor inter alia, particulars of the claim and shall specify clearly the relief granted or other determination of the suit.
9. Further, it was argued that every judgment passed by a court of law has to be on merits, irrespective of the fact, whether or not; the defendant appears before the court of law and defends himself. In support of this contention, he placed reliance on the judgment in the case of **Meenakshisundaram Textiles vs. Valliammal Textiles, 2011 (3) CTC 168**. It is further submitted that the State Commission proceeded ex-parte merely relying upon the statement of the complainants that the builder has been served. However, no evidence was adduced before the State Commission to substantiate the same. He has further argued that the complainants with ulterior motives deliberately concealed all the facts before the State Commission. It is stated that the complainants failed to disclose that there was an injunction order passed by the Hon'ble Bombay High Court restraining the builder from creating the third-party interest in respect of the said property.
10. Learned counsel for the complainants rebutted the builder's arguments, emphasizing that the order of the State Commission has been challenged before this Hon'ble Commission only on the basis of being ex-parte whereas the facts and the case shows a different story. He further argued that the record of the fora below clearly reflects that there was proper service on the builder and they choose not to appear before the State Commission. Further, it was argued that the State Commission has passed an equitable order and has directed the builder to abide by the agreement between the parties and after receiving the balance amount transfer the flat to the complainants through registered sale deed and in case there is any impediment in transfer, in an alternative, return the amount along with interest. Even if we presume that the builder would have been served and appear, the order passed by the State Commission does not require any interference, as being just and proper. Further, it is pertinent to note that the complainants had requested a compensation amounting to Rs.90,00,000 (as on 30.03.2017) against which the only Rs.1,00,000/- has been awarded. Also, the property rates have almost doubled since the complainants booked the flat in 15.11.2010. Therefore, the rate of interest @ 18% per annum till the realization, is just and proper under the facts and circumstances of the present case specifically in order to satiate the compensation amount prayed by the complainants.

11. The question which falls for our consideration is whether there is deficiency in service on the part of the builder.
12. It is seen from the facts and circumstances of the case and perusal of evidence on record that the builder was informed about the proceedings before the State Commission through their notices and despite the due service of such notices issued by the State Commission under RPAD, the builder did not bother to appear before them for proceedings without sufficient reasons. It is pertinent to note that by the impugned order dated 21.04.2016, the written version was disallowed and nobody appeared for arguments in the proceedings before the State Commission. The builder was given ample opportunity to represent their case, following the principles of natural justice but same was not availed by the builder. Therefore, in our view, the order of the State Commission cannot be assailed on the ground that it is ex-parte.
13. Further, it is seen that the amount of Rs.42,35,000/-deposited by the complainants towards booking of the flat has been deposited in the State Commission by the builder in compliance of order of the State Commission dated 21.04.2016. It is seen that there was no alternate prayer for refund in the complaint and only possession was sought along with compensation.
14. It is clear that builder failed to fulfill their contractual obligations and caused significant delay in handing over the possession of the flat. Additionally, they have not produced any evidence on record to show any reason for the delay in handing over the possession within the promised period. This constitutes deficiency in service on its part.
15. The Hon'ble Supreme Court in the case of ***DLF Homes Panchkula Pvt. Ltd. vs. D.S. Dhanda***, has held that multiple compensations for singular deficiency is not justifiable. Therefore, the award of compensation of Rs.1,00,000/- granted by the State Commission is found to be not tenable.
16. In view of the above discussion, the order dated 21.04.2016 of the State Commission is modified as under:
 - a. The builder shall hand over the possession of the flat in question to the complainants complete in all respects and the complainants are directed to pay the balance amount to the builder as per the agreement at the time of possession.
 - b. The builder shall pay compensation for delay in delivery of possession at the rate of 6% p.a. on the amount of Rs.42,35,270/- from the promised date of possession till the date of handing over of possession of the flat.
 - c. In case, any amount is deposited by the builder with the State Commission, the same shall be adjusted in the compensation as mentioned above in (b) above. The amount so deposited shall be released to the complainants post adjustment.
 - d. The amount of Rs.1,00,000/- awarded by the State Commission towards mental agony and harassment is set aside.
 - e. The builder is directed to pay Rs.10,000/- as cost of litigation.

17. The order be complied with within eight 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**