

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,  
8TH FLOOR, B.W.S.S.B BUILDING, K.G.ROAD,BANGALORE-09**

**Complaint Case No. CC/268/2023  
( Date of Filing : 03 Aug 2023 )**

1. Mrs.Sulochana Sripati Koimattur, W/o Mr.Sripati B  
Koimattur

Aged about 87 years, Rep by her GPA Holder Mr.Sripati Balaji  
Koimattur, S/o Late Sri Balaji Koimattur Aged about 91 years  
Residing at No.C-704 RNS Shanti Nivas Yeshwanthapura  
Bangalore-560022

.....Complainant(s)

Versus

1. M/s Sai Kalyan Builders & Developers Pvt Ltd  
By its Managing Director, No.3, 2nd floor, Above Nilgiris,  
Channappa Complex, Opp: Coffee Board Layout Park,  
Kempapura, Hebbal, Bangalore-560024

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MRS. M. SHOBHA PRESIDENT  
HON'BLE MRS. K Anita Shivakumar MEMBER  
HON'BLE MRS. SUMA ANIL KUMAR MEMBER**

**PRESENT:**

**Dated : 20 May 2024**

**Final Order / Judgement**

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION AT  
BANGALORE (URBAN)**

**DATED 20<sup>th</sup> DAY OF MAY 2024**

**PRESENT:-**

**SMT.M.SHOBHA**

**: PRESIDENT**

**BSC., LLB**

**SMT.K.ANITA SHIVAKUMAR**

**MEMBER**

**:**

**M.S.W, LL.B., PGDCLP**

**SMT.SUMA ANIL KUMAR**

**: MEMBER**

**BA., LL.B., IWIL-IIMB**

**COMPLAINT No.268/2023**

**COMPLAINANT**

**1 Mrs. SulochanaSripatiKoimattur,**

W/o Mr. Sripati B Koimattur,

Aged about 87 years,

Rep. by her GPA Holder

Mr. SripatiBalajiKoimattur,

S/o Late BalajiKoimattur

Aged about 91 years,

R/at: No.C-704, RNS Shanti Nivas, Yeshwanthapura,  
Bangalore-560022.

**(Sri. Gopalakrishna R. Hedge, Adv.)**

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**OPPOSITE PARTY**

**1**

M/s. Sai Kalyan Builders and Developer Pvt. Ltd., By its  
Mananging Director. No.3, 2<sup>nd</sup> floor, Above Nilgiris,  
Channappa Complex, Opp: Coffee Board Layout Park,  
Kempapura, Hebbal, Bangalore-560024.

**(In-person)**

## **ORDER**

### **SMT. K. ANITA SHIVAKUMAR, MEMBER**

Complaint filed by the complainant U/S 35 of Consumer Protection Act 2019, seeking direction to OP to pay sum of Rs.30,29,480/- along with interest at the rate of 12% p.a., to pay a sum of Rs.1,00,000/- towards the deficiency of service caused mental agony and damages, to pay sum of Rs.25,000/- towards cost of litigation and such other reliefs.

### **2. Brief facts of this case are as follows:-**

Complainant had booked a residential flat bearing No.405 in the 4<sup>th</sup> floor, D block in the project ULTIMA with super built up area of 1050 Sq.ft. consisting of 2 BHK along with 1 covered car parking space and 430.5 Sq.ft. of undivided share in the converted land bearing sy.No.78 situated at Thanisandra village, K.R. Puram, Bangalore East, measuring in all 4 acres, bearing Khata No.202/78 within the limits of Bruhath Bengaluru MahanagaraPalike, Bangalore being constructed by OP. Complainant stated that she had entered into the agreement of sale and construction agreement on 14.08.2018. The total cost of the flat was agreed between the parties was Rs.58,51,080/-.

3. As per the terms of the agreement of sale and construction, complainant had paid sum of Rs.3,00,000/- as booking amount by way of cheque bearing No.715921 drawn on ICICI bank, Dharwad, during June 2018. She further paid Rs.26,00,000/- as an advance amount in the month of August 2018 by way of cash and further additional advance amount of Rs.9,00,000/- by way of cheque drawn on ICICI bank, Dharwad on 29.08.2019. In total complainant paid Rs.38,00,000/- which is acknowledged by OP issued receipts for the payment, dated 29.08.2019. Complainant further stated that OP has mentioned in their letter dated 29.08.2019, had acknowledged the receipt of above said sum of Rs.38,00,000/- paid by complainant, further mentioned that the balance amount of Rs.20,51,080/- is to be paid as against the total flat consideration of Rs.58,51,080/-.

4. As per the agreement, OP has agreed to handover the possession of the flat by 30.05.2019, however the apartment was not ready for the occupation on the day. Therefore complainant had requested the OP to cancel the flat and refund the entire amount of Rs.38,00,000/- with interest, in her letter dated 24.03.2021. Meanwhile, complainant had lost her son on 06.09.2020. After several requests made by the complainant and her husband OP has refunded sum of Rs.10,00,000/- on 17.04.2021 and further sum of Rs.10,00,000/- on 17.11.2021. OP still due to pay Rs.18,00,000/- with interest. Complainant requested several times to make the payment of balance amount, in spite of that OP did not come forward to pay back, even not considered the age of complainant who is 87 years old. Therefore complainant caused legal notice on 27.06.2022, calling upon OP to refund of Rs.18,00,000/- along with interest. Though the said notice was served on OP on 29.06.2022, neither OP refunded the amount nor replied to the legal notice, definitely is a deficiency of service on its part. Till now OP postponing the same with one or the other reasons, deliberately torturing complainant by keeping the heavy amount of Rs.18,00,000/- without keeping their promises.

5. Complainant stated in her complaint that OP has sold the aforesaid flat No.405, 4<sup>th</sup> floor, D block with the same measurement with the car parking space to third party i.e. Mr. Gourav Kumar, in registered sale deed 29.10.2020 for the valuable consideration of Rs.53,28,700/-. Hence complainant approached this commission for the above referred claims from this commission.

6. Notice sent to OP to two different addresses which were duly served on it. Managing Director of OP company, appeared on the date of appearance and prays time to file version, but OP has not filed their statement of objection even after lapse of 45 days, hence version of OP taken as NIL.

7. At this stage complainant adduced affidavit evidence by filing affidavit along with certificate U/S 65B of IE act and in support to the evidence complainant, filed 12 documents which are marked as Ex.C.1 to Ex.C.12. OP did not come forward to lead its evidence as well. Heard complainant counsel. OPs argument taken as heard since despite the several opportunity, OP not argued the matter. We perused the materials on record and proceed to pass the following order on merits.

8. On the basis of above pleadings for our consideration are as follows:-

- i) Whether the complainant proves the deficiency of service on the part of OP's?
- ii) Whether complainant is entitled for the relief?
- iii) What order?

9. Our answers to the above points are as follows:-

**Point No.1:-**Affirmative.

**Point No.2:-**Partly Affirmative.

**Point No.3:-** As per the final order.

### **REASONS**

**10. Point No.1&2:-**These points are inter-connected to each other and for the sake of convenience, to avoid repetition of facts, these points are taken up together for common discussion.

11. After perusal of the pleadings and documents placed before this commission, complainant booked a flat with Op company by paying Rs.3,00,000/- towards the booking amount which is revealed in agreement of sale dated 14.08.2018 which is at Ex.C.1. By paying Rs.3,00,000/- complainant has booked a residential flat bearing No.405 in the 4<sup>th</sup> floor, D block in the project ULTIMA with a super built up area of 1050 Sq.ft. consisting of 2BHK with car parking space. As per agreement of sale which is at Ex.C.1 and the construction agreement which is at Ex.C.2, complainant has paid total amount of Rs.38,00,000/- in three phases. He paid Rs.3,00,000/- on June 2018 and Rs.9,00,000/- on 29.08.2019 by way of cheques. He paid Rs.26,00,000/- as an advance amount in August 2018 by way of cash. For the receipt of the said amount OP has issued receipt which is at Ex.C.3, it also reveals that complainant is due to pay Rs.20,51,080/- towards the total consideration amount. Even after receipt OP did not come forward to hand over the possession of the flat by 30.05.2019 as agreed. However, the apartment was not ready for the occupation, therefore complainant requested OP to cancel the flat and refund the entire advance amount of Rs.38,00,000/- with interest through letter dated 24.03.2021. After several requests OP has refunded Rs.20,00,000/- in two phases i.e. Rs.10,00,000/- on

17.04.2021 and another Rs.10,00,000/- on 17.11.2021 which is revealed in the accounts statement which are produced in the Ex.C.4. Out of Rs.38,00,000/- OP has refunded only Rs.20,00,000/-, the balance of Rs.18,00,000/- is retained with OP, therefore complainant requested several times that Rs.18,00,000/- to be refunded with interest at 12% p.a. In this regard complainant has caused legal notice dated 27.06.2022, which is at Ex.C.6. OP not responded to legal notice even the notice has duly served on him. Complainant sought Rs.18,00,000/- with interest from OP and also complainant alleged that OP has caused deficiency of service by retaining Rs.18,00,000/-, without providing any service/executing the sale deed of scheduled C property of the project ULTIMA.

12. It is not fair on the part of OP without handing over the possession of flat and also no refunded the amount paid by the complainant even after their several requests, they are liable for interest. Complainant has produced a memo of calculation at the time of filing the complaint and the same has been marked as Ex.C.8. Complainant calculated the amount payable by OP from the date of respective payments at the rate of 12% p.a. That comes up to Rs.30,29,480/- till the date of filing the complaint. Complainant has deducted Rs.20,00,000/- which is already been refunded. Considering Ex.C.2, page No.8, in the Point No.13 - compensation column:-

*iii)For any other reason; the promoter shall be liable, on demand to the Allottee's, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the total amount received by him in respect of the Apartment, with interest at the rate of standard SBI HFL within 45 days of it becoming due. Provided that where if the Allottee does not intend to withdraw from the project, the promoter shall pay the Allottee interest at the rate standard SBI HFL for every month of delay, till the handing over of the possession of the apartment, which shall be paid by the promoter to the Allottee within 45 days of it becoming due.*

This aforesaid clause is applicable to OP when the complainant herself withdraw from the project, but here complainant wished to have the apartment possession even she was ready to pay the balance amount at the time of final stage, inevitably cancelled her flat booking after observing the attitude of OP and the situation at the project. OP was supposed to refund the amount within 45 days but OP has only refunded Rs.20,00,000/- that too after 7 months of submission of cancellation letter. But the balance of Rs.18,00,000/- is still lying with OP, is not refunded, hence is liable for interest as complainant calculated in Ex.C.8.

13. Moreover OP has not shown any interest to handover the possession to the complainant, instead they executed the sale deed in favour of one Mr. Gouravkumar, with the same schedule C property mentioned in Ex.C.1 and Ex.C.2 i.e. flat No.405, 4<sup>th</sup> floor, D block with super built up area of 1050 Sq.ft. with car parking area and undivided share, the same has been produced in Ex.C.9 as absolute sale deed executed by OP in favour of Mr. Gourav Kumar on 29.10.2020.

14. The above mentioned facts are observed seriously, in spite of complainant has paid Rs.38,00,000/- towards the said flat and waiting for the final sale deed till March 2021. Meantime, OP has executed the said flat in favour of 3<sup>rd</sup> party, is not anything other than the Unfair Trade Practice. With all these, in our considered view OP has caused deficiency of service and also indulging in Unfair Trade Practice by keeping heavy amount of

complainant and executed in favour of other party, liable to compensate the same to the complainant.

15. It is pertinent to note that, in spite of the service of notice by this commission, OP has neither appeared before this commission to defend its case nor refunded the claim amount of complainant. Hence the evidence placed before this commission by complainant are unchallenged, complainant hereby proved the deficiency of service and Unfair Trade Practice by OP by placing documentary evidences. Complainant is entitled for the refund of Rs.18,00,000/- with interest, compensation and litigation cost. Though the OP has refunded Rs.20,00,000/- on 17.04.2021 and 17.11.2021 (Rs.10,00,000/- each), OP retained Rs.38,00,000/- since 2018 till 2021 and the balance amount of Rs.18,00,000/- from 2021 to till now accumulated and the balance amount becomes Rs.30,29,480/- as per Ex.C.8. In our considered view, it seems to be rightly calculated and claimed. If OP has any objections to the calculation filed at the filing this complaint, OP could appear before this commission and challenge the calculation by filing the version and evidence. Hence, Ex.C.8 is considered.

16. For the deficiency of service, OP is liable to pay Rs.1,00,000/- to the complainant towards compensation for the delay caused, hardship, mental agony, Rs.15,000/- towards cost of litigation for no fault of complainant, OP made her to approach this commission by incurring money on litigation. To stop such kind of Unfair Trade Practice indulged by OP, shall pay punitive damages of Rs.25,000/- U/S 39 (1) (g) of Consumer Protection Act 2019 to be remitted to Consumer Welfare Fund. On the above reasons we answer Point NO.1&2 affirmative and partly affirmative respectively.

**17. Point No.3:-**In view of the discussion referred above, we proceed to pass the following:-

### **ORDER**

- i. Complaint filed by the complainant U/S 35 of Consumer Protection Act, is hereby allowed in part.
- ii. OP is liable to pay Rs.30,29,480/- which includes interest at the rate of 12% p.a. from the date of respective payments till 20.08.2023.
- iii. OP shall pay interest at the rate of 12% p.a. on Rs.30,29,480/- from 20.08.2023 to till realization.
- iv. OP shall pay Rs.1,00,000/- towards compensation and Rs.15,000/- towards cost of litigation to complainant within 30 days from the date of order, failing which it carrier interest at the rate of 10% p.a. on Award amount.
- v. OP further directed to pay Rs.25,000/- towards punitive damages U/S 39 (1) (g) of Consumer Protection Act, 2019, to be remitted Consumer Welfare Fund within 30 days.
- vi. Furnish the copies of the order and return the extra copies of pleadings and documents to the parties, with no cost.

***(Dictated to the Stenographer, got it transcribed and corrected, pronounced in the Open Commission on this 20<sup>h</sup> day of May 2024)***

**(SUMA ANIL KUMAR)****(K.ANITA SHIVAKUMAR)****(M.SHOBHA)****MEMBER****MEMBER****PRESIDENT****Documents produced by the Complainant-P.W.1 are as follows:**

1.	Ex.P.1	Copy of agreement of sale dated 14.08.2018.
2.	Ex.P.2	Copy of agreement of construction dated 14.08.2018.
3.	Ex.P.3	Copy of receipt dated 29.08.2019 for having received Rs.38,00,000/-
4.	Ex.P.4	Copy of passbook entry dated 17.04.2021.
5.	Ex.P.5	Copy of passbook entry dated 17.11.2021.
6.	Ex.P.6	Copy of legal notice dated 27.06.2022.
7.	Ex.P.7	Copy of postal acknowledgement dated 29.06.2022
8.	Ex.P.8	Copy of memo of calculation.
9.	Ex.P.9	Copy of registered sale deed dated 29.10.2020
10.	Ex.P.10	Copy of Encumbrance Certificate for the period from 01.04.2018 to 29.07.2023.
11.	Ex.P.11	Copy of Special Power of Attorney.
12.	Ex.P.12	Certificate U/S 65B of Indian Evidence Act.

**Documents produced by the representative of opposite party – R.W.1;****NIL****(SUMA ANIL KUMAR)****(K.ANITA SHIVAKUMAR)****(M.SHOBHA)****MEMBER****MEMBER****PRESIDENT**

**[HON'BLE MRS. M. SHOBHA]  
PRESIDENT**

**[HON'BLE MRS. K Anita Shivakumar]  
MEMBER**

**[HON'BLE MRS. SUMA ANIL KUMAR]  
MEMBER**