

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 428 OF 2021

(Against the Order dated 27/05/2021 in Complaint No. 57/2019 of the State Commission
Chandigarh)

1. M/S. GAUTAM CONSTRUCTION COMPANY & ANR.
THROUGH ITS SOLE PROPRIETOR RAJNISH GAUTAM,
HN O 20, SECTOR 19A
CHANDIGARH

2. RAJNISH GAUTAM,
S/O. SH. LALIT KUMAR, HN O 20, SECTOR 19-A,
CHANDIGARH

.....Appellant(s)

Versus

1. MUBARAK MASIH
S/O. SH NAZAR MASIH, HN O 3217/2, SECTOR 44D,
CHANDIGARH

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT :

Dated : 02 April 2024

ORDER

For the Appellant

Mr N K Nagar, Advocate

For the Respondent

Mr Kumar Vignesh Ram, Advocate

ORDER

PER MR SUBHASH CHANDRA

1. This first appeal under section 51 of the Consumer Protection Act, 2019 (in short, 'the Act') challenges the order dated 27.05.2021 of the State Consumer Disputes Redressal Commission, U T, Chandigarh (in short, 'the State Commission') in Complaint Case no.57 of 2019 partly allowing the complaint with cost and prays for setting aside the impugned order and for any other order(s) as deemed fit.

2. Briefly put, the relevant facts of the case are that the appellants had entered into a contract with the respondent on 18.09.2018 for construction of a house located at 7914, Block H, Aero City, SAS Nagar (Mohali) at the rate of Rs.1600/- per sq ft. The house was to

comprise of Ground and First floor and Mumti. Payments were to be made on stage by stage construction basis. The respondent approached the State Commission alleging that he had paid Rs.27 lakh to the appellant whereas the quantum of work executed was far less and as per the assessment done privately through a contractor, the work done was assessed to be equivalent to Rs.16,77,629/-. He therefore stopped the work and sought refund of the excess amount of Rs.10,22,371/- with interest, compensation for mental agony, harassment, litigation expenses etc. The State Commission appointed a retired Chief Engineer as a Local Commissioner who submitted his report dated 19.02.2020 and reported that only 45 to 50% of brick work and RCC structure of the building had been completed and sanitary and electrical work had not been done. The estimated cost of the work done was worked out to Rs.15,04,630/-. The quality of the construction was stated to be broadly as per the specification. The State Commission has held that the respondent was right in seeking bills from the appellant towards the work done and that denial of the same amounted to deficiency in service since the appellant was obliged to provide any records or bills pertaining to construction to the complainant even though it was not specifically recorded in the Agreement. The State Commission's orders, on contest, directed the OPs to jointly and severally refund Rs.11,95,370/- with 12% per annum interest from the date of filing of the complaint within 30 days of the order failing which, with 15% interest till realisation along with Rs.50,000/- in lumpsum for mental agony, harassment and cost of litigation within 30 days failing which, with interest @ 9% till realisation. This order is impugned before us.

3. We have heard the learned counsel for the parties and have given our thoughtful consideration to the material on record.

4. It is the contention of the appellant that the parties were bound by the contract dated 18.09.2018 and that based on the assessment obtained by the respondent from a third party, the respondent wrongly terminated the contract and sought refund of Rs.10,22,371/-. It was stated that the appellant had overcharged and collected money in excess. It was contended by the appellant that the contract stipulated the liability of the respondent to pay @ Rs.1600/- per sq ft and that since the construction of 3928 sq ft had been completed, the respondent owed the appellant Rs.62,84,800/-.

5. The State Commission's finding is as under:

8.from bare perusal of the report aforesaid, it is evident that though the material in the building and structure raised is as per the required specifications, yet, the value of the work which has been done at the site comes to Rs.15,04,630/- only, whereas, on the other hand, the opposite parties have already received an amount of Rs.27 lacs from the complainant, which act clearly amounts to adoption of unfair trade practice. In our considered opinion since the complainant has himself agreed to supersede his assessment report attached with the main complaint by the report of the Local Commissioner and at the same time, not even an iota of evidence has been placed on record by the opposite parties, to rebut the report of the said Local Commissioner, as such, the same is binding on the parties.

9. Under above circumstances, we are of the considered opinion that the complainant was right in seeking bills from the opposite parties towards the work done in the building, when he noticed that excess money has been extracted from him. By

not providing the said bills, the opposite parties were deficient in providing service. It is significant to mention here that the opposite parties cannot wriggle out of the situation by stating that they were not obliged to provide any record/bills to the complainant, as the same was not agreed to between the parties, because every person who is shredding hefty amount from his pocket, towards the services being provided to him, has right to know as to how, where and in what manner, the same has been utilized. Thus, when the detail of bills towards expenditure on the construction work for the house of the complainant was not provided to him by the opposite parties and at the same time, he also come to know that excess amount has been extracted from his pocket by the opposite parties, he was right in stopping the work and cancelling the contract.

10. *For the reasons recorded above, this complaint is partly accepted, with costs.*

6. The appellants contend that work of laying of sewerage pipes, electrical distribution pipes in roof, rain water pipes have been completed although conduiting in walls and bathrooms for electrical wiring has not been done. It is contended that 60% of the work on site has been done and therefore, for this quantum of work, the amount payable was Rs.37,70,880/- on the basis of 60% of Rs.1600/- per sq ft (Rs.960/-) for 3928 sq ft of construction. According to the appellant, the respondent had paid Rs.27 lakh and therefore, balance payable exceeds Rs.10 lakh. It is also contended by him that the report of the Local Commissioner was incorrect since neither the labour charges for ground or first floor construction or for services by the appellant have been factored in its report. It is contended that the impugned order has misinterpreted documentary evidence and erred in arriving at its conclusions. It is submitted that the terms and conditions of the contract by way of argument between the parties were binding in nature and no party could wriggle out of it. It is also submitted that even if the quantum of work is considered to be 45% as per the report of the Local Commissioner, the amount chargeable for 45% would work out to Rs.28,28,160/- (i.e., on the basis of 45% of Rs.1600/- per sq ft) which was the agreed rate. The State Commission's order, is therefore, argued to be erroneous and the rate of interest of 12% stated to be excessive.

7. *Per contra*, the respondent in his written submission has alleged that the appellant is liable for unfair trade practice and deficiency in service. As per the allotment letter of GMDA dated 01.08.2016, the construction of the building was to be completed within three years from the date of possession and that due to delay in construction owing to the builder's inefficiencies, the respondent has to bear additional charges of Rs.3,06,376/-. Even after passage of two years of the order of the State Commission, the appellant has dragged the respondent into litigation. The appellant has alleged to have charged the respondent excessive rates for work of poor quality and failed to provide the bills and details of expenses on work executed as per the report of the Local Commissioner. As per the assessment by the respondent dated 10.01.2019, quantum of completed work was estimated at Rs.16,77,629/- whereas Rs.27 lakh had been deposited with the appellant which amounts to excess of Rs.10,22,371/-. Appointment of Local Commissioner by the State Commission had provided due opportunity to the appellant to respond and to make his case on technical grounds which he failed to do. It was argued that the Local Commissioner's report included labour charges and the cost of material and the contention of the appellant to the contrary was not acceptable. It was argued that the contention of the appellant with regard to the expenditure

incurred was incorrect since the cost of construction of the bare shell of a house was very different to that of the finished house construction which had various other value added components. It was, therefore, argued that there was no merit in the appeal and that the impugned order was a well-reasoned order based upon the report of a Court Commissioner.

8. The contention of the appellant that the parties to the agreement are bound by the terms and condition of the agreement cannot estop the respondent from seeking his remedies under the CP Act, 2019 since the remedies under the CP Act are in addition to and not in derogation to the remedies under the Act, in view of the fact that the Consumer Protection Act is a beneficial legislation.

9. From the foregoing it is evident that the appellant has not denied that the construction of the house in question has not proceeded as per the agreement. Admittedly, only the ground floor and part of the first floor appears to have been constructed. The works relating to plumbing, sewerage and electrification have also not been undertaken. Internal plastering and other floor related works have also not been completed as per the report of the Local Commissioner. The contention of the appellant is that since Rs.1600/- per sq ft had been agreed between the parties as cost of construction, there was no necessity to provide details of expenditure and or bills cannot be accepted. The State Commissions has held that any prudent person spending his hard earned money obtaining the service of construction of a house was entitled to disclosure of details with regard to the construction. The respondent cannot be faulted for having sought these details. The contention of the respondent with regard to the quantum of work also merits consideration since it is well established that the construction of a bare structure costs much less in proposition to a constructed finished structure with internal plastering of walls of the rooms, flooring and fittings including plumbing, sanitary, electrical and wood work. Therefore, based on the calculation adopted by the appellant the contention that 45% of the work are concluded by the Local Commissioner would have costed Rs.28,28,160/- cannot be accepted. Such a calculation needs to be considered in greater detail with reference to the bill of quantities with reference to the specifications of the work including the rate of material that is used. In the absence of such details, but considering the fact that the quality of the work to the extent completed not being of very deficient quality, indicated a short fall of Rs.10,32,371/- vis-à-vis the amount of Rs.27 lakh received by the appellant has been fairly held to be reasonable by the State Commission. That the amount of Rs.27 lakh has been paid by the respondent to appellant is not in dispute. Therefore, based on the report of the Local Commissioner appointed by the State Commission, the amount of Rs.10,22,731/- which amounts to quantum received against which no work has been done as per the agreement appears rightly held by the State Commission.

10. In the light of the above discussion, it is manifest that the appellant is liable for unfair trade practice and deficiency in service. However, as regards the rate of interest awarded by the State Commission, i.e., 12% if payment is made within 30 days and penal interest rate of 15% for default and 9% interest on lumpsum payment for mental agony/ harassment/ litigation, we find that keeping in view with the judgment of the Hon'ble Supreme Court in *Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, C.A. No. 6044 of 2019 decided on 07.04.2022* which laid down that 'interest payable on the amount deposited (has) to be restitutionary and also compensatory (and) that interest @ 9% was fair and just in cases where refund of deposited amount was ordered; and in *DLF Homes Panchkula Pvt. Ltd., vs*

D S Dhandra (2020) 16 SCC 318, which laid down that multiple penalties not be awarded for a singular default, the rate of interest awarded as compensation needs modification. .

11. In the light of the discussion above, and the facts and circumstances of this case, the order of the State Commission is affirmed with the following directions/ modifications:

- i. Appellant shall refund the sum of Rs.10,22,371/- with interest @ 9% per annum from the date of payment to the respondent within two months of this order failing which it shall be paid with interest @ 12% per annum till realisation;
- ii. Litigation cost of Rs.50,000/- shall also be paid by the appellant to the respondent along with the amount as indicated above.

12. Pending IAs, if any, also stand disposed of by this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**