

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 933 OF 2020**

(Against the Order dated 11/09/2020 in Complaint No. 293/2019 of the State Commission  
Uttar Pradesh)

1. SHRADDHA SACHAN

R/O. 107, ELDECO GREENS, NEAR FUN REPUBLIC  
MALL, GOMTI NAGAR,

LUCKNOW-226010

UTTAR PRADESH

.....Appellant(s)

Versus

1. AURA BUILDWELL PRIVATE LIMITED

301,3RD FLOOR,KRISHNA APRA BUSINESS  
SQUARE,NETAJI SUBHASH PLACE, PITAMPURA, NEW

DELHI-110034

.....Respondent(s)

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING  
MEMBER**

FOR THE APPELLANT :

FOR THE APPELLANT : MR.ANSHUL GUPTA, ADVOCATE  
MR. SHUBHAM KAUSHIK, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENT : MR.SHUBHANSHU GUPTA, AND  
MS. CHAITANYAM, PROXY COUNSELS

**Dated : 30 July 2024**

**ORDER**

1. The present First Appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (“the Act”) against the Order dated 11.09.2020 passed by the learned U.P State Consumer Disputes Redressal Commission (the State Commission”), in CC No.293 of 2019 whereby the State Commission dismissed the complaint.

2. As per office report, there is a delay of 65 days in filing the present First Appeal. As the said delay was during the suspended period of limitation by the Hon’ble Supreme Court due to covid-19, the First Appeal is treated to have been filed within limitation.

3. For Convenience, the parties in the present matter being referred to as mentioned in

the Complaint before the State Commission. "Shraddha Sachan" is identified as the Complainant (Appellant herein) whereas Aura Buildwell Private Ltd. is referred to as the Opposite Party (Respondent herein).

4. Brief facts of the case, as per the Complainant, are that the Opposite Party (OP/Respondent) is a Private Limited Company engaged in the business of Real Estate. The OP widely advertised its project "Drive Mart" located in Gautam Budh Nagar, UP, through print and electronic media. In 2017, the Appellant booked a unit in the "Drive Mart" project of the Respondent at Plot No. SC-02B, Sector 27, Greater Noida (West), Gautam Budh Nagar, U.P. (the "Project"). The Appellant was allotted Unit No. UGF-15, Type Shop, measuring 381 Sq Ft of super area on the Upper Ground Floor of the Project ("Unit"). The initial basic sale price of the Unit was Rs.40,00,000/-. The OP had stated to her that if she initially paid Rs.11,95,000/-, the basic sale price of the Unit would be reduced accordingly in the Allotment Agreement. The Appellant paid a total of Rs.26,67,000/- to the Respondent, which was duly acknowledged by the Respondent through various receipts dated 09.03.2017. A copy of the Allotment Agreement dated 25.09.2017, showing the Unit allotted and the reduced total cost of Rs.27,16,530/- was issued to her. The Respondent executed the Allotment Agreement dated 25.09.2017, reducing the total cost of the Unit as promised to INR 27,16,530/-. The Appellant could not negotiate any terms of the Agreement as the Respondent had already collected almost the full amount of the Unit from the Appellant prior to the execution of the Allotment Agreement. As per the Possession Clause of the Allotment Agreement dated 25.09.2017, the Respondent was to complete construction and deliver possession of the Unit within three years from the date of execution of the Allotment Agreement, with an additional grace period of six months. The total amount deposited by the Appellant to the Respondent was Rs.38,62,000/- as of the date of execution of Allotment Agreement, constituting more than 95% of the total cost. The payment receipts dated 09.03.2017 issued by the Respondent showing total amount of deposit by him. Despite the expiry of over a year since the execution of the Allotment Agreement, the construction of the Unit had not even commenced, and the project was nowhere near completion till date. The Respondent has been deceitful, fraudulent, and malicious in their approach from the very beginning, making false and unwarranted statements and claims with the sole intention of luring the Appellant and enjoying the money already paid. Their actions displayed gross deficiency and unsatisfactory service, clearly portraying their mala fide, fraudulent, wrongful, and deceitful intentions to evade accountability and responsibility on all counts. He is a victim of the wrongful acts of OPs, which commenced in 2017 and continue to this day. She contended that her case is not just of a simple delay but one where there is no possibility of getting possession in the near future as the construction of the project is still at a nascent stage, causing immense financial burden on him. The Appellant has been severely traumatized by the gross deficiency in service, coupled with the mental agony of the fact that the project is not even a priority for the Respondent after taking huge amount

from the Appellant. Being aggrieved by the Respondent's misconduct, fraudulent activities, 'deficiency in service,' failure in service, and 'unfair trade practices,' he filed a complaint dated 23.09.2019 bearing No. CC/293/2019 before the State Commission seeking refund of the total amount deposited along with interest for the delay and compensation for mental agony and physical harassment.

5. The Opposite Parties (Respondent herein) did not appear before the State Commission despite service and therefore, the same were proceeded ex-parte.

6. The State Commission, vide Order dated 11.09.2020, dismissed the Complaint with the following observations:-

***“We have heard the argument of the complainant scholar advocate and observed the epistle.***

***The allotment letter dated 25-09-2017 makes it clear that the opposition has allotted the unit number UGF-15 in their "Drive Mart" project to the complainant. Whose super area 381 Sq. feet and built up area is 209 sq. feet. As according to the allotment letter, the basic sell price of the unit is Rs.2,67,000/- and total value of Rs.27,16,530/-. According to the allotment letter, the opposition's in qua/question project is "Drive Mart" Shopping Project/ Complex and the unit allotted to the complainant is UGF-15 Shop. The complainant has stated in the complaint letter that she has applied for allotment of the unit in question to earn for her livelihood. She is not stated that the unit in qua/question to earn the a living from self-employment, hence clarification of Section-2(1)(d) of Consumer Protection Act-1986 and Section- 2(7) of Consumer Protection Act-2019 she doesn't come under it.***

***Since the unit in question is a shop and booked for commercial purposes. And hence the complaint is not a consumer as per Section-2 (1) (d) Consumer Protection Act- 1986 and Section-2(7) Consumer Protection Act-2019 and the complaint presented by it is both Consumer Protection Act-1986 and Consumer Protection Act-2019 are not admissible under it.***

***Our above conclusion is supported by the Hon'ble National Commission, Sunil Kohli and Anr. Vs. M/s. Purearth Infrastructure Ltd., 2018 (3) C.P.R. 508 N.C. The principle formulated in the decision.***

***On the basis of the above conclusion, complaint is dismissed with the liberty to proceed before the competent the liberty court or officer in accordance with law.***

***Opponents will bear their own expenses.”***

**(Extracted from translated copy)**

7. Being aggrieved by the order of the State Commission, the Complainant/Appellant filed Appeal no. 933 of 2020 seeking:

***i. Direct the Respondent for an immediate 100% refund of the total amount of INR 38,62,000/- paid by the Appellant; in adherence to the judgments of the Hon’ble National Consumer Disputes Redressal Commission in Sunil Kohli & Anr. vs M/S Purearth Infrastructure Ltd.; Civil Appeals Nos. 9004-9005 of 2018.***

***ii. Direct Respondent to pay a sum of INR 10,00,000/- to Appellant as compensation for unfair trade practices.***

***iii. Direct the Respondent to pay compensation of Rs.10,00,000/- to the Appellant for mental agony, harassment, discomfort and undue hardships caused to the Appellant as a result of the above acts and omissions on the part of the Respondent.***

***iv. Direct the Respondent to pay a sum of Rs.2,00,000/- to the Appellant as a whole, towards litigation costs.***

***v. Any other and further relief in favor of the Appellant as the Hon’ble Commission may deem fit and proper in the fact and circumstances of the case.***

8. In the Appeal, the Appellant mainly raised the following issues:

A. The Appellant asserted her status as a Consumer under Section 2(1)(d) of the Act, 1986, and Section 2(7) of the Act, 2019. She relied upon the order of NCDRC in *Sunil Kohli & Anr. vs. M/S Purearth Infrastructure Ltd.; Civil Appeals Nos. 9004-9005 of 2018*, that purchase of goods for commercial purposes would not exclude a purchaser from the definition of ‘consumer’ if the commercial use is for earning

livelihood by self-employment.

B. The purchase made for commercial purposes will not exclude the purchaser from the definition of Consumer if the commercial use is for self-employment, as is the case with the Appellant.

C. The inordinate delay frustrated the purpose for which they purchased the Unit. Despite anticipating possession within the promised time, no construction has been initiated even after over a year since the expiry of the promised possession period.

D. The Appellant suffered financial loss due to OP enjoying the money as an interest-free loan and delaying the construction. She wasted valuable time making representations to OP. She feels cheated by their false promises and has suffered financial losses, mental pressure, harassment, and agony.

E. The callous and negligent conduct of the Respondent demonstrated that their main concern is to enjoy the funds collected from allottees and divert them to other projects. They are making false promises and cheating customers.

F. She already paid Rs.38,62,000/- i.e. 95% of the total cost, in the hope of getting possession within time. There is no chance of timely completion. She seeks full refund as their livelihood depends on the Unit.

G. The Appeal should be governed by Act, 1986, not the Act, 2019 as per the principle laid down by NCDRC in *M/s Parkwood Developers Pvt Ltd. vs. Harbans Singh Popli; FA No. 687 of 2020*, holding that the complaints filed before commencement of the Act, 2019, should be governed by the Act, 1986.

9. Upon notice, the Respondent/OP appeared before this Commission and filed its Reply and contended that the Appellant is not a consumer within the scope of Section 2(1) (d) of the Act, 1986 as the Appellant has booked the shop for commercial purpose. The construction could not be completed due to grounds which were beyond the reasonable justification and not in control, therefore, the issue of deficiency of services raised is unfair and baseless as the delay was caused by actual service provider/landowner and the Respondent cannot be held liable for the fault of others. The project was not completed due to various orders of the National Green Tribunal, Hon'ble Allahabad High Court and Hon'ble Supreme Court. The GNIDA eventually cancelled the license of the Respondent and forfeited the amount. Therefore, the Respondent filed a Writ Petition No.12239 of 2020 which is pending before the Hon'ble High Court of Allahabad. The Respondent is obligated to only refund the principal amount received from the Appellant and will not be held liable for any compensation as it has not committed any fault of its own.

10. In his arguments, the learned Counsel for the Appellant/ Complainant reiterated the facts and grounds taken in the Appeal and asserted that the Complainant purchased the said unit for the purpose of earning her livelihood by means of self employment, which she had clearly stated and she is a consumer under the Act. She had already been paid Rs.38,62,000/- to the Respondent/ OP the OP failed to deliver the possession of the unit within the time stipulated. He sought to allow the present First Appeal and refund the deposited amount with suitable compensation. He has relied upon the following judgments in support of his arguments:

***A. Sunil Kohli & Anr. Vs. M/s.Purearth Infrastructure Ltd. & Anr., CC. No.62 of 2013 decided on 03.04.2018 by NCDRC;***

***B. Laxmi Engineering Works Vs. P.S.G. Industrial Institute, 1995 SCC (3) 583;***

***C. Anand Mundra Vs. Shelter Makers (I) Pvt. Ltd., MANU/ CF/0503/2021;***

***D. Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers and Ors., MANU/SC/1574/2019;***

11. Per contra, the learned counsel for the Respondent/OP reiterated the grounds taken in the Reply filed to the present First Appeal filed before this Commission and argued in favour of the impugned order passed by the State Commission. He sought to dismiss the First Appeal with costs. He has relied upon the following judgments in support of his arguments:

***A. Rohit Chaudhary & Anr. Vs. M/s. Vipul Limited, 2023 SCC OnLine SC 1131;***

***B. Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers, 2019 SCC OnLine SC 1466;***

***C. Laxmi Engineering Works Vs. P.S.G. Industrial Institute, AIR 1995 SC 1428.***

12. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned Counsels for both parties.

13. It is undisputed that the unit booked by the Complainant has not been handed over

till date. The OP clarified that the project cannot be completed. A buyer cannot be expected to wait indefinitely after paying substantial amount of the total consideration with expectation of timely possession. In several cases, the Hon'ble Supreme Court asserted the right of buyers to receive fair delay compensation when developers unreasonably delay possession as per the Agreement.

14. The 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.”***

15. In another Landmark judgement, the Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghvan, II (2019) CPJ 34 (SC)*, decided on 02.04.2019 has held that:

***We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfil his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent- Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest”.***

16. The contention of the OP that the construction could not be completed due to grounds beyond their control, therefore, there is no deficiency in services as the delay was caused by actual service provider/ landowner, is entirely untenable. The OP further clarified that the project was not completed due to various orders of the National Green Tribunal, Hon'ble Allahabad High Court and Hon'ble Supreme Court and that the GNIDA eventually cancelled the license of the Respondent and forfeited the amount. The Respondent contended that they are obligated to refund only the principal amount received from the Appellant.

17. This Commission in CC 379 of 2013 *Sivarama Sarma Jonnalagadda & Anr vs. M/s Maruthi Corporation Limited & Anr.* decided on 21.09.2021 has held that:

***“We are of the view that that the Complainant cannot be made to wait indefinitely for the delivery of possession and the act of the Opposite Party in relying on force majeure clause while retaining the amounts deposited by the Complainant, is not on only an act of deficiency of service but also amounts to unfair trade practice.”***

18. As regards the interest liability in such cases, in a recent Order of the Hon'ble Supreme Court in the case of *Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, in Civil Appeal No.6044 of 2019* decided on 7.4.2022, it was held as under :-

***“We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the Order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in DLF Homes Panchkula Pvt. Ltd. Vs. DS Dhanda and in modification of the direction issued by the Commission, we direct that the interest on the refund shall be payable from the dates of deposit. Therefore, the Appeal filed by purchaser deserves to be partly allowed. The interest shall be payable from the dates of such deposits.***

***At the same time, we are of the opinion that the interest of 9% granted by the Commission is fair and just and we find no reason to interfere in the appeal filed by the consumer for enhancement of interest.”***



19. As regards the objection that the Complainant/Appellant is not a consumer under the Act as the Unit is a commercial property is rejected. In this regard, it would be proper to draw attention to this Commission's Order in the case of *Sanjay Rastogi v. BPTP Limited & Anr in CC No. 3580 of 2017* decided on 18.06.2020 which was upheld by Hon'ble Supreme Court. It has observed as under:

1.

20. In the instant Complaint, there is no such evidence filed or argued by the Opposite Party to establish its case that the said Unit was intended to be purchased for the purpose of resale or any real estate activity.

21. Based on the above discussions and on careful perusal of material on record, the order passed by the learned State Commission dated 11.09.2020 is unsustainable and is, therefore, set aside. The instant FA No. 933 of 2020 is allowed as follows:

### **ORDER**

**I. The Opposite Parties is directed to refund Rs.38,62,000 to the Complainant, along with simple interest @ 9% per annum from the date of deposit till its total realization, within a period of one month from the date of this order. In the event of delay beyond one month, the interest payable for such extended period shall be @ 12% per annum.**

**II. The Opposite Party is also directed to pay Rs.25,000/- to the Complainant as costs of litigation.**

22. All pending applications, if any, also stand disposed of accordingly.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)**  
**PRESIDING MEMBER**