

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Pronounced on: 28th September, 2021

+ **CM(M) 639/2020**

TDI INFRATECH LTD. & ORS. Petitioners
Through Ms. Kanika Agnihotri and Ms.
Yashodhara Gupta, Advocates.

versus

NIRUPAMA MARWAHA & ANR. Respondents
Through Mr. Meet Malhotra, Sr. Advocate
with Mr. Navjyot Singh, Advocate

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Article 227 of the Constitution of India impugning the order dated 17th November, 2020 (hereinafter referred to the impugned order) passed by the learned National Consumer Disputes Redressal Commission ("NCDRC" for short).

2. Ms. Kanika Agnihotri, learned counsel for the petitioner has submitted that the petitioner Company is in the business of development of real estate in the form of integrated township comprising of residential and commercial flats of various dimensions, residential apartments, Villas, multiplexes and malls. The respondents had got themselves registered for provisional allotment of a shop-cum-office admeasuring 750 sq.fit in TDI City, Sector 118, SAS Nagar, Mohali, Punjab against a basic sale consideration of Rs.31,23,520/-. A complaint was filed by the respondents with the State Consumer Disputes Redressal Commission, Punjab, Chandigarh ("SCDRC" in short) being Complaint Case No. 631

of 2019 whereby they sought refund of the amount deposited by them in respect of the said unit. The SCDRC passed the final order on 18th December, 2019 directing the petitioner to refund the entire amount deposited by the respondents alongwith compensation at the rate of 12% per annum from the respective dates of deposits till realization in accordance with the Rule 17 of the Public Procurement Rules, 2004 (PPRA in short) as well as Rs 55,000/- as compensation on account of the mental agony, harassment and litigation charges.

3. Learned counsel submitted that an appeal was preferred by the petitioner against this order on 18th February, 2020. Vide order dated 28th August, 2020, the NCDRC allowed the application for stay of the order of the SCDRC, subject to the petitioner depositing the entire awarded amount with up-to-date interest before the SCDRC within 10 weeks. An application was thereafter moved before the NCDRC seeking waiver of this deposit. Vide the impugned order, the waiver was disallowed also observing that in the order dated 28th August, 2020, it had been made clear that if the amount was not deposited within the stipulated period, there would be no stay.

4. It was submitted by learned counsel that the order was unjust as it had overlooked several important facts. It was submitted that the respondents had purchased a commercial property and were therefore making investment in real estate and as such were not ‘consumers’ under the Consumer Protection Act, 1986 (“CP Act” in short). Thus, they could not have filed any complaint before the SCDRC. Further, it was submitted that under the CP Act a complaint could not be filed beyond

two years from the date when the cause of action arose and, on that score, as well, the complaint could not have been entertained by the SCDRC. Furthermore, the petitioner had offered the possession of the commercial property in light of the Partial Completion Certificate dated 15th September, 2015 issued by the Greater Mohali Area Development Authority, which fact was also overlooked by the SCDRC. Reliance has been placed on the judgments of the Supreme Court in **IREO Grace Realtech Pvt. Ltd. v. Abhishek Khanna & Ors.**, 2021 SCC OnLine SC 14 and **Supertech Limited v. Rajni Goyal**, (2019) 17 SCC 681 to submit that once the completion certificate had been obtained by the builder, the liability of the builder would come to an end.

5. Learned counsel submitted that these important factors were completely overlooked by the SCDRC and the appeal filed by the petitioner was bound to succeed. However, on account of financial crunch arising out of the Covid-19 pandemic situation, the petitioner was unable to deposit a sum of Rs. 31,52,419/- with interest @ 12 per cent per annum alongwith Rs.55,000/- as compensation, which was why the application for waiver was moved. It was submitted that the NCDRC had taken a far too narrow view particularly when the application for waiver had been moved in October, 2020 which was well within the 10 weeks period granted to the petitioner to make the said deposit, with effect from 28th August, 2020. Hence, it was prayed that the impugned order be set aside.

6. Mr. Meet Malhotra, learned senior counsel for the respondents on the other hand submitted that the present petition under Article 227 of the Constitution of India was not maintainable inasmuch as there was no

error or perversity in the impugned order. It was further submitted that the arguments of the learned counsel for the petitioner encompass the merits of the case, which the NCDRC would consider in the appeal pending before it. Relying on the judgments of the Supreme Court in **Raj Kumar Bhatia vs. Subhash Chander Bhatia**, (2018) 2 SCC 87; **Sadhana Lodh vs. National Insurance Co. Ltd. and Another**, (2003) 3 SCC 524 and the decision of the Division Bench of this Court in **Hindustan Transmission Products Limited and Another vs. Appellate Authority for Industrial and Financial Reconstruction and Others**, 2001 (58) DRJ 736 (DB), it was submitted that the jurisdiction under Article 227 of the Constitution of India was limited and this Court could not sit in appeal over the decision taken by the NCDRC. Hence, it was prayed that the petition be dismissed. It was further pointed out that the petitioner had not chosen to challenge the initial order dated 28th August, 2020 but had come only against the order dated 17th November, 2020 when the NCDRC declined to waive the deposit.

7. In **Hindustan Transmission** (supra) it was observed as below:

“Jurisdiction under Article 227 must be sparingly exercised and may be exercised to correct errors of jurisdiction and the like but not to upset pure findings of fact, which falls in the domain of the concerned Court, Tribunal or forum only. (See. Khimji Vidhu v. Premier High School, 2000 AIR SCW 2333). Exercise of power under Article 227 can be done only in cases of:

- (i) *Erroneous assumption or excess of jurisdiction.*
- (ii) *Refusal to exercise jurisdiction.*

- (iii) *Error of law apparent on the face of the records as distinguished from a mere mistake of law or error of law relating to jurisdiction.*
- (iv) *Violation of the principles of natural justice.*
- (v) *Arbitrary or capricious exercise of authority, or discretion.*
- (vi) *Arriving at a finding which is perverse or based on no material.*
- (vii) *A patent or flagrant error of procedure.*
- (viii) *Order resulting in manifest injuries.”*

8. Similarly, in ***Sadhana Lodh*** (supra), it was observed as under:-

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision.

9. This view was reiterated by the Hon’ble Supreme Court in ***Raj Kumar Bhatia*** (supra) in the following words:-

“The supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is confined

only to see whether an inferior court or Tribunal has proceeded within its parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order.”

10. It is thus clear that all the pleas relating to the merits of the appeal though argued before this court, against the orders of the SCDRC, cannot be considered in the present petition. It is for the NCDRC to consider the status of the respondents as ‘consumer’ or otherwise, whether the complaint was filed within the prescribed period or not and to see the effect of the issuance of Partial Completion Certificate and whether there was a firm offer of possession by the petitioner to the respondents. Therefore, the judgments in **Supertech Ltd.** (supra) and **IREO Grace Realtech Pvt. Ltd.** (supra) are not relevant for the decision in the matter at hand.

11. The court has only to consider whether there is any illegality or perversity in the impugned order, as rightly pointed out by the learned senior counsel for the respondents. The order dated 28th August, 2020 had directed the petitioner to deposit the entire awarded amount within 10 weeks of the order. However, that order was not challenged. Furthermore, after about 2 months, the application for waiver was moved with the following submissions: -

“It is submitted that due to the loss of business given the persisting circumstance of Covid-19, the Appellant Company has suffered major losses. The Appellant Company is facing serious paucity of funds. The

pandemic has adversely impacted the cash flow of the company which has infact yet to pay its employees salary for a few months that have gone by.”

12. The statements of accounts were also annexed to justify the prayer for waiver. However, this did not find favour with the NCDRC. The bald claim made that the petitioner was suffering “major losses on account of the Covid-19”, without any details through accompanying affidavits, justifies the NCDRC refusing waiver. Before this court, as noticed hereinabove, arguments on merits were sought to be urged, which, again as noticed above, are not relevant, as this Court is not sitting in appeal either over the SCDRC or the NCDRC.

13. This court is therefore of the view that no infirmity is seen in the impugned orders. However, an opportunity is granted to the petitioners to deposit with the SCDRC, Punjab, Chandigarh, the awarded amount within 4 weeks from the date of this order, subject to which there shall be a stay of the execution proceedings in respect of the Award.

14. The petition is accordingly disposed of.

15. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

SEPTEMBER 28, 2021

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