



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 137 OF 2024

(M/s Ambika Land Developers, Nagpur, Thr. Its Partners
Vs.
Shri Rajpal S/o Laxman Raut & Anr.)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
--	---------------------------

Mr. A.A. Sambaray, Advocate for the Petitioner/s.
Mr. M.G. Burde, Advocate for the Respondents.

CORAM: N.R. BORKAR, J.

DATED : 18th JUNE, 2024

Heard.

2. This Petition takes exception to the order dated 21.08.2023 passed by the National Consumer Disputes Redressal Commission, New Delhi ("National Commission" for short) in First Appeal No. 86/2023.

3. The Respondents herein had filed the complaint before the State Consumer Disputes Redressal Commission, Maharashtra ("State Commission" for short). The State Commission by order dated 27.07.2022, has allowed the said complaint.

4. The operative para of the order passed by the State Commission (page 108), reads as under:

“ ORDER

(1) Consumer Complaint is partly allowed with cost quantified to Rs. 50,000/- to be paid by the opposite party to the complainants within a period of four weeks from the date of receipt of a copy of this order.

(2) It is declared that the opposite party, Ambika Land developer through its partners, has indulged in unfair trade practices, and deficiency in service.

(3) The opposite parties are hereby directed to hand over peaceful legal possession of plots no. 11 B and 30 B as per pre-revised layout or plots no.32 and 30 as per post-revised layout, located at Namdeo Nagar, at Mouza: Lava, i.g.u. 4, Khasra No. 40, Tahsil: Nagpur Gramin, District Nagpur, by accepting the balance sale consideration of Rs.28,770/- from complainant no. 1 and Rs. 58,743/- from the complainant no. 2 ; along with interest @ 6 % per annum from 21.01.2010 (date of issuance of demand letter by opponents) and additionally to pay the approved development charges Rs. 63/- per square foot of the plots, after receiving the balance consideration the opponents to execute the Sale Deed in favour of the complainants within the period of three months from the date of receipt of this order.

(4) Alternatively, if the plots are not available today, at the option of the complainants, opponents are directed to hand over any other two plots of equal size at the same location or any other location, by accepting the consideration as per point no.3 above.

(5) Alternatively, if the plots are not available today, at the option of the complainants, opponents are directed to pay to the complainants the price of both the plots as per the market rate, Rs. 600/- per square foot, with interest @ 9% from the date of filing of the complaint by the complainants before this commission.

(6) The opposite parties are directed to pay Rs. 2 Lakh towards the compensation for causing emotional, mental, and physical agony.

(7) The above order is to be complied with by the opposite party within the period of three months from the date of receipt of this order, failing which the

amounts will carry interest @ 12% per annum from the date of this order.

(8) Copy of this order to be given to all the parties free of cost.”

5. By the order impugned the appeal filed by the Petitioner/s against the order of the State Commission came to be dismissed. Hence, this Petition.

6. Mr. Sambaray, learned Counsel for the Petitioner/s, submits that the complaint filed by the Respondents was time barred, and therefore, the State Commission ought not to have entertained the complaint.

7. Mr. Sambaray, learned Counsel for the Petitioner/s, in support of his submission has relied upon the judgment of this Court in ***C. Padmawati Naidu and others Vs. Friends Co-operative HSG. Society Ltd., Nagpur and others, 2016(4) Mh.L.J. 289.***

8. The State Commission has held that since the plots were not handed over as per agreements between the parties, there is a continuous cause of action and the complaint is not time barred.

9. On the said issue, the National Commission has recorded the following finding (page 28):

“6. I have considered the arguments of the counsel for the appellant and examined the record. The argument that allotments of the plots of the respondents were cancelled on 02.10.2014 and the complaint was filed on 11.01.2018 without any application for condonation of delay and is liable to

be dismissed as time barred, is not liable to be accepted. Admittedly, the respondents had deposited Rs.160000/- in the year 2006, which according to them was full consideration for both the plots. If the allotments were cancelled by the appellant on 02.10.2014, then they were bound to return the amount deposited by the respondents. Since the appellant did not return any amount to the respondents as such there was no valid cancellation. Even after alleged cancellation letter dated 02.10.2014, there were several emails from the side of the appellant between 01.02.2015 to 30.10.2017, demanding development charges at enhanced rate, which shows that they were not firm on their cancellation letter. As such cause of action for the complaint did not arise. Otherwise also, the appellant was not able to get the layout plan sanctioned from competent authority as such they were not in position to handover possession and execute sale deed. State Commission has rightly held that in such a situation demanding full consideration and cancelling allotment for not fulfilling the demand was unfair trade practice.”

10. The National Commission has held that there was no valid cancellation. The said finding is not shown to be perverse. In that view of the matter, no interference is called for in the impugned orders.

11. The Petition is therefore **dismissed**. No costs.

12. Pending application/s, if any, shall stand disposed of accordingly.

(N.R. BORKAR, J.)