



2024:DHC:778



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

Date of decision: 30th JANUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 15378/2023 & CM APPL. 61692/2023, 61693/2023, 61694/2023**

ASHOK KUMAR SHIVPURI

..... Petitioner

Through: Mr. Manan Bansal and Mr. Kanishk Rana, Advocates.

versus

ASHOK B CHAJJAR, CMD, ARIHANT ENTERPRISES

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging Orders dated 19.06.2023 and 06.09.2019 passed by the National Consumer Disputes Redressal Commission (NCDRC) in Revision Petition No.3152/2018 whereby the Consumer Forum has allowed the revision petition in part in favour of the Petitioner herein by enhancing of the compensation from Rs.25,000/- awarded by the State Commission to Rs.3 lakhs.
2. A perusal of the material on record shows that attracted by an advertisement of the Respondent/Arihant Enterprises, the Petitioner herein booked a flat in one of its projects called 'Arihant Sparsh' in Vashi, Navi Mumbai.
3. It is stated that an agreement for sale was entered into on 25.05.2010 and by May, 2011, that the Petitioner paid 97% cost of the flat. It is stated by the Petitioner that there was a delay in handing over possession and the



possession was handed over to the Petitioner only on 11.04.2012. It is stated that after taking possession, the Petitioner pointed out various deficiencies in the flat. Since the deficiencies were not rectified, the Petitioner approached the District Consumer Redressal Forum, Thane, Navi Mumbai claiming compensation.

4. The District Forum *vide* Order dated 27.11.2015 found that there was deficiency in service on the part of the Respondent and directed the Respondent to provide all the facilities and to do work with its own expenses and also granted compensation @ Rs.25,000/- for the deficiency in service. It is pertinent to mention herein that the District Forum held that the material on record does not show that there was any delay in giving the possession of the flat but held that there was deficiency in the flat which was handed over. The District Forum observed as under:-

“The Complainant has argued that the opposite party did not provide any facility in the Flat of the Complainant as was agreed and also the material used is sub standard. On the other hand the Argument made by opposite party is that there is no deficiency in service given by the opposite party. The report submitted by the Court Commissioner does not support the complaint complainant. From this it is proved that the Accusations made by Complainant are baseless the proofs submitted by both the party's are perused by the Forum. The Complainant with reference to various facilities has stated in this proof that opposite party did not provide the said facilities to the Complainant. The Complaint has stated that opposite party has used sub standard material while constructing the Flat of Complainant. The complainant has submitted certain Photographs of Flat in Documentation. It is important to note at this point that Mrs. Moushmi Sengupta was appointed as the Court Commissioner by Forum. She has submitted her Report to the Forum. It is observed



from the Report that Complainant did not co-operate with the Court Commissioner when she was inspecting the Flat of the Complainant. The Complainant did not permit her to inspect the Flat. This way Complainant has himself prevented factual position of his Flat to be placed before the Forum and did not co-operate to bring forward the Facts. The Complainant has not produced any independent proof. To prove that opposite party has not provided any facility as agreed.

Even then as per the admission by the Opposition party in his statement, some minor work to be carried out in the Flat of the Complainant. The opposite party has submitted the photographs of the sample Flat —102. It can't be said on the basis of the written statement of the opposite party himself that they did the work of complainant's Flat and provided the facilities as per the sample Flat. It is responsibility of the opposite party to construct other Flats and provide facilities there in as per the sample Flat. But, as per the statement of opposite party itself certain other work yet to be completed in the Flat of the Complainant & opposite party is willing to do that. Taking into Account all this matter, the Forum has come to conclusion that opposite party left some deficiencies in providing facilities to the Complainant. It is natural that Complainant and his family would undergo mental torture for non completion of the work in the Flat of the Complainant on agreed terms. Therefore, for this reason Forum has opened that the Complainant is entitled to receive compensation from the opposite party.

Taking into account the available proofs and other matters the Forum conclude that while providing the facilities to the Complainant, the opposite party has given the deficient service to the Complainant. Therefore, the conclusion for point No. 1 as affirmative and point No. 2 as partial affirmative is noted, by the



Forum. The Forum issues order as follows:

FINAL ORDER

- 1. The Complaint No. 277/2012 is partially admitted.*
- 2. The Forum declares that opposite party has given deficient services to the complainant.*
- 3. The opposite party is directed that they should provide all the facilities and do work with their own expenses in the Flat 702 of the Complainant as it was shown in the sample Flat.*
- 4. The opposite party should pay the Complainant Rs. 25000/- as Compensation for giving deficient services. Similarly should pay Rs. 25000/- as compensation for Mental Agony.*
- 5. The opposite party should pay Rs. 10000/- to the Complainant compensate for the expenses incurred by him on making complaint to the Forum.*
- 6. The opposite party should act within 30 days from the date of issue of the Order. If not done so then opposite party will be liable to pay interest @ 18% Pa from 10.12.2015 till the date of receipt of Actual payment by the Complainant of the Amount of compensation mentioned in Clause 4.*
- 7. Certified copies of this order be sent to both the parties free of cost."*

5. Aggrieved by the amount of compensation awarded to the Petitioner, the Petitioner herein filed an appeal before the State Consumer Disputes Redressal Commission. The State Commission *vide* Order dated 04.04.2018 upheld the findings of the District Consumer Forum but did not enhance the



amount of compensation. The State Commission disposed of the appeal by holding as under:-

“...We however do not disturb the order of compensation on account of mental anguish granted in the sum of Rs.25,000/-, which appears just and sufficient as also costs of litigation in the sum of Rs.10,000/-, since complainant is adequately protected regarding payment of compensation and default clause was inserted into the award, which obliged opponent to pay the amount with interest in case of failure or non-payment as directed in the award. We therefore dispose of this appeal as partly allowed as above. Inside home brochure facilities shall be provided by the builder as directed accordingly in respect of flat no.702 in 'Arihant Sparsh' building on 7th floor. According to learned advocate for respondent, respondent had offered payment of compensation but appellant had refused to accept the amount. If that is so, evidence in this regard be furnished to executing forum so that opponent may be relieved of burden of interest. Copies of the order be furnished to the parties.”

6. This order was challenged before the NCDRC by filing a revision petition. The National Commission placed reliance on the inspection done by a Advocate Commissioner appointed by the District Consumer Forum who had given a report that *‘there is no serious technical problem, but, however, 4-5 vitrified floor tiles ought to be changed and putty should be done in the dry balcony’*. It was stated that the marble can be filled and polished periodically to get better texture and finish and the spot on the granite is natural and that shade variation is seen in few tiles but there is no installation problem. The National Commission, however, held that there is a difference between the flat as promised and the amenities as promised in



brochure and the flat which has been finally handed over.

7. The National Commission, therefore, enhanced the compensation from Rs.25,000/- to Rs.3,00,000/- which is 12 times the compensation. Dissatisfied by enhancement to Rs.3,00,000/-, the Petitioner has approached this Court by filing the instant writ petition.

8. Learned Counsel for the Petitioner points out to a table showing the amenities which were promised and have not given. The table read as under:-

<i>Inside the house</i>			<i>Around the house</i>		
1.	4 burner gas stove	X	1.	Grand entrance lobby	Y
2.	Exhaust chimney	Y	2.	Terrace garden	Y
3.	Water purifier	Y	3.	Swimming pool	Y
4.	Kitchen waste crusher	Y	4.	Open air Jacuzzi, health club with gym and steam room	Y
5.	High end CP fittings	Y	5.	SS high speed lift & service elevators	Y
6.	Branded sanitary ware	Y	6.	Pure acrylic texture external paint	Y
7.	Luster paint with POP	Y	7.	DG set/power back-up for lifts, basement & stilt parking	X
8.	Granite top kitchen	Y	8.	Pampering all floor lobbies and elegant air-conditioned ground floor lobby	X
9.	Full tiles above platform	Y			
10.	Concealed wiring with ample electric points	Y			
11.	Modular switches	Y			
12.	Aluminium sliding windows	Y			
13.	Mosquito nets with tinted glass	Y			
14.	Ceramic flooring on attached terraces	Y			
15.	Inverter set-up for minimum lighting in all rooms	X			
16.	High quality doors & hardware	Y			



17.	Water geyser, boilers & exhaust fans in toilets	YYX			
18.	Air conditioners	X			

9. The Petitioner claims compensation of Rs.16,79,000/-. The details of the calculation of the amount is evident from table placed before the State Commission, which reads as under:-

1)	Reimbursement of Rent paid for “Divya Jyoti”, Sector-29, Vashi, Navi Mumbai, stayed in due to delay caused by Builder for the period from 01/12/2010 to 30/06/2011 on rental @ 12,000/- per month.	Rs.84,000/-
	Stayed at “Arihant Ansh” under above circumstances from 15/06/2011 to 15/04/2012 on rental @ 16,000/- per month.	Rs. 1,60,000/-
	Services in common area-non-provision of facility A/C in Lobby Designers Stairs on 300 Steps.	Rs.2,00,000/- Rs.4,50,000/-
	Walls, Doors, Grill painting in the Flat.	Rs. 1,00,000/-
	Replacement of Mirror 6x6 one piece, in Passage	Rs.25,000/-
	4 ACs in 3 and half bedrooms 1.5 Ton x 3, 1.00 Ton x 1	Rs.1,60,000/-
	2 ACs in drawing room 1.5 Ton each	Rs.1,00,000/-
	Deficiency in flooring (Italian marble)316.05 Sq. Ft.	Rs.2,00,000/-
	Non provision of Generator set based power back up in Flat No.702 (Total Flats 31 Nos in Bldg.)	Rs.50,000/-
	Ratify Compensation for mental agony from Rs.25,000/- to be considered.	Rs.50,000/-
	Ratify Compensation for expenses incurred including Legal Expenses should be from	Rs.1,00,000/-



	<i>Rs.10,000/- to be enhanced. Since litigation has started on 17/11/2012.</i>	
	<i>Total</i>	<i>Rs.16,79,000/-</i>

10. Heard learned Counsel for the Petitioner and perused the material on record.

11. The Petitioner has come to this Court for enhancement of the compensation. The District Forum has not observed any major deficiency of service and has awarded Rs.25,000/-. At this juncture, it is apposite to mention that the report of the Court Commissioner which reads as under:-

“On the basis of my experience as a practicing designer for the past 16 years and also an experienced professor of design with prominent universities, I am submitting my report of inspection.

The living room flooring is done up with Italian marble which one of the highest grades of material used for a floor. Hair line cracks along the grains of marble are visible on the marble at different areas. With my experience I would state that marble is a natural stone resulting from metamorphism of sedimentary carbonate rocks and metamorphism causes variable recrystallization of the original carbonate grains. Hence certain characteristic of this natural material are beyond human control. This marble can be filled and polished periodically to get better texture and finish.

The common room toilet door frame is made of granite which has a patch of around 1 inch. After inspection it is evident that the patch is inbuilt in the stone. Granite being an igneous volcanic rock solidifies below the level of the earth hence any spot which is in the stone is a part of Its natural process.



2'x2' vitrified tiles have been used in the passage and bedroom. A Shade variation is seen in a few tiles there is no installation problem. The tiles are from a branded company and shade variation is a problem of mass production and batching in any tile industry.

The master toilet has a boiler installed in the ceiling above the bath tub. Mr. Shivpuri had told that there is a leakage in that part of the ceilings. However I found no evidence of drops of water. With my experience I am of the opinion, that due heat generated and false ceiling below being closed, vapor is being created and appears like leakage. The rubber seal must be rectified.

There is an issue about a mirror in the passage. The client has complains of the mirror having spots and being put up in 2 parts. 3-4 spots are visible on the mirror. But the fixing in 2 parts is positive as the passage is long and fitting of the mirror in one piece on the upper levels not possible.

The verandah railings have been clamped from outside regarding which the client is dissatisfied. It could have been grouted to the wall which would have definitely given a better appearance. But these are different methods of fixing a grill. As far as stability is concerned there is no problem noted as the MS pipes are 25mmx50mm in size.

There is a dry balcony behind the common toilet. This has pipes running. The surface is not finished properly. I think the surface must be done smooth with putty.

On a general note I would conclude that there is no evidence of any serious technical problem. However 4-5 vitrified floor tiles should be changed and putty should be done up in the dry balcony.”

(emphasis supplied)



12. The State Commission chose to uphold the findings of the District Commission but chose not to enhance the compensation. The National Commission in its jurisdiction held that the amenities as promised have not been given. However, the National Commission in its revisional jurisdiction did not order for one more inspection as seven years have already lapsed and held that the compensation should be increased from Rs.25,000/- to Rs.3,00,000/-

13. Jurisdiction of a High Court, while exercising powers under Article 227 of the Constitution of India, has been laid down by the Apex Court in a number of Judgments. The Apex Court in State of Andhra Pradesh v. Chitra Venkata Rao, (1975) 2 SCC 557, has observed as under:-

“23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding



are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64].”

14. The Apex Court in Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil, (2010) 8 SCC 329, while considering the scope and ambit of Article 227 of the Constitution of India has observed as under:-

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down



by the Constitution Bench of this Court in Waryam Singh [AIR 1954 SC 215] and the principles in Waryam Singh [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment



by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration



of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

*(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.”
(emphasis supplied)*

15. The short question which arises for consideration before this Court is as to whether this Court while exercising its jurisdiction under Article 227 of the Constitution of India, which is supervisory, should interfere with the compensation awarded by the NCDRC.

16. A perusal of the above judgments would show that High Courts while exercising its powers under Article 227 of the Constitution of India should not substitute its own conclusion to the one arrived at by authorities below only because one more view is possible, unless the decision arrived at by the authorities below shocks the conscience of the Court. It is well settled that frequent exercise of this power will divest the strength and vitality of Article 227 of the Constitution of India.

17. This Court is of the opinion that substantial justice has been rendered in this case by increasing the compensation from Rs.25,000/- to Rs.3,00,000/- more so when the findings of the District Forum and the State Commission shows that the deficiencies are not of such magnitude and nature which warrants a higher compensation. The inspection report also does not show any major deficiency in the flat provided by the Respondent.

18. The only factor which persuaded the National Commission to increase the compensation was that the flat as promised in the brochure did not



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correspond with the flat actually delivered. This Court is not inclined to re-appreciate the evidence under Article 227 of the Constitution of India by going into excruciating details of facts as to what was promised and what was delivered and re-compute the compensation while exercising jurisdiction under Article 227 of the Constitution of India. This Court is of the opinion that enhancement of compensation over 12 times is sufficient to meet the ends of justice and, therefore, the judgment of the NCDRC does not warrant any interference.

19. The writ petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 30, 2024

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