AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.162 OF 2025

Vinay L. Dubey … Petitioner
V/s.
Subhash Ramjang Chourasiya … Respondent

Mr. Shanay Shah with Mr. Vivek Sharma i/by Mr. H.R. Sharma for the petitioner.
Mr. Mohit Bhansali for the respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 17, 2025

P.C.:

1. The petitioner has instituted the present writ petition under Article 226 of the Constitution of India, impugning the legality, validity, and propriety of the Order dated 3rd October 2024 passed by the National Consumer Disputes Redressal Commission ("National Commission") in Appeal No. 304 of 2024. The said order confirms and upholds the Order dated 28th February 2024 issued by the State Consumer Disputes Redressal Commission, Maharashtra, at Mumbai ("State Commission") in Consumer Complaint No. 599 of 2014. By the impugned orders, the National Commission has granted an option to the complainant and directed the opponent Nos. 1 and 2 to compensate the complainant by paying the prevailing market price of the subject flat, as determined based on a valuation report obtained from the concerned Sub-Registrar, such valuation to be placed on record in the execution proceedings.

2. The factual matrix and circumstances leading to the filing of the present writ petition are delineated hereunder:

The respondent herein initially instituted Consumer Complaint No. 240 of 2011 before the District Consumer Disputes Redressal Commission, Thane ("District Commission"), seeking possession of the subject flat, along with other ancillary reliefs. In the said proceedings, the respondent sought an injunction restraining the petitioner from creating third-party rights over the subject flat. However, the said application for injunction was rejected by the District Commission vide order dated 17th January 2012. Aggrieved by the rejection, the respondent preferred Revision Petition No. 52 of 2012 before the State Commission, which was allowed by order dated 27th October 2012, thereby granting an injunction restraining the petitioner from alienating or creating third-party rights in respect of Flat No. 603. Subsequent thereto, the respondent amended the consumer complaint on 21st October 2012. Consequently, the District Commission returned the complaint, directing its presentation before the State Commission, in view of the jurisdictional considerations. The respondent accordingly refiled the complaint before the State Commission.

3. As per the averments made in the complaint, the respondent had booked Flat No. 603, ad-measuring 625 square feet, situated on the sixth floor of the building known as 'Sai Palace' for a total consideration of Rs. 7,50,000/-. The petitioner had allegedly promised to deliver possession of the said flat within eighteen months from the date of execution of the agreement. According to the respondent, an amount of Rs. 1,00,000/- was paid towards the booking amount, and additionally, the respondent incurred expenses for the stamp duty and registration charges for the Agreement to Sale dated 2nd August 2007. The respondent had also availed of a housing loan amounting to Rs. 5,00,000/-.

4. It is the case of the respondent that from 17th January 2007 to 14th August 2008, he paid a sum of Rs. 6,45,000/- to the petitioner through cheques, with the exception of Rs. 10,000/-, which was paid in cash. The remaining balance of Rs. 1,05,000/- was to be remitted at the time of delivery of possession. The respondent contends that the petitioner failed to demand the said balance amount due to the land being sanctioned by the banker, and no further demands were raised. However, the respondent received a legal notice dated 8th April 2010 from the petitioner, calling upon him to pay an alleged outstanding amount of Rs. 3,50,000/-. The respondent replied to the said notice on 10th April 2010, categorically disputing the claim and asserting that the actual balance amount payable was only Rs. 1,05,000/-.

5. Alleging failure on the part of the petitioner to hand over possession of the flat within the stipulated period, the respondent initiated criminal proceedings under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963, as well as under the Indian Penal Code. The respondent further claimed that due to the non-delivery of possession, he was compelled to incur additional expenditure towards payment of rent for alternative accommodation. As a result, he instituted a consumer complaint before the State Commission, seeking appropriate reliefs against the petitioner and other respondents.

6. The petitioner filed a written statement contending that he had received an amount of Rs. 6,00,000/- from the respondent towards the consideration of the subject flat. However, it is the case of the petitioner that the respondent failed to remit the balance payment despite the petitioner being ready and willing to deliver possession of the flat. Consequently, the petitioner issued legal notices dated 8th April 2010 and 6th April 2011, terminating the respondent's agreement for failure to comply with the payment obligations. The petitioner further contended that, upon termination of the agreement, the flat in question was sold to a third party on 12th April 2011. According to the petitioner, the respondent was liable to pay more than Rs. 1,05,000/-, and the leave and license agreement produced by the respondent in an attempt to substantiate his claim of rental payments was alleged to be false and fabricated. The petitioner, therefore, prayed for the dismissal of the writ petition.

7. The State Commission, upon a meticulous examination of the undisputed registered Agreement for Sale dated 2nd August 2007, recorded a categorical finding that the respondent had paid an acknowledged amount of Rs. 6,00,000/-, which constitutes 80% of the total consideration amounting to Rs. 7,50,000/-. The Commission noted that despite having received the substantial portion of the agreed consideration, the petitioner proceeded to sell the flat in question to a third party for the same consideration of Rs. 7,50,000/-.

8. The State Commission further held that the act of selling the very same flat, without formally canceling the registered Agreement for Sale, and executing such a sale transaction during the pendency of the consumer complaint, amounted to an unfair trade practice. Additionally, the Commission found that the petitioner had created a false and fabricated document dated 12th April 2011, purportedly showing that the flat was purchased by one Advocate Nipa Shah, with the apparent intent of misleading the forum. The Commission also recorded a finding that the respondent had availed a housing loan of Rs. 5,00,000/- from GIC Housing Finance Limited, and was still servicing the EMI payments towards the repayment of the said loan. It was conclusively held that for a prolonged period of 17 years, the petitioner had failed to deliver possession of the flat to the respondent, thereby causing immense mental agony, hardship, inconvenience, and financial detriment to the respondent.

9. Consequently, the Commission directed the petitioner to hand over possession of Flat No. 603 to the respondent within one month, failing which the petitioner was directed to jointly and severally pay the prevailing market value of the flat to the respondent. Additionally, the Commission awarded compensation in the form of interest at the rate of 9% per annum for the delay in handing over possession, which was to be computed until the date of actual possession. Further, the petitioner was directed to pay a sum of Rs. 5,00,000/- towards compensation for the hardships suffered by the respondent.

10. Aggrieved by the said findings and directions of the State Commission, the petitioner preferred First Appeal No. 304 of 2024 before the National Consumer Disputes Redressal Commission, New Delhi ("National Commission"). However, the National Commission, upon due consideration, dismissed the appeal, thereby affirming the findings of the State Commission. Dissatisfied with the decision of the National Commission, the petitioner has instituted the present writ petition, assailing the correctness of the impugned orders.

11. Mr. Shah, learned advocate for the petitioner, forcefully argued that the respondent should have challenged the termination of the agreement before a competent Civil Court. In his submission, absent any such challenge, the Consumer Commission had no jurisdiction to grant relief in favor of the respondent. He further contended that because the conveyance in favor of a third party—effected during the pendency of the consumer complaint—was never formally set aside by the Consumer Commission, the respondent could not claim any right over the disputed flat. Mr. Shah specifically assailed Clause 4 of the order passed by the State Commission, deeming it contrary to the terms of the contract. According to him, under the agreement, the respondent was only entitled to a refund of the amount paid, with no additional relief or compensation.

12. Relying upon the pronouncement of the Hon'ble Supreme Court in **Venkataraman Krishnamurthy vs. Lodha Crown Buildmart (P) Ltd., (2024) 4 SCC 231**, Mr. Shah emphasized that parties, having willingly committed themselves to a written contract, must abide by its stipulations. He underscored that where the contract itself sets out the consequences of any breach, those contractual conditions and consequences are binding and enforceable in toto, leaving no scope for extraneous reliefs.

13. In support of his argument, learned counsel submitted that consumer fora, being creatures of statute with limited jurisdiction, cannot usurp or override the jurisdiction of a Civil Court in matters concerning title and conveyance of immovable property, especially where complex questions of fact or law arise. He urged that the respondent's failure to pursue remedies before a Civil Court is fatal to the respondent's claim under the consumer framework.

14. Upon hearing the rival submissions and with the assistance of the learned advocates, this Court has perused the copies of the agreement, the correspondence exchanged between the parties, and other documents placed on record. It is manifest that there existed a registered agreement to sell under Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963 ("MOFA Act"). This Court's decision in **Navi Mumbai Merchants Chambers vs. Arjun Krishnarao Deshmukh**, Writ Petition No. 10677 of 2019, decided on 12th February 2025, in paragraphs 17 to 22 held as under:

"17. The concept of "jus ad rem" in the context of agreements to sell under the Maharashtra Ownership Flats Act (MOFA), 1963, refers to a buyer's right to a specific property arising from a contractual obligation, which can be enforced against the developer and, in certain cases, third parties. This right is intermediate, lying between a personal right (jus in personam) and a full proprietary right (jus in rem).

18. "Jus ad rem" is a legal right that entitles a person to demand the transfer of ownership of a specific property, typically arising from a contract. It is not full ownership but a vested right to obtain ownership upon fulfilling contractual conditions. Under MOFA, an agreement to sell creates obligations for developers to convey ownership to buyers after construction. The buyer's right under this agreement is interpreted as jus ad rem, enforceable against the developer and, in some cases, successors.

19. In the context of the Maharashtra Ownership Flats Act (MOFA Act), and particularly under Section 4—which lays down the conditions for entering into and registering an agreement to sell—a "just ad rem" right refers to the quasi-property interest that a purchaser acquires once the promoter has complied with the statutory requirements before accepting an advance payment. This interest, although not a full title, is attached "to the thing" (i.e. the flat) and is enforceable against the promoter (and, in some respects, against subsequent dealings affecting the property).While an agreement to sell is a contractual obligation between the promoter and the purchaser, the requirement of registration transforms the buyer's interest. As soon as the promoter complies with the statutory mandate by executing and registering the agreement, the purchaser's interest in the flat "attaches" to the property. This attachment is what is described as a "just ad rem" right—it is not the full title but is an interest "in respect of the thing."

The statutory requirement of registration is not a mere formality. Rather, it is a tool to convert what might otherwise be a personal contractual right into an equitable interest that "runs with the property." This is the essence of a "just ad rem" right—it is attached to the property, giving it a "real" character.

20. Once the agreement is registered as prescribed, the purchaser's interest cannot be displaced by any subsequent act of the promoter (such as an attempt to reassign or sell the property to another party). The purchaser is, in effect, entitled to insist on the performance of the contract (i.e., construction and eventual transfer of title) in accordance with the terms laid down in the registered agreement.

21. It needs to be clarified that while the "just ad rem" right is intermediate, it is confined to the terms and conditions specified in the agreement. It does not automatically grant the purchaser any additional rights beyond what has been expressly or implicitly provided in the agreement executed under section 4 of the Act. This right is not merely contractual but is elevated to a statutory entitlement under MOFA, creating a legally enforceable charge over the property.

22. The transferee's rights under such agreements are further safeguarded by Section 4 of MOFA, which mandates the promoter to disclose project details and timelines, thereby embedding statutory sanctity into the contractual relationship. Thus, the phrase "taken flats" under Section 10(1) is not necessarily contingent on the execution of a sale deed but on the conferral of irrevocable jus ad rem through a legally enforceable instrument."

15. In *Navi Mumbai Merchants Chambers(Supra)*, this Court held that an agreement executed pursuant to the MOFA Act creates a *jus ad rem*—an intermediate right straddling the boundary between a mere contractual right in personam and a property right in rem—and thus confers a form of interest in the property. It therefore clear that such an interest cannot be extinguished unilaterally by the mere issuance of a termination notice.

16. This principle is in consonance with other judicial precedents that recognize the special status of agreements executed under similar statutory frameworks, wherein the protection of consumers (purchasers) is paramount. Consumer forums are entitled to intervene when there is a demonstrated deficiency in service or unfair trade practice. In the present context, once it is established that the respondent had a statutory right over the flat, the Consumer Commission was within its jurisdiction to address the dispute and grant suitable relief, notwithstanding any conveyance purportedly executed in favor of third parties.

17. A plain reading of Clause 4 of the agreement, which the petitioner seeks to invoke, makes it clear that the promoter may terminate the contract only in the event that the respondent defaults in paying an installment. However, the record unequivocally demonstrates that the respondent committed no such default. Indeed, there is no evidence to suggest that the petitioner ever demanded the balance payment at the stage of handing over possession. Absent any material to show a formal or substantive call for payment, Clause 4 is rendered inapplicable to the present factual matrix. Moreover since the respondent obtained a housing loan of Rs. 5,00,000/- from GIC Housing Finance Ltd., it stands firmly established that the respondent remained ready and willing to discharge his obligation to pay the remaining Rs. 1,50,000/-.

18. The respondent's willingness and capacity to pay the remaining balance of Rs. 1,50,000/- is further borne out by the fact that the loan application filed by the respondent was sanctioned by GIC Housing Finance Ltd. In such circumstances, there was little reason to doubt the respondent's bona fides, as he had secured sufficient financing to cover both the partial payments already made and the pending amount. The petitioner's argument that the respondent was disinterested in fulfilling the contractual obligations does not stand scrutiny in light of the evidence on record. As such, the petitioner's unilateral termination of the registered agreement cannot withstand judicial scrutiny.

19. The petitioner's decision to execute a sale deed in favor of a third party during the pendency of the consumer complaint manifests a disregard for the orderly process of law. The record reflects that the flat in question was transferred at the same price of Rs. 7,50,000/-, whereas the Index-II register suggests its market value was around Rs. 22,00,000/-. In such circumstances, the Consumer Commission rightly concluded that the petitioner sought to deprive a bona fide consumer of lawful possession, thereby operating in flagrant violation of legal norms and principles. The Commission also correctly found that, even after 17 long years, the respondent had not been afforded possession, resulting in substantial hardship, including psychological distress and financial strain. The respondent, for instance, furnished leave and license agreements establishing monthly rental outlay, and it remains undisputed that the respondent paid EMIs on the loan obtained from GIC Housing Finance Ltd. Indian courts have consistently refused to exercise their extraordinary constitutional jurisdiction in favor of a developer or promoter whose approach is high-handed and who fails to act in good faith. Where a promoter is shown to have acted unfairly or capriciously, relief in a writ proceeding cannot be countenanced.

20. The documentary evidence, including the agreement clauses, confirms that the total consideration for the flat was fixed at Rs. 7,50,000/-, payable in installments. It is undisputed that the respondent had already paid Rs. 6,00,000/-, representing more than 80% of the total sale price. The agreement explicitly specified that the balance would become due at the time of delivery of possession. However, rather than issuing a formal demand or scheduling a date for handing over possession, the petitioner, by a notice dated 8th April 2010, abruptly terminated the agreement without affording the respondent an opportunity to rectify any alleged shortfall. Such unilateral action not only contravenes the terms of the agreement, but also runs counter to the principle of fairness underlying consumer protection laws.

21. In the light of these facts, this Court finds that the termination of the registered agreement by the petitioner, absent a call upon the respondent to pay the outstanding balance, is unjustified. Moreover, the argument advanced by the petitioner—namely, that the respondent should have independently challenged this termination in a Civil Court—carries limited weight in the context of consumer protection proceedings. Once a deficiency in service or an unfair trade practice is prima facie established, consumer fora are statutorily empowered to take corrective measures for the ends of justice.

22. The learned advocate for the petitioner also placed reliance on the decision of the Supreme Court in Venkataraman Krishnamurthy (supra). However, the factual matrix in that case differs significantly from the present one. There, the promoter had a clear contractual right to terminate within 90 days from the stipulated date of possession, coupled with a one-year grace period, and the parties had expressly agreed that such a right of election was absolute. Consequently, the Supreme Court held that the Consumer Commission was not at liberty to deem the delay in handing over possession unjustifiable without reference to the clear contractual timeline. Contrastingly, in the instant case, the respondent was never invited or directed to remit the outstanding payment in exchange for taking possession; instead, the petitioner sold the flat at the same consideration to a third party. This conduct, by any measure, is manifestly unconscionable and warrants no equitable or discretionary indulgence. Hence, the petitioner can claim no relief.

23. For these reasons, the petitioner’s objections are untenable. The arrangement under the registered agreement to sell stands on a special statutory footing by virtue of the MOFA Act, and the respondent’s rights under such an agreement cannot be defeated merely by unilateral action or by insistence on civil proceedings without first exhausting consumer remedies. Accordingly, the Consumer Commission was justified in exercising its powers to protect the respondent’s rights and to award appropriate relief.

24. For these reasons, the writ petition stands dismissed, with no order as to costs. Such dismissal is consistent with a long-established principle that a party seeking equity must do equity; the petitioner's unfair conduct precludes any relief in extraordinary constitutional proceedings.

(AMIT BORKAR, J.)