

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14043 OF 2024
WITH
INTERIM APPLICATION NO. 13820 OF 2024

M/s. Prathamesh Construction & Ors.

.. Petitioners

Versus

Captain (In) Bhupesh Aneja & Anr.

.. Respondents

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- Mr. Alankar Kirpekar a/w Mr. Susmit Phatale, Mr. Ayush Tiwari & Mr. Somnath Kale i/by Mr. Susmit Phatale, Advocates for Petitioners
- Captain (In) Bhupesh Aneja, Respondent No. 1 in Person

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 12, 2025

P.C.:

1. Heard Mr. Kirpekar, learned Advocate for Petitioners and Captain Bhupesh Aneja, Respondent No. 1.

2. Petitioners are developers. They are challenging the order dated 27.06.2024 passed by National Consumer Disputes Redressal Commission in First Appeal No. 370/2024 whereby the Complaint filed by Respondents is partly allowed and direction given to the Petitioners to jointly and severally directed to refund the amount of Rs. 10,34,000/- to the Complainants along with interest @ 9% from the date of respective payments till realization within 60 days from the date of receipt of the copy of the order. That apart Petitioners are also

jointly and severally directed to pay Rs. 3,00,000/- towards compensation for mental and physical harassment to the Complainants and an amount of Rs. 75,000/- towards cost of litigation.

3. Briefly stated Respondents are investors with Petitioners. They invested amount of Rs. 10,34,000/- sometime in the year 2013. It is seen that since the Petitioners did not respond to the investment made by the Respondents for booking of the flat, Respondents filed FIR dated 03.11.2016. Petitioners approached the Court seeking anticipatory bail and by order dated 24.04.2017, Petitioners were granted anticipatory bail on pre-condition that they shall deposit Rs. 10,34,000/- in this Court. On 02.05.2017 Petitioners deposited the said amount of Rs. 10,34,000/- in this Court and anticipatory bail was confirmed. In the criminal proceedings initiated by Respondents, negotiations took place between the parties and Petitioners handed over 6 cheques to the Respondents which were ultimately dishonoured. Being aggrieved, Respondents thereafter in 2017 filed Consumer Complaint No. CC/17/883 before the State Consumer Disputes Redressal Commission Maharashtra, Mumbai. The Complaint was resisted by Petitioners and by order dated 15.05.2023, State Consumer Disputes Redressal Commission allowed the Complaint party and directed payment of Rs. 10,34,000/- along with 12% interest to the Respondents. Being dissatisfied with the said order,

Petitioners filed First Appeal No. 370/2024 before the National Consumer Disputes Redressal Commission which by order dated 27.06.2024 upheld the order passed by the State Consumer Disputes Redressal Commission but reduced the interest rate from 12% to 9%. Order dated 15.05.2023 passed by the State Consumer Disputes Redressal Commission is appended at page Nos. 36-54, Exh. 'B' of Petition whereas order dated 27.06.2024 passed by National Consumer Disputes Redressal Commission is appended at page Nos. 33-35, Exh. 'A' of Petition.

4. In the meanwhile Respondents filed Execution proceedings before the State Consumer Disputes Redressal Commission in respect of the order dated 27.06.2024. In Execution Proceedings, order dated 21.08.2024 was passed directing the Petitioners to withdraw the deposited amount of Rs. 10,34,000/- in this Court and deposit the same in State Consumer Disputes Redressal Commission. Petitioners therefore addressed letters to the Registry of this Court along with copy of the said order. Registrar of this Court responded by directing the Petitioners to obtain Court's order. In the meanwhile, non-bailable warrant was also issued against the Petitioners but the same has been stayed in the Interim Application filed by Petitioners in present Petition.

5. It is seen that National Consumer Disputes Redressal Commission has by its order dated 27.06.2024 upheld the order dated 15.05.2023 and directed payment of Rs. 10,34,000/- along with interest to be paid over to the Respondents by Registry of this Court. There is further direction in the order that the differential amount be paid within a period of further 4 weeks.

6. Mr. Kirpekar, learned Advocate for Petitioners would submit that Petitioners are ready and willing to forgo the amount of Rs. 10,34,000/- which has been deposited in this Court along with all accrued interest in favour of Respondents and abide by the orders passed subject to this Court passing appropriate directions in the present Petition. He would submit that appropriate directions can be given by this Court to the Registry of this Court to transfer the amount of Rs. 10,34,000/- along with all accrued interest directly to the Respondents without routing it through the State Consumer Disputes Redressal Commission where the Respondents have filed Execution Proceedings against the Petitioners. The suggestion made by Mr. Kirpekar *prima facie* appears to be fair to the Court.

7. *Per contra*, Captain Aneja - Respondent No. 1 has appeared in person and persuaded the Court to hear his submissions. He would submit that Respondent has suffered a lot at the hands of Petitioners. He would submit that in that view of the matter, Petitioners should be

given strict punishment so that they would not behave in same fashion with another investors. He would submit that Respondents have found hopes of realizing his dream house which he has booked but in view of the demeanor and omissions of Petitioners, the said dream was never fructified. He would submit that after realizing he had been duped by the Petitioners, he was made to run from pillar to post to secure a refund of the amounts, which were also not released by the Petitioners. He would submit that he is a Serviceman employed in the Indian Navy and he had suffered a lot for the past 12 years for getting his money back. He would submit that Petitioners had committed fraud and duped him by advertising that they were owners of Plot Nos. 189 and 190A at Sector 20, Ulwe which were never owned by them in the first place. He would submit that he was duped when he had booked a 2 BHK flat of approximately 1100 sq.fts. on the 7th floor of the building in 'Prathmesh Empire-1' on the basis of widely advertised the project and brochure as 'clear title CIDCO transferable CIDCO transfer plot'. He would submit Petitioners had advertised their project on facebook page and through several real estate websites and misled him through fraudulent representations which is clear from the correspondence which is place don record in the Petition and appended to various responses before the State Consumer Disputes Redressal Commission and National Consumer Disputes Redressal

Commission. He would submit that Petitioners have made false submissions at different points in the proceedings before the State Consumer Disputes Redressal Commission and National Consumer Disputes Redressal Commission and in Anticipatory Bail Application filed in this Court. He would submit that anticipatory bail granted by this Court to Directors of Petitions is on the false premise and submissions made by Petitioners that Respondents had agreed to shift his booking to another project undertaken by Petitioners. He would submit that in this regard, the Court should consider the order of rejection of bail by Sessions Court which is the judgment dated 15.12.2016 wherein the Court has held that it is an admitted fact that Petitioners were unable to sell the flat to Respondents as per the original agreement and there was absence of clear title and possession over the subject land in question by Petitioners. He would submit that the Sessions Court had categorically held that Petitioners were compelling the purchasers to purchase flats on a different location instead the location agreed and therefore this very fact shows element of cheating on the part of Petitioners. He would submit that Petitioners have duped several investors like Respondents before the Court and therefore no leniency whatsoever should be shown by Court to Petitioners while allowing their Petition in challenging the order passed by the National Consumer Disputes Redressal Commission

dated 27.06.2024. He would submit that Petitioners have committed unfair trade practice and deficiency in service. They have been proceed in criminal matters which resulted in issuance of non-bailable warrants against them. They are habitual offenders for similar offences. They have made false representations to the Court. They have given 6 post-dated cheques to Respondents which were dishonoured. They had sent a scanned image of demand draft of Rs. 10,34,000/- for falsely stating that Respondents had agreed to accept the same as part of settlement and therefore due to all these issues, Respondents have been harassed mentally and physically. He would therefore submit that Respondent had shown his bonafides by paying 20% of the booking amount of Rs. 60.38 lakh for 2 BHK flat upfront and had consistently shown his bonafides until he realized that he was duped by Petitioners. He would submit that it is only when Respondents visited the site to find out details of the plots, he realized that there was an issue of title of the subject plot where he booked the flat and thus Petitioners had duped the Respondents. He would therefore persuade the Court to look into the harassment rather mental and physical harassment meted out to Respondents in the present case and determine the present Writ Petition.

8. I have heard Mr. Kirpekar, learned Advocate for Petitioner and Respondent No. 1 in person and with their able assistance perused the record of the case.

9. It is seen that sometime in 2013, Respondents intended to purchase a residential flat and it is an agreed position that he had paid advance amount of Rs. 10,34,000/- to Petitioner No. 3. It is also admitted position that Petitioner No. 1 had issued receipt in respect thereof and there is no dispute in respect of the same. Rather Mr. Kirpekar has fair to the Court in informing the Court that Rs. 10,34,000/- has been deposited in this Court at the time of grant of anticipatory bail to directors of Petitioners and the said amount can be allowed to be taken by Respondents along with all accrued interest thereon. It is seen that the said amount of Rs. 10,34,000/- deposited on 02.05.2017 and we are in 2025. In the past 8 years, substantial interest may have accrued on the said amount also. Insofar as considering the impugned order passed by the National Consumer Disputes Redressal Commission is concerned, after perusing the said order, it is seen that the said Commission has been waged on the basis of the proposition that the amount which has been deposited as a condition for grant of anticipatory bail cannot be considered as tender of money by the Petitioners. Therefore the National Consumer Disputes Redressal Commission has come to the conclusion that

Petitioners cannot be absolved from the liability of interest in the case of refund. In that view of the matter, the National Consumer Disputes Redressal Commission has upheld the order passed by the State Consumer Disputes Redressal Commission for refund of money along with interest. However while doing so the National Consumer Disputes Redressal Commission has modified the order to the extent that rate of interest has been reduced from 12% to 9% per annum to be paid over to the Respondents. I have perused the order dated 15.05.2023 passed by the State Consumer Disputes Redressal Commission. It is seen that the State Consumer Disputes Redressal Commission has passed a reasoned and cogent order after determining the points for determination as to whether the Complainants Respondents were consumers under the Consumer Protection Act, whether the Complainants have booked a flat in the project flouted by Petitioners, whether the Petitioners are guilty of deficiency in service and unfair trade practice to which the State Consumer Disputes Redressal Commission has returned affirmative findings along with cogent reasons from paragraph No. 10 onwards. That apart on the issue of the Complainants – Respondents being entitled to the reliefs, the State Consumer Disputes Redressal Commission has granted various reliefs in operative part of the order which are confirmed by the National Consumer Disputes Redressal Commission save and except the issue of

reduction of interest. On the issue of reduction of interest National Consumer Disputes Redressal Commission has relied upon the decision of the Supreme Court in the case of *Experion Developers Pvt Ltd v. Sushma Ashok Shiroom*¹ quoted in paragraph No. 6 of the impugned order in which it has been held that in case of refund 9% interest is just compensation which amounts to restitutory and compensatory both. In that view of the matter, rate of interest has been scaled down from 12% to 9% in the present matter. On perusing the reasons given in paragraph No. 6 of the impugned order, I am not in agreement with the reasons given therein by the National Consumer Disputes Redressal Commission. The reason for reduction of interest is without any reason whatsoever. On the contrary, the decision of the State Consumer Disputes Redressal Commission which has been upheld by the National Consumer Disputes Redressal Commission is found to be correct and cogent on all parameters. The hardship and harassment which the Respondents have undergone in the present case is evident from the aforesaid timeline. In that view of the matter, there was no reason for the National Consumer Disputes Redressal Commission to interfere with the order dated 15.05.2023 passed by the State Consumer Disputes Redressal Commission which had given adequate reasons for passing of the said order. In that view of the matter, order dated 27.06.2024 passed by National Consumer Disputes Redressal

¹ (2022) SCC OnLine SC 416

Commission in First Appeal No. 370 of 2024 is quashed and set aside and the order dated 15.05.2023 passed by State Consumer Disputes Redressal Commission in Consumer Complaint No. 833 of 2017 is upheld and confirmed in its entirety.

10. Respondents shall be entitled to withdraw the amount of Rs. 10,34,000/- along with accrued interest thereon from this Court to which Petitioners shall give their no objection. Registry of this Court shall permit the Respondents to withdraw the said amount on his Application.

11. In view of the above, Registry of this Court is directed to transfer the amounts to the Respondents along with all accrued interest thereon within a period of two weeks from today positively. Respondents shall provide all details of their bank account to the Registry of this Court along with his Application and server copy of this order. Under no circumstances, there shall be delay in transferring the aforesaid amount. If any fixed deposit is to be broken, same shall be done immediately for the above compliance.

12. Computation and calculation of rate of interest @ 12% per annum shall be computed by the Petitioners and the differential amount due and payable to the Respondents shall be paid over by the Petitioners within a period of three weeks from the date of this order.

Insofar as the amount of compensation and costs is concerned, the same are upheld and the said amount shall be paid over to the Respondents within a period of three weeks from today.

13. With the above direction, Writ Petition is disposed. In view of disposal of the Writ Petition, Interim Application No. 13820/2024 is also disposed.

14. As a consequence of this order, non-bailable warrant issued by the State Consumer Disputes Redressal Commission vide order dated 04.10.2024 in Execution Application No. EA/23/179 stands cancelled. Said Execution Application is also disposed.

15. Writ Petition is disposed in the above terms.

[**MILIND N. JADHAV, J.**]

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Digitally signed
by RAVINDRA
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