IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 18303 OF 2024

Arjun Bali … Petitioner

Vs.

M/s. Ravi Developments … Respondent

Mr. Rohit Pawaskar a/w. Mohiyuddin Y. Baugwala i/b. Sana Y. Baugwala for the petitioner.

CORAM: G. S. KULKARNI & ADVAIT M. SETHNA, JJ.

DATED: 15 April, 2025

P.C.

1. This petition under Articles 226 & 227 of the Constitution of India challenges the judgment and order dated 18 March, 2024 passed by the National Consumer Disputes Redressal Commission, New Delhi whereby First Appeal No. 2187 of 2019 filed by the respondent against the petitioner assailing the judgment and order dated 12 March, 2019 passed by the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai in Consumer Complaint No. CC/14/313 has been interfered without any independent consideration or reasons in terms of what was decided in companion First Appeal Nos. 2185 of 2019 and 2186 of 2019, as filed before the National Consumer Disputes Redressal Commission, which were in respect of another flat purchaser, namely, Vijay Kumar Bajaj and Anr.

2. The respondent was represented on the earlier occasion by learned counsel Mr. Makarand Raut, however, today none appears for the respondent. It appears that the respondent is not interested to contest the present proceedings. Also no

reply affidavit is placed on record. Thus, the contention as urged on behalf of the petitioner in the writ petition have remained uncontested and/or are admitted.

3. At the outset, we may note that the petitioner had approached the respondent for purchase of a flat, namely, flat no. 1201, 12th floor in 'B' Wing of a project known as 'Gaurav-Aster' at Mira Road (East), Thane. It is the petitioner's case that as there was no construction which was to be undertaken beyond 10th floor, hence such sale of the flat to the petitioner on 12th floor itself was illegal. The petitioner has parted with substantial amounts of Rs.34,81,791/- alongwith Rs.1,99,700/- for stamp duty and registration of Rs.30,000/- and other charges. Such amounts as paid by the petitioner was utilized by the respondent knowing well that the construction would not be undertaken and the said flat could never be sold to the petitioner. The petitioner accordingly approached the State Consumer Disputes Redressal Commission, Mumbai in the complaint in question.

4. Our attention is drawn to the order dated 12 March, 2019 passed by the State Consumer Disputes Redressal Commission, Mumbai whereby the petitioner's complaint was partly allowed in terms of the following order:

> **"ORDER**
>
> (1) Consumer Complaint is hereby partly allowed with costs quantified at Rs.25,000/- (Rupees Twenty Five Thousand only) to be paid by the opponent to the complainant.
>
> (2) Opponent is directed to pay an amount of Rs.34,81,791/- along with Rs.1,99,700/- spent for stamp duty and registration charges of Rs.30,000/- to the complainant (totaling Rs.37,11,491/-) along with interest @24% p.a. from 03.04.2014 till realization.

> (3) Opponent is directed to pay an amount of Rs.1,00,000/- to the complainant as compensation on account of mental agony and sufferings by the complainant.
>
> (4) The above mentioned amounts shall be paid within a period of one month from the date of this order. In default, the said amount will carry interest @12% p.a..
>
> (5) Copies of the order be furnished to the parties."

5. The aforesaid order was challenged by the respondent before the National Consumer Disputes Redressal Commission (NCDRC) in the proceedings of First Appeal No. 2187 of 2019, on which the impugned order is passed.

6. Learned counsel for the petitioner has contended that there were two companion Appeal Nos. 2185 of 2019 and 2186 of 2019 before the NCDRC filed by the respondent, namely, Vijay Kumar Bajaj & Anr. which were completely independent from the petitioner's cause as also such parties were investors. It is his submission that on a cryptic reasoning, which is contained in paragraph 19 of the impugned order following the reasons as set out in deciding the companion appeals, the appeal filed by the respondent against the petitioner was allowed in similar terms, namely, that the rate of interest of 24% p.a. as awarded by the State Commission was reduced to 9% p.a. and to that extent, the orders passed by the State Commission were modified. The observations as made by the National Commission in paragraphs 16 and 17 of the impugned order, which according to the petitioner, are mechanically made applicable to the petitioner's case as clearly seen from paragraph 19 of the impugned order passed by NCDRC. We note paragraphs 16 and 17 and its application to the petitioner's case in paragraph 19 as contained in the NCDRC's order. These paragraphs read thus:

> "16. In view of the above settled legal position, we are of the opinion that the rate of interest at the rate of 24% per annum is on the higher side and the rate of interest at the rate of 9% per annum is just and reasonable.
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> 17. In view of the aforesaid discussion, we modify the Order of the State Commission to the extent that the builder company shall refund the amount of Rs.18,21,847/- (Rupees Eighteen Lakh Twenty One Thousand Eight Hundred Forty Seven only) with interest at the rate of 9% per annum from 01.11.2011 till realization and cost of Rs.25,000/- within six weeks' time, failing which, the interest shall be paid at the rate of 12% per annum. Keeping in view the decision of the Hon'ble Supreme Court in the case of **DLF Homes Panchkula Pvt. Ltd. vs. D.S. Dhanda (supra)** that the multiple compensations for singular deficiency is not justifiable, direction to the builder company to pay the compensation of Rs.1,00,000/- towards mental agony and inconvenience, granted by the State Commission is set aside."
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> "19. The appeals no. 2186 of 2019 and 2187 of 2019 are disposed of in terms of the examination and reasons contained hereinabove apropos appeal no. 2185 of 2019 (the lead-case) with similar directions *mutatis mutandis*."

7. We find that apart from what has been set out in paragraph 19, there is no independent reasoning, considering the appeal of the respondent against the petitioner on its merits. There is no consideration of any of the plea as raised by the petitioner in opposing the respondent's appeal. Also it was necessary that the issue be discussed as to whether the petitioner's case would at all be required to be considered as similar case, as in the companion appeals, namely, Appeal No. 2186 of 2019 and 2187 of 2019.

8. This apart, learned counsel for the petitioner has contended that there was no order passed on the delay condonation application filed by the respondent praying for condonation of delay before the NCDRC. The petitioner had opposed the application on the ground that the delay was of a period of 216 days, however, what was averred in the delay condonation application was delay of 46 days as set out in prayer clause (a) of the said application. It is submitted that the delay was not appropriately explained and all these issues have not been taken

into consideration.

9. In the light of the aforesaid discussion and circumstances, in our view, it would be in the interest of justice that the petition is disposed of in terms of the following order:

(i) The impugned order dated 18 March, 2024 passed by the National Consumer Disputes Redressal Commission, Bench 3, New Delhi in First Appeal No. 2187 of 2019 is quashed and set aside. The proceedings of the said First Appeal stands restored to the National Consumer Disputes Redressal Commission to be decided afresh and in accordance with law. All contentions of the parties in that regard are expressly kept open.

(ii) As the petitioner has suffered for quite sometime and the amounts in question still continue to be deprived to the petitioner, we direct the National Consumer Disputes Redressal Commission to consider the proceedings expeditiously and decide the same on or before 31 July, 2025.

10. Disposed of in the aforesaid terms. No costs.

(ADVAIT M. SETHNA, J.) **(G. S. KULKARNI , J.)**