



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

WRIT PETITION NO. 2684 OF 2024

M/s Honeywell Developers
through its Partner, Vaibhav Vitthal
Unganlawar, Aged about : 45 Years, Occu :
Business, Resident of 22, Vidarbha Housing
Board Colony, Ramnagar, Chandrapur.

... PETITIONER

VERSUS

1. Pravin Gangadhar Deotale
Aged about 35 Years, Occu : Business;
2. Mrs. Sonali Pravin Deotale
Aged about 31 Years, Occu : Chartered
Accountant; R/o Plot No.33, Old Subhedar
Layout, Ayodhya Nagar, Nagpur – 440024.

... RESPONDENTS

Mr. R. R. Deo, Advocate for Petitioner.
Ms. Swati Paunikar, Advocate for Respondent Nos.1 & 2.

CORAM : R. M. JOSHI, J.
ARGUMENTS HEARD ON : JUNE 30, 2025.
PRONOUNCED ON : JULY 09, 2025.

JUDGMENT

. This Petition takes exception to the order dated 5/1/2024 passed
by the National Consumer Disputes Redressal Commission, New Delhi in
Appeal No. 30/2020, whereby the order dated 4/12/2019 passed by the State

Commission in Complaint Case No. CC/17/27 came to be confirmed with modification in respect of the interest.

2. For the sake of convenience, the parties are referred to as 'Developer' and 'Purchaser'.

3. By consent of both sides, Petition is heard finally at the stage of admission.

4. It is a case of the Developer that the Firm had floated a residential apartment scheme known as 'Honeywell Residency'. The Purchaser agreed to purchase Flat No. 201 in 'B' Wing of the proposed building for a total consideration of Rs.33,00,000/-. An Agreement to Sell came to be executed between them on 16/3/2015. It is further case of the Developer that as per the terms of the Agreement, the Purchaser was obliged to pay regularly the requisite instalments as per the stage of construction, which is essence of the contract and which entails option for cancellation of the Agreement at the instance of the Developer.

5. It is a case of the Purchaser that an amount of Rs.27,30,000/- was paid to the Developer on 30/9/2015, but there was a delay in completing the construction of the apartment. The balance amount of Rs.5,70,000/- came to

be paid on 5/1/2017. The Developer claims that in terms of the said Agreement the Purchaser was not required to be delivered actual possession of the premises unless the entire consideration as well as the charges for installation of electricity and water meter are paid, over and above legal expenses, stamp duty etc.. Pursuant to the Agreement of Sale dated 15/3/2015, a registered sale deed came to be executed on 5/1/2017, which indicates that the Purchaser had inspected the apartment/premises and satisfied himself with the work and specifications carried out.

6. The Purchaser instituted a Complaint Case No.27/2017 under Section 17 of the Consumer Protection Act, 1986 (*for short, 'the Act'*) against the Developer before the State Consumer Disputes Redressal Commission (*for short, 'State Commission'*). The Developer opposed the said complaint by filing reply refuting the allegations and contentions of the Purchaser. It was claimed before the Commission that the delay, if any, is solely attributable to the Purchaser's negligence in paying total amount of consideration. It is also claimed that construction work was completed within the prescribed time, but despite several requests by the Developer, Purchaser deliberately kept the flat vacant. Parties led evidence. The Commission, by order dated 4/12/2019 allowed the complaint and directed the Developer to handover possession of

the subject premises to the Purchaser and further direction was issued to pay damages/compensation to the Purchaser with interest at the rate of 9% per annum on the amount of consideration paid by him i.e. Rs.33,,00,000/-.

7. Being aggrieved by the said order, the Developer preferred appeal under Section 21 of the Act before the National Commission at New Delhi. The National Commission partly allowed the appeal by setting aside the order passed by the State Commission to the extent of grant of compensation of Rs.1,00,000/- and a sum of Rs.2000/- per month from 16/3/2016 till handing over the actual, legal and physical possession of the subject premises to the Purchaser. It is a case of the Developer that the findings recorded in the impugned orders by the State Commission as well as National Commission are contrary to the evidence on record and that the same have been passed in breach of the principles of natural justice and without recording any reasons.

8. The learned Counsel for Developer submits that execution of the sale deed by the purchaser indicates that the possession of the subject premises was handed over to the purchaser and that the said possession is obtained after duly satisfying himself about the specification and workmanship. It is, therefore, his submission that there was no question of the Commission to pass any order in respect of directing handing over of the actual possession of the

subject premises to the Purchaser with all amenities as per the Agreement. He further drew attention of the Court to the fact that a sum of Rs.5,70,000/- was paid belatedly by the Purchasers and, therefore, it is not open for him to make any grievance in respect of the alleged deficiency in service by the Developer. It is his submission that these facts are totally ignored by the Commissions while passing impugned orders. It is further argued that the State Commission passed order in absence of the Developer and hence principles of natural justice are not followed. It is his submission that on this ground alone the order passed by the Commission deserves to be set aside and the matter is required to be relegated back to the Commission for decision afresh. By referring to the Judgment of the National Commission it is contended that the said Judgment does not record reasons, much less, elaborate reasons for rendering the ultimate findings that there is deficiency in services at the end of the Developer, which entitles the Purchaser to get compensation on the amount of consideration paid towards the purchase of the premises. It is his submission that there is no explanation as to the reason for which interest at the rate of 6% per annum would be entitled by the Purchaser. On these amongst other contentions he seeks interference in the impugned orders.

9. He placed reliance on the Judgment of the Hon'ble Supreme Court

in the case of *Secretary and Curator, Victoria Memorial Hall V/s Howrah Ganatantrik Nagrik Samity and Others, (2010) 3 Supreme Court Cases 732.*

10. *Per contra*, learned Counsel for the Purchaser supported the impugned orders. With regard to the possession, attention of the Court is drawn to the possession letter dated 25/8/2022 indicating the possession of the subject premises having been handed over to the Purchaser on 25/8/2022. Thus, it is her contention that there is no substance in the plea sought to be raised by the Developer that the possession of the subject premises was handed over at the time of execution of sale deed. It is her submission that merely because there is a reference made in the sale deed about handing over of the possession, there is no presumption that the possession is so handed over and the possession letter falsifies the said claim. It is submitted that the law on the point of compensating the consumer is fairly settled to say that once the Developer is said to have failed in performing his contractual duties and there is deficiency in the service, it is open for the Commission to adequately compensate the Purchaser. To support her submission she placed reliance on the Judgment in the case of *DLF Home Developers Ltd. V/s Capital Greens Flat Buyers Assn., (2021) 5 SCC 537* and in the case of *Greater Mohali Area*

Development Authority (GMADA) through its Estate Officer (H) V/s Anupam Garg Etc.. in Special Leave Petition (C) Nos.27847-27848 of 2019.

11. Insofar as the contention of the Developer about the State Commission passing order in his absence is concerned, it is argued that the Developer had appeared before the State Commission, filed reply so also opportunity of leading evidence was accorded to the Developer. It is also her contention that perusal of the order indicates that the pleadings and evidence has rightly been taken into consideration by the Commission and as such there is no case made out for relegating the matter back to the Commission for decision afresh.

12. There is no dispute about the fact that there is an Agreement for purchase of the subject premises between Developer and Purchaser. Further, the agreed consideration is Rs.33,00,000/-. Undeniably, the entire amount of Rs.33,00,000/- is paid by the Purchaser to the Developer atleast on 5/1/2017. The recitals of the sale deed confirmed the said fact. Though it is now sought to be argued on behalf of the Developer that Rs.5,70,000/- was not paid when it became due, and therefore, the delay is attributed to the Purchaser. In this regard it is pertinent to note that it was open for the Developer to cancel the Agreement in case of non-payment of the instalments by the purchaser in time.

The Developer has not exercised the said right in spite of the allegation that the amount of instalments are not paid in time. The Developer, therefore, can be said to have waived the said right of cancellation of the said Agreement.

13. Apart from this, at the later point of time the amount of Rs.5,70,000/- is accepted without any demur. Thus, it is not open for the Developer to make a grievance that there was non-payment of the instalments in time. Moreover, there is no evidence led before the Commission to indicate that for non-payment of Rs.5,70,000/-, the work could not be completed, which has resulted in delay in handing over possession of the premises.

14. Insofar as the claim of the Developer about handing over of possession of the subject premises to the Purchaser on 5/1/2017 is concerned, though there is a stipulation to that effect in the sale deed, there is contrary evidence on record to indicate that the possession of the premises has been handed over to the Purchaser on 25/8/2022. There is no presumption that since there is a recital in the sale deed, actual possession must have been handed over to the Purchaser. More particularly, in view of the evidence which indicates otherwise, there is no reason to accept the contention of the Developer in that regard.

15. It is an admitted fact that the possession letter has been issued by the Developer on 25/8/2022, there is, however, nothing on record to indicate that the said possession letter was given under protest or pursuant to the order passed by the Commission. The perusal of the said letter indicates that there was certain work even then incomplete. This supports claim of the purchaser of deficiency of service. Moreover, apart from the fact of delay in handing over of possession, admittedly the work of installation of lift had not been done in time. However, it is a matter of fact that on 25/8/2022 the Purchaser has accepted the possession of the subject premises.

16. It is claimed on behalf of the Developer that the order passed by the State Commission is in absence of the Developer. Though it is so indicated from the order dated 4/12/2019, however, as a matter of fact, the Developer had participated in the proceedings before the State Commission. Reply was filed. Opportunity of hearing was also given so also to lead evidence. In such circumstances, it cannot be said that the principles of natural justice are denied by the Commission. Moreover, the order passed by the State Commission is in consonance with the evidence led on record, as a result of which, no case is made out by the Developer in seeking the relegation of the complaint back to the State Commission for decision afresh. Pertinently, the order came to be

challenged before the National Commission, wherein no prayer was made for remand of the proceeding before the State Commission. Before the National Commission the only relief which was prayed was for quashment of the order passed by the Commission dated 4/12/2019. On this ground also, this Court is not inclined to relegate the matter back to the State Commission for decision afresh.

17. It is claimed on behalf of the Developer that the order passed by the National Commission is not reasoned one. In this regard, perusal of the said order clearly indicates that the National Commission has taken into consideration the relevant facts and contentions of the parties, which can be seen from the order itself, and more particularly, from paragraph 14 to 16 of the order. The finding recorded by the State Commission as well as National Commission of there being no handing over of the possession and deficiency of service on the part of the Developer is in consonance with the evidence on record, and hence, cannot be called as perverse. In exercise of writ jurisdiction, this Court is not inclined to cause any interference therein for want of perversity.

18. Insofar as the relief moulded by the National Commission of

directing to pay compensation to the Purchaser in the form of simple interest at the rate of 6% per annum on the amount of consideration paid by him to the Developer is concerned, it is settled position of law by the Judgments of the Hon'ble Supreme Court to state that it is open for the Commission to compensate the consumer for deficiency in service by directing payment of the interest for delayed possession in order to compensate consumer's lost in use of his money. The interest granted at the rate of 6% per annum is also reasonable one. In case the said amount was retained by the Purchaser, he would have at least earn interest at the rate of 6% per annum which was applicable during the relevant period even on a saving account. Thus, the order passed by the National Commission directing interest cannot be faulted with.

19. The learned Counsel for Developer has sought to argue that since it is a case of the Developer that the possession of the subject premises was already given, there is no question of directing any interest to be paid till handing over of the possession. This contention gets falsified in view of the admitted document on record i.e. possession letter dated 25/8/2022. This conclusively establishes that the actual possession was handed over to the Purchaser on 25/8/2022. In such circumstances, the Purchaser would be

entitled for the interest at the rate of 6% per annum on the amount of Rs.33,00,000/- from 16/3/2016 till 25/8/2022.

20. In view of the foregoing discussion, the Developer has failed to make out any case for causing interference in the impugned orders. Hence, the Petition stands dismissed.

21. Since the Writ Petition is dismissed, pending Civil Application No. 331/2025 does not survive and stands disposed of accordingly.

(R. M. JOSHI, J.)

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