



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

WRIT PETITION No.3150 OF 2024

Jansewa Griha Nirman Developers and Builders,
through Mr.Shailendra s/o. Radheshyam Banode,
R/o. Shri Krishna Govind Hare Murari
Developmental Stores,
Bhagwan Nagar, Nagpur.

: PETITIONER

...VERSUS...

Vivek Bapurao Deshmukh,
Aged about – Major,
R/o. 36, Ishwar Nagar, Nagpur.

: RESPONDENT

WITH

WRIT PETITION No.3151 OF 2024

Jansewa Griha Nirman Developers and Builders,
through Mr.Shailendra s/o. Radheshyam Banode,
R/o. Shri Krishna Govind Hare Murari
Developmental Stores,
Bhagwan Nagar, Nagpur.

: PETITIONER

...VERSUS...

Chandu Ramkrishna Chafle,
Aged about – Major,
R/o. 115, Mire Layout, Nagpur.

: RESPONDENT

WITH

WRIT PETITION No.3152 OF 2024

Jansewa Griha Nirman Developers and Builders,
through Mr.Shailendra s/o. Radheshyam Banode,
R/o. Shri Krishna Govind Hare Murari
Developmental Stores,
Bhagwan Nagar, Nagpur.

: PETITIONER

...VERSUS...

Chitrabai Deorav Wadule,
Aged about – Major,
R/o. Bhagwan Nagar, Nagpur.

: **RESPONDENT**

WITH
WRIT PETITION No.3153 OF 2024

Jansewa Griha Nirman Developers and Builders,
through Mr.Shailendra s/o. Radheshyam Banode,
R/o. Shri Krishna Govind Hare Murari
Developmental Stores,
Bhagwan Nagar, Nagpur.

: **PETITIONER**

...VERSUS...

Damini Pravin Deshmukh,
Aged about – Major,
R/o. 36, Ishwar Nagar, Nagpur.

: **RESPONDENT**

WITH
WRIT PETITION No.3154 OF 2024

Jansewa Griha Nirman Developers and Builders,
through Mr.Shailendra s/o. Radheshyam Banode,
R/o. Shri Krishna Govind Hare Murari
Developmental Stores,
Bhagwan Nagar, Nagpur.

: **PETITIONER**

...VERSUS...

Vijaya w/o. Sudhir Gabhane,
Aged about – Major,
R/o. 118, Mire-Layout, Nagpur.

: **RESPONDENT**

WITH
WRIT PETITION No.3155 OF 2024

Jansewa Griha Nirman Developers and Builders,
through Mr.Shailendra s/o. Radheshyam Banode,
R/o. Shri Krishna Govind Hare Murari
Developmental Stores,
Bhagwan Nagar, Nagpur.

: **PETITIONER**

...VERSUS...

Ashwini Ravindra Deshmukh,
Aged about – Major,
R/o. 115, Mire-Layout, Nagpur.

: RESPONDENT

WITH**WRIT PETITION No.3156 OF 2024**

Jansewa Griha Nirman Developers and Builders,
through Mr.Shailendra s/o. Radheshyam Banode,
R/o. Shri Krishna Govind Hare Murari
Developmental Stores,
Bhagwan Nagar, Nagpur.

: PETITIONER

...VERSUS...

Pushpa Raju Ghatole,
Aged about – Major,
R/o. 215, Cement Road, Nandanwan,
Nagpur.

: RESPONDENT

WITH**WRIT PETITION No.4006 OF 2024**

Jansewa Griha Nirman Developers and Builders,
through Mr.Shailendra s/o. Radheshyam Banode,
R/o. Shri Krishna Govind Hare Murari
Developmental Stores,
Bhagwan Nagar, Nagpur.

: PETITIONER

...VERSUS...

Kalpana C. Chafale,
Aged about – Major,
R/o. 118, Mire-Layout, Nagpur.

Mr. Kalpana C. Chafale,
Aged Major, Occupation : Private,
R/o. Flat No.211, C Wing Shivaji
Park Near Vivekanand School,
Shrikrushna Nagar, Nagpur-440 000.

: RESPONDENT

Amendment carried out
as per court's order
dated 20.9.2024.

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Mr. Kapil V. Deshmukh, Advocate for Petitioner in all Petitions.
Mr. H.P. Gadhia alongwith Mr. Aniket A. Sawal, Advocate for
Respondents in all Petitions.

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CORAM : **R.M. JOSHI, J.**
DATE : **8th JULY, 2025.**

JUDGMENT :

1. By consent of both sides these petitions are heard finally at the stage of admission and since common question of facts and law are involved herein, the same are decided by this common judgment.
2. This petition takes exception to the order dated 4.5.2023 passed by the National Consumer Disputes Redressal Commissioner, New Delhi (in short, 'NCDRC') in Revision Petition No.2036/2017 affirming the orders passed in Appeal No.A/08/1041, passed by the State Consumer Disputes Redressal Commission, Nagpur (in short, 'SCDRC') of confirming the order passed by the Additional District Consumer Forum, Nagpur, dated 29.11.2008 in Case No.CC/08/160, filed under Section 12 of the Consumer Protection Act, 1976 (for short, 'the Act').
3. The facts as they are sought to be brought on record by the petitioners are narrated in brief as under :

It is the case of the petitioner that it decided to float a scheme on the land on monthly installment basis and prepared undeveloped Lay-Out plan of 102 plots on 11.8.2000. Sale-deeds

were allowed to be executed in respect of said plots. Agreement to sale was executed in respect of said plots with respondents in these petitions. It is further case of the petitioners that since the respondents have failed to make the payment of monthly installments as agreed, the said agreement came to be cancelled by the petitioners. The respondents filed complaints before the Additional District Consumer Forum, Nagpur alleging that there is deficiency in the service. The said complaints came to be allowed by order dated 29.11.2008. Appeal preferred by the petitioners before the SCDRC stood dismissed. So also, Revision filed before the National Consumer Dispute Redressal Commissioner, New Delhi was unsuccessful. The petitioners are directed to execute sale-deed after holding that there is deficiency in service and unfair trade practices. The petitioners were also directed payment of compensation of Rs.50,000/-. Being aggrieved by these orders, present petitions.

4. Learned counsel for the petitioners submits that the authorities under the Consumer Protection Act have failed to take into consideration the fact that this is a case of specific performance of contract and that the Forums created under the Consumer Protection Act are not entitled to entertain the same. On merit, it is submitted that the agreement to sale and execution thereof is not in dispute. It is his submission that the conditions annexed to the agreement from part thereof and which indicate that it was the responsibility of the

respondents to make the payment of installment and failure on the part of the respondents to pay three installments, the agreement would become inexecutable. He drew attention of the Court to the notice of termination of the agreement. According to him, once the agreement is terminated by letter dated 11.8.2004, question of granting any specific performance does not arise, unless said cancellation is held to be illegal by competent court of law. He argued that since the facts are disputed, the same could not have been decided by Forum. To support this submission he relied upon **Chairman and Managing Director, City Union Bank Limited and another Vs. R. Chandramohan, (2023) 7 SCC 775 and Oriental Insurance Co. Ltd. Vs. Munimahesh Patel (2006) 7 SCC 655**. It is his further submission that the respondents are not consumers within the meaning of Section 2(d) of the Consumer Protection Act nor the alleged act on the part of the petitioners could be considered as deficiency in service. It is his submission that the Forum under the Act completely ignored the agreement between the parties which mandates the development expenses to be borne by the respondents/purchasers. It is his submission that the Forum passed order without considering the said fact and unless the expenses incurred of the development, no direction could be issued for execution of sale-deed. He also argued that unless a breach is shown to have been committed of agreement and unless respondents plead for readiness and

willingness to perform their part of contract, direction to execute sale-deed cannot be issued. He relied upon **Katta Sujatha Reddy and another Vs. Siddamsetty Infra Projects Private Limited and others with connected appeals (2023) 1 SCC 355** and **Adani Power (Mundra) Limited Vs. Gujarat Electricity Regulatory Commission and others, (2019) 19 SCC 9** to support this submissions. It is his further submission that even in absence of signature of respondent on the annexure to the agreement, same binds them, as held in the case of **Rickmers Verwaltung GMBH Vs. Indian Oil Corporation Limited, (1999) 1 SCC 1** and **Govind Rubber Limited Vs. Louis Dreyfus Commodities Asia Private Limited, (2015) 13 SCC 477**. To counter the submission of respondents about subsequent events could not be considered i.e. N.A. permission being granted during pendency of proceeding, before the Forum, he relied upon **Rameshwar and others Vs. Jot Ram and another, (1976) 1 SCC 194**. It is canvassed that in view of **Ganeshlal Vs. Shyam, (2014) 14 SCC 773** the sale of land simplicitor would not involve consumer transaction. It is his submission that the findings recorded by the District Consumer Forum about the expenses of development having been already incurred by the petitioners and, therefore, the respondents are not liable to pay the same is erroneous in law and hence cannot sustain. While opposing orders of grant of compensation reliance is placed on **Laxmiben Laxmichand Shah (Mrs) Vs. Sakerben Kanji Chandan (Mrs)**

and others, (2001) 9 SCC 604. He also relied upon **Judgment of this Court delivered in Writ Petition No.864/2017, dated 19th June, 2018.**

5. Learned counsel for the respondents supported the impugned orders. According to him, respondents falls within the definition of consumer under the Act and that the developer was duty bound to perform his part of contract and that there is deficiency of service as rightly held by the Forum under the Act. It is his contention that there was no demand raised by the petitioners in respect of expenses incurred for development of plots and, therefore, in absence of any such notice, it cannot be said that the respondents have committed any default in performance of their part of agreement. He drew attention of the Court to the findings recorded indicating that all the installments were paid by the respondents. Without prejudice to his submissions, it is his contention that only in case of three consecutive defaults, the petitioners could be said to have authority to cancel the agreement and at no point of time case is made out or establish that there were three defaults on the part of the respondents which would enable the petitioners to cancel the agreement. It is his submission that the facts which are duly proved by the material evidence on record cannot be interfered with in exercise of writ jurisdiction even if different view is possible. To support his submission he placed reliance on following judgments :

(i) Ireo Grace Realtech Private Limited Vs. Abhishek Khanna and others, (2021) 3 SCC 241,

(ii) Narne Construction Private Limited and others Vs. Union of India and others, (2012) 5 SCC 359,

(iii) Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329.

6. Learned counsel for the respondents, on instructions, makes a statement that the respondents are ready to pay the expenses incurred for the development of the plots. In this regard attention of the Court is drawn to the statement recorded on behalf of the petitioners before the National Consumer Redressal Commission about interment of expenses at the rate of Rs.12/- per sq.ft. It is his submission that in view of the said statement made on behalf of the petitioners, there is no question of making payment of anything more than Rs.12/- per sq. ft.

7. It is not in dispute that there was agreement to sale executed between the parties. Though the dispute is sought to be raised about the conditions which were annexed to the agreement to sale, however, after hearing submissions of counsel for respondents practically there remains no dispute of the fact that it was agreed between the parties that there would be payment of part consideration by installments and the final amount was to be paid at the time of execution of sale-deed and that annexure forms part of Agreement. Record further indicates that there was no specific case sought to be made out by the petitioner about there being breach of

three installments by the respondents. There is no reference to that effect even in letter for cancellation of plot. Apart from this, perusal of the finding of fact recorded by the Member of the State Consumer Commission indicates that except for small amount in case of couple of respondents, others had paid all installments to the petitioners. The said finding of fact being in consonance with the evidence on record does not deserve interference.

8. Though relying upon the judgment of the Hon'ble Supreme Court in the case of Chairman and Managing Director (supra) it is sought to be canvassed on behalf of the petitioners that the disputed facts could not have been decided by the Consumer Forum, a careful perusal of the said judgment indicates that what is being held by the Hon'ble Supreme Court therein, is that, the proceeding before the Commission being summary in nature, the complaints involving highly disputed questions of fact or the cases involving tortious acts or criminality like fraud or cheating could not have been decided by the Forum/Commission under the Act. Insofar as present case is concerned, there are no highly disputed facts involved herein nor this is a case wherein fraud or cheating is alleged or required to be established. Here, in this case, the facts which are disputed by the parties can be decided on the basis of material evidence placed on record. Even in summary nature of proceeding decision of such nature of disputed facts on the available material on record is

permissible. This Court therefore finds no reason to accept the said contention of the petitioner.

9. It is further sought to be canvassed that in the case of sell of the plot, provisions of the Act could not get attracted. In this regard, reference is required to be made to the judgment of the Hon'ble Supreme Court in the case of Ganesh Lal (supra). In the said case what is being held by the Hon'ble Supreme Court is that failure to handover possession of a plot of land in a sale simplicitor cannot come within the jurisdiction of Consumer Forum. In the instant case however it is not a case purely of failure on the part of the petitioners to handover the possession of the plot. As per the case of the petitioners itself, the agreement involved the development of lands/plots by the developer and upon such development and on payment of full and final consideration, the sale-deeds were to be executed. Thus, this cannot be called as a transaction of simplicitor sale and failure on the part of the petitioners to handover possession thereof. By very nature of transaction it could be said that the owner has agreed to develop the plots such as conversion of agricultural land into non-agriculture and it is only thereafter it has to be sold to the purchaser. Moreover, the part consideration was already accepted by vendor in installments. The Judgment in case of *Ganeshlal* (supra) therefore has no application to the present case.

10. On perusal of the complaints filed by the respondents

under Section 12 of the Act indicate that it was specifically pleaded therein that the amounts which were required to be paid before execution of the sale-deed are paid by them. It is specifically stated that the complainant had made arrangement to pay petitioners balance amount at the time of execution of sale-deed. Thus, necessary requirement of the pleading of readiness and willingness is sufficiently found in the complaints in question. Thus, this Court finds that the judgment cited in the case of Katta Sujata Reddy and Adani Power Limited (supra) would not help the petitioners in any manner to substantiate its case.

11. It is sought to be contended on behalf of the petitioners that the respondents have failed to make the payment of development charges and as such they are not entitled for the sale-deed to be executed in their favour. In this regard, it is pertinent to note that the agreement between the parties makes the respondents/purchasers liable for the payment of development charges. The petitioners being the owner of the property was reasonable and could have obtained appropriate permission for the development thereof. Similarly, though during the pendency of the proceeding before the Forum, N.A. permissions were obtained, admittedly no notice was ever issued by the petitioners to the respondents calling upon the respondents to pay the N.A. charges. It is thus clear that this is not a case wherein there was a demand of payment of development charges and by the

petitioners-owners and that the respondents-purchasers have not paid the said amount. In any case, since the N.A. permissions are sought by the petitioners, in view of agreement between the parties the petitioners are entitled to receive the development charges.

12. At this stage, it would be relevant to re-produce the observations made by the National Commission in its order which reads thus :

“Learned counsel appearing for the Petitioner has submitted that the Fora below have failed to appreciate that the Complainants are defaulter in making monthly payments and therefore, the Opposite Party was justified in cancelling the allotment. It is further averred that it is not the duty of the Opposite Party/Petitioner herein to convert the land for non-agricultural use and the Opposite Party has incurred Rs.12/- per sq.ft. for the conversion of the agricultural land to non-agricultural use and the other purchasers, with respect to whom the Sale Deed has been executed, have paid the additional amount and therefore the Fora below have erred in giving direction to the Opposite Party for execution of the Sale Deed after accepting the balance sale consideration in terms of the Agreement.”

13. The aforestated submission recorded by the National Consumer Commission indicates that the petitioners have incurred expenses of Rs.12/- per sq.ft. for conversion of agricultural land to non-agricultural use. In view of the agreement between the parties the respondents are liable to pay the said expenses. The payment of such expenses to the petitioners would be a condition precedent for execution of sale-deed. In view of above, the petitions deserve to be

dismissed, however, the orders require modification.

14. Having regard to the facts of the case and the findings recorded by the Forum confirmed by the 'SCDRC' and 'NCDRC', require no interference except to the extent of payment of development charges by respondents/purchasers. Hence, petition stands dismissed, with modification to the order of Forum that the respondents are directed to pay development charges to the petitioners at the rate of Rs.12/- per sq.ft. in addition to balance amount of consideration. The execution of the sale-deed shall be subject to the payment of said amounts by the respondents to the petitioners.

15. Rest of the orders stand confirmed.

16. Learned counsel for the petitioner seeks continuation of the stay for a period of six weeks to challenge the order before Supreme Court. Learned counsel for the respondents opposes the request.

17. In the interest of justice, interim relief granted is extended for a period of six weeks.

18. All pending civil applications are disposed of.

(R.M. JOSHI, J.)