



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-19277-2024

Date of Decision: 19.02.2025

Randhir Singh Sathi

....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Robin Sathi, Advocate
for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana
Ms. Svaneel Jaswal, Additional Advocate General, Haryana
Mr. P.P.Chahar, Sr. Deputy Advocate General, Haryana
Mr. Saurabh Mago, Deputy Advocate General, Haryana
Mr. Gaurav Bansal, Deputy Advocate General, Haryana and
Mr. Karan Jindal, Assistant Advocate General, Haryana.

Mr. Vaneet Soni, Advocate for
Mr. Deepak Sabherwal, Advocate
for respondent No.2 – HSVP.

Mr. Rajeev Sharma (Raju) Advocate and
Ms. Sony, Advocate
for respondent No.3.

Sureshwar Thakur, J. (Oral)

1. Previously, the present petitioner had filed a Consumer Complaint No.258 of 2019 on 01.08.2019 before the State Consumer Disputes Redressal Commission, Haryana, Panchkula (hereinafter for short called as the 'Commission'). The said complaint was filed against two respondents, namely Haryana Employees Welfare Organization, Sector-6, (HUDA Building), Panchkula and the Managing Director, HEWO, Sector-6, HUDA Building,



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Panchkula.

2. The relief claimed in the said consumer complaint was, that there was a deficiency of service on the part of respondents, on the ground, that they were imposing unconscionable terms, thus for enlisting the present petitioner as a member of the Super Deluxe Flats, HEWO, Scheme-II, GH Site, Sector-19, Faridabad. Furthermore, a prayer was asked, that the respondents in the said complaint, be directed to refund the amount of Rs.38,63,400/- which was paid by the complainant to the respondents along with interest @ 10% per annum. The further relief as sought, was to pay an amount of Rs.5,00,000/- as compensation for mental harassment and mental agony and to pay Rs.55,000/- as litigation expenses. In the relevant paragraph 14 of the order pronounced in the consumer complaint, the relief as thereunder(s) became endowed to the petitioner, becomes extracted hereinafter:-

“14. In the light of the above observation and discussion, there are sufficient grounds to accept the complaint and while accepting the complaint, the OPs are directed to refund the deposited amount of Rs.38,63,400/- (Rs.Thirty eight lacs sixty three thousand four hundred only) alongwith Interest @ 9% per annum to the complainants from the date of its respective deposits till realization. In case, there is a breach in making payment within the stipulated period of 45 days, in that eventuality, the complainants would be entitled to get the interest @ 12% per annum, for the defaulting period. The complainant is also entitled to a sum of Rs.10,000/- (Rs. Ten



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thousand only) on account of compensation for mental and physical agony. In addition, the complainant is also entitled to an amount of Rs.10,000/- (Rs. Ten thousand only) as litigation charges. It is also made clear that in case of non-compliance, the provisions enshrined under section 72 of the C.P. Act would also be attractable.”

3. It stems from Annexure P-9, that the present petitioner had constituted some motion before the authorities under the RERA Act, whereby the present petitioner asked for the adjustment of Rs.5,67,678/-, qua his earlier withdrawn efforts for ensuring his enlistment, as a member of Sonapat Society. The said adjustment was asked for on the ground, that since the present petitioner has surrendered his Sonapat membership, thereby the amount, which was paid by the present petitioner, in respect of his being enlisted, as a member of Sonapat, thus being adjusted for his enlistment a member of the Faridabad society. However, from a reading of Annexure P-9, it appears that the said prayer was not allowed and liberty was given to the present petitioner, to access the civil Court of competent jurisdiction or the Registrar of the Societies for redressal of his grievances. It was post the said liberty becoming granted to the present petitioner, that the consumer complaint supra, was filed before the State Commission and through a decision becoming made on the said consumer complaint, thus the supra extracted reliefs became endowed to the present petitioner.

4. The dispute which the present petitioner cultivated before the RERA authorities, is similar to the one, which he has now cultivated before



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this Court, inasmuch as, the present petitioner has asked for the adjustment of the amount of Rs.5,67,678/- which was paid by him to get himself enlisted as a member of a Society located at Sonapat, viz-a-viz, the membership which he applied for qua a society located at Faridabad, on the ground, that the present petitioner has chosen to withdraw his membership of the society located at Sonapat. On the said petition, an order, as evident on a reading of Annexure P-9, operative portion whereof becomes extracted hereinafter, thus became rendered, whereby liberty was preserved to the present petitioner to access the civil Court remedies or the Registrar of Societies for the redressal of his grievances.

“So, the present appeal is hereby disposed of with the modification of impugned order dated 05.03.2019 giving liberty to the appellant to approach to any appropriate forum including the Civil Court or the Registrar of the Societies for redressal of his grievances. He will also be at liberty to raise the issue of the adjustment of the amount payable by him for the booking of the membership of second scheme Sector-19, Faridabad, towards the amount payable to him by the respondent organization.”

5. Even if, the present petitioner may have beyond the said preserved liberty to him, has accessed the Consumer Commission, but yet though, thereby this Court, may not be led to declare the verdict pronounced on the consumer complaint by the State Commission to be nonest. However, in the consumer complaint, whereons, a verdict Annexure P-15 became



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rendered, the present petitioner did not add in the array of respondents, one co-respondent Remesh Kumar Garg, though, at that time accrual of the requisite the said cause of action also did become aroused against him.

6. Now despite the accrual of cause of action against the said respondent, at the stage, when the present petitioner availed the remedy of his filing a complaint in respect of the subject matter, before the State Commission, yet his abandoning to claim any relief against the said respondent, and is yet choosing to array the present co-respondent No.4, in the instant petition, thus, thereby, makes the instant writ petition, with the said improvement or addition, rather to be a mis-recoursed remedy. The reason being that when the cause of action did at the relevant stage accrue also *viz-a-viz* the said respondent, yet with the said respondent being not impleaded in the consumer complaint, thereby when the present petitioner has abandoned his cause of action against the present respondent No.4, thereby, thus the present writ petition rather with the said improvement is deemed to be a mis-constituted remedy.

7. Moreover, since in terms of Order 2 Rule 2 CPC, provisions whereof becomes extracted hereinafter, there is a bar of estoppel against the petitioner, to raise a cause of action, which though, was raisable earlier, but which was omitted to be so raised in the earlier motion. Resultantly, thereby, too, any grievance which has now been raised in the present petition against the co-respondent No.4, thereby the same on the said principle becomes barred to be raised.

“2. Suit to include the whole claim.—(1) Every suit shall



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include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court.”

8. However, in terms of Section 71 of the Consumer Protection Act, 2019, the order passed by the State Commission (Annexure P-10), is permitted to be enforced.

9. Disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

February 19, 2025

Varinder

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No