

09.01.2026

Sl. No.677.

D/L.

Mithun

Ct.No.29.

CO 3785 of 2024

**M/s. Orchid Developers Private Limited
& Anr.**

Vs.

Adhish Kumar Kundu

Mr. Sarosij Das Gupta,
Mr. Sitikanta Mitra,
Mr. K.K.Daruka,
Mr. Subham Dey

...for the petitioner

Affidavit-of-service filed by the petitioner is taken
on record.

In spite of service opposite party is not
represented.

The instant application has been preferred against
the order dated July 29, 2024 passed by National
Consumer Disputes Redressal Commission, which has
affirmed the order of the State Consumer Commission
dated 26th February, 2020.

Being aggrieved by the aforesaid order, learned
Counsel for the petitioner submits that in the petition of
complaint before the State Commission, the opposite
party herein contended that complainant entered into an
agreement on 25.04.2011 with the petitioners herein for
obtaining a flat along with car parking space described

in 'B' schedule with a consideration of total Rs. 18,52,000/- along with service taxes and complainant paid in total Rs.18,06,618/- including Service tax time to time as per agreement. The petitioner allegedly did not comply the terms and conditions of the agreement for sale and also with the demand of the complainant to execute and register the deed of sale in respect of 'B' schedule property in favour of complainant. Therefore, complainant made prayer in Para 25(a) that the opposite parties who are petitioners herein jointly and severally be directed to execute and register deed of conveyance in favour of the complainant, i.e. opposite party herein or their nominated person/persons in respect of the 'B' Schedule property as per terms and conditions of the agreement for sale.

Learned Counsel for the petitioner submits that they were all along ready and willing to execute and register the deed of conveyance in favour of the opposite party herein in respect of 'B' Schedule property as per terms and conditions of the agreement for sale which is also reflected in their letter sent through e-mail dated 9th February, 2016.

In the alternative prayer opposite party herein prayed that in case of failure to execute and register the deed of sale by the opposite parties, the execution and registration of the deed of sale may be effected through

the process of commission. In another prayer opposite party has prayed for refund of the entire paid sum along with interest as determined by the Commission deeming fit and proper, as complainant will have to arrange a habitable flat to stay.

The main grievance ventilated herein by the petitioner is that without considering the principal relief claimed in the application, the State Consumer Commission had considered the alternative relief and observed that complainant cannot be asked to wait for an indefinite period in order to get the flat on payment of bulk consideration amount and, as such, he is entitled to get refund of the entire amount along with compensation as deficiency of service on the part of the opposite party is quite apparent. Accordingly, he granted the alternative relief by directing to refund Rs.18,06,618/- along with compensation over the said amount in the form of simple interest @ 18% per annum from the date of such payment till the date of realization.

It appears that National Commission has only reiterated the conclusion drawn by the State Forum and allowed the appeal partly with the observation that it is apparent that the respondent had prayed for possession of the flat in question and the execution and registration of deed of conveyance, however an alternative prayer at Para (g) was also made to refund the entire paid sum

along with interest and therefore the order of State Commission cannot be said to be faulted.

“Deficiency of Service” under the Act of 2019 means any fault, imperfection, short coming as inadequacy in the quality, nature or performance of a service including negligence, omission or deliberate withholding of information that causes loss or injury to a consumer. It is no doubt true that ‘deficiency of service’ includes poor service, such as delayed delivery but in the instant case, in the absence of any challenge against petitioners’ case that they were all along ready and willing to execute the deed in favour of complainant in terms of agreement for sale, since 9th February, 2016, it is not understandable what prompted both the Commissions to go for alternative relief on the ground that there is deficiency in service.

In such circumstances, the instant application being CO 3785 of 2024 is allowed.

The impugned order passed by the State Forum dated 26.02.2020 and the order passed by the National Forum dated 29th July, 2024 are hereby set aside.

The petitioner is directed to send a draft copy of deed of conveyance in terms of agreement for sale to the opposite party within one month from the date of communication of this order and on approval and/or necessary correction in connection with the draft deed,

deed will be executed and registered in favour of the opposite party herein/or his representative within a period of two months thereafter in respect of 'B' Schedule property in accordance with the terms and conditions as laid down in the agreement for sale. If either party fails to comply the order in executing the deed conveyance then the affected party will be at liberty to pray for execution before the State Forum in accordance with the provisions laid down under the Consumer Protection Act, 2019.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Dr. Ajoy Kumar Mukherjee, J.)