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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 13834/2024 & CM APPL. 57950/2024**

M/S HETALI ENTERPRISES .....Petitioner

Through: Mr. Robin Jaisinghani, Mr. Vikas Mehta, Mr. Bhaskar Nayak, Advocates

versus

DR. VIJAY PURUSHOTTAM KALE .....Respondent

Through: Mr Viraj Kadam and Mr Rahul Kumar, Advocates.

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\+ **W.P.(C) 13837/2024 and CM APPL. 57955/2024, CM APPL. 57956/2024**

M/S HETALI ENTERPRISES .....Petitioner

Through: Mr. Robin Jaisinghani, Mr. Vikas Mehta, Mr. Bhaskar Nayak, Advocates

versus

DR. SATISHCHANDRA PURUSHOTTAM KALE .....Respondent

Through: Mr Viraj Kadam and Mr Rahul Kumar, Advocates.

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\+ **W.P.(C) 13846/2024 and CM APPL. 57979/2024 & CM APPL. 57980/2024**

M/S HETALI ENTERPRISES .....Petitioner

Through: Mr. Robin Jaisinghani, Mr. Vikas Mehta, Mr. Bhaskar Nayak, Advocates

versus

DR. PURUSHOTTAM G. KALE .....Respondent

Through: Mr Viraj Kadam and Mr Rahul Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

<u>O R D E R</u>

% **23.01.2026**

1. The petitioners are aggrieved by the orders dated 10.06.2024, and 23.08.2024, passed by the National Consumer Dispute Redressal Commission (NCDRC) in the execution applications filed by the respondents herein.

2. The facts would indicate that the respondents in these petitions, had instituted complaints on 22.08.2017, before the NCDRC against the petitioner and the co-operative housing society (society), wherein, they were members, alleging certain deficiencies in the flats that were allotted to them. The said complaints were allowed by the NCDRC *vide* order dated 08.12.2021 (final order) and the same has attained finality after having been upheld upon review. The writ petitions filed assailing the order in the said review petitions have also been dismissed by this Court.

3. The respondents filed applications dated 28.02.2022 for execution of the final order, under Section 71 of the Consumer Protection Act, 2019. The petitioner, on 29.11.2023, filed applications seeking dismissal of the said

applications for execution. The NCDRC, *vide* the impugned order dated 10.06.2024 has dismissed the petitioner's applications and *vide* the impugned order dated 23.08.2024, has directed the petitioners to pay a certain sum of money towards execution of the final order.

4. It is pertinent to briefly note the facts pertaining to the dispute. The petitioner-builder had entered into a redevelopment agreement with the society for reconstruction of the building of the said society. The respondents are members of the society. As per the terms of the redevelopment agreement, the members of the society were to vacate the building and the petitioner had to hand over possession of the reconstructed building to the members within a specified time period from the date on which the members had vacated the original building. Further, the redeveloped flats were to have a pre-decided 'carpet area'.

5. Learned counsel for the petitioner has taken the Court through the final order and has submitted that it suffers from the following fundamental infirmities and therefore, is unenforceable:

a. The exact amount to be refunded to the respondents has not been specified.
b. The quantum of shortage in the actual carpet area handed over to the respondents has not been specified.
c. The NCDRC did not have pecuniary jurisdiction to entertain the complaints.

6. He submits that the NCDRC, in the impugned orders, has not dealt with the aforesaid objections. He submits that the NCDRC, instead, had passed the order dated 23.08.2024 based on calculations submitted by the respondents.

7. Additionally, he points out that in the final order the liability to pay the awarded amount was on both, the petitioner and the society, who were the opposite parties. According to him, the society has made payment of a part of the awarded amount, and therefore, without prejudice to the petitioner's contentions, the NCDRC was bound to adjust the same towards the awarded amount.

8. The aforesaid submissions are strongly opposed by learned counsel for the respondent(s) and he defends the impugned orders contending that they are strictly in accordance with law. He also submits that NCDRC, *vide* the impugned orders, has dealt with the submissions and has arrived at definite findings regarding all the aforesaid aspects.

9. A perusal of the order dated 10.07.2024, whereby the petitioner's applications for dismissal of the execution applications were dismissed, indicates that the NCDRC has dealt with the petitioner's objection in respect of the lack of jurisdiction to pass the final order. It is observed that the said objection had been raised even in the review petition but the same had been dismissed.

10. The objection with respect to the alleged ambiguity in the final order has not been addressed in the order dated 10.07.2024. The same, however, has been dealt with in the order dated 23.08.2024. The NCDRC has held that the said objection does not affect its inherent jurisdiction to pass the final order, and as such, the same was bound to be executed.

Thereafter, the NCDRC has noted compensation had been granted *vide* the final order after finding that certain amount had been illegally recovered by the petitioner and the society from each of the complainants and upon finding that the actual carpet area delivered to the complainants was also short of the areas originally promised. Further it was also noted that there had been a delay of more than a year from the promised date, in the handing over of possession

11. In paragraph no.4 of the said order, the NCDRC has noted the refundable amount for deficiency in open space and the shortage in carpet area. The tabular representation of the same in the said order is extracted as under:-

Case No.	Refundable Amount for deficiency in Open Space w.e.f. 6.1.2015 (Rs.)	Shortage in Carpet Area (Sq.ft.)
EA/64/2022 in CC/2443/2017	4,70,622/-	28.35
EA/65/2022 in CC/2444/2017	4,65,586/-	29.471
EA/66/2022 in CC/2445/2017	3,26,530/-	30.094

12. With respect to the refundable amount for deficiency in open space and other aspects, the Commission in paragraph no.5 to 7 has held as under:-

> *"5. In respect of the refundable amounts for deficiency in open space, the liability of the Judgment Debtors was fixed w.e.f. 6.1.2015. Consequently, for the period of 3429 days till 27.5.2024, the interest entitlement on the refundable amount for each set of Decree Holders in EA No. 64, 65 & 66 of 2022 would be Rs. 5,30,552/-, Rs. 5,24,875/- & Rs. 3,68,111/- respectively.*
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> *6. It was also directed in the final Order dated 8.12.2021 that compensation towards shortage in carpet area would have to be paid w.e.f. 5.1.2016 to each set of Decree Holders at the rate of Rs. 24,650/-. Such compensation therefore comes to Rs.6,98,828/-, Rs.7,26,460/- & Rs.7,41,817/- in EA No. 64, 65 & 66 of 2022, respectively and the interest w.e.f. 5.1.2016 thereupon for the period of 3065 days @ 12% p.a. comes to Rs 7,04,188/-, Rs. 7,32,033/- & Rs. 7,47,508/- respectively. Consequently, the total entitlement of the Decree Holders on these counts*

for the refundable amount for deficiency in open space and compensation towards shortage in carpet area along with accrued interest thereupon comes to Rs. 24,04,190, Rs. 24,48,954/- & Rs. 21,83,967/- in EA No. 64, 65 & 66 of 2022, respectively.

7. Each of the Decree Holders were also awarded Rs. 10.00 lakhs towards mental agony and compensation for delay of 8 months in handing over the possession, and additionally Rs. 2.00 lakhs each towards litigation costs. This total interest on the amounts of Rs.10.00 lakhs and Rs. 2.00 lakhs @ 12% p.a. for the period of 901 days w.e.f. 8.12.2021 therefore comes to Rs. 2,96,219/- plus Rs. 59,244/- respectively, thus totalling an additional amount of Rs. 15,55,463/- to each set of the Decree Holders. The final entitlement of the Decree Holders in each of these Execution Applications (EA No. 64, 65 & 66 of 2022) therefore comes to Rs.39,59,653/-, Rs.40,04,954/- & Rs.37,39,430/- respectively"

13. Having considered the submissions made by the parties, the Court finds that after dismissal of the review petition(s), the petitioners herein have challenged the dismissal in three separate writ petitions before this Court.

14. The Court *vide* order dated 07.01.2026 has dismissed those petitions finding no reason to interfere into the order passed by the Commission. Paragraph nos. 10 to 12 of order dated 07.01.2026 are extracted as under:-

"10. The parties were heard at length and the Court has considered the findings rendered by the NCDRC in its order dated 08.12.2021. The Court has also considered the order passed by the Supreme Court. If the averments made in the review petitions are considered, the same would seek for the re-appreciation of the entire matter afresh.

11. Mr. Jaisinghani points out that while in the complaints, the complainants themselves have taken the position that on 20.01.2013, flats were vacated; however, the NCDRC in its final order has reckoned the delay from 31.01.2012. He, therefore, points out that when the flats were vacated only on 20.01.2013, no delay can be attributed to the petitioner from 31.01.2012. He has also pointed out certain other alleged factual errors from the petitions. The Court, however, finds that in the final order passed by the NCDRC, the overall facts and circumstances have been considered. The fact that the flats were handed over by the petitioner to the complainant only on 01.01.2016 has been noted, hence the alleged factual error would have no significance.

> *12. The argument that the impugned orders are not speaking also loses its significance as this Court itself has considered the alleged factual errors and finds that there is none warranting recalling of the earlier orders."*

15. In view of the aforesaid facts and circumstances, the NCDRC in the execution applications, of course, has to enforce the final order passed strictly in accordance with directions thereof. In the final order, the NCDRC has rendered categorical findings that there was deficiency in open space and shortage of carpet area. Therefore, unless the petitioner is able to place on record that there is a glaring error in the quantum of deficiency as adjudicated by the in the execution applications, no interference is called for.

16. In the order dated 23.08.2024, the NCDRC has found that the shortage in carpet area is 28.35, 29.271 and 30.094 respectively, in the three complaints. The shortage in carpet area has been determined on the basis of the affidavit filed by the parties and the material available on record. The same thus does not call for any interference.

17. So far as the refund of charges towards deficiency in open space is concerned, even the said aspect has been adequately dealt with by the NCDRC in its impugned order dated 23.08.2024. The findings rendered therein do not seem to be perverse, calling interference under Article 227 of the Constitution of India.

18. So far as the submission *qua* the aspect of jurisdiction is concerned, liberty was granted by the Supreme Court to take recourse to review proceedings. However, the review petition has been dismissed as also the writ petition against the same.

19. So far as the submission made by the petitioners that the petitioner and the society were held jointly and severally liable for the awarded

amount and the payment of some of the amount is concerned, it requires to be appropriately adjusted. The NCDRC, therefore, is directed to adjust the same in the awarded amount, if it is satisfied that certain amount pursuant to the orders passed on 08.12.2021 and 23.08.2024 has been paid by the society, on production of the documents and the evidence to that effect.

20. With the aforesaid modification, the Court does not find any illegality or infirmity in the order. Accordingly, the instant petitions stand disposed of along with all pending applications.

PURUSHAINDRA KUMAR KAURAV, J

JANUARY 23, 2026
Nc/amg