STATE CONSUMER DISPUTES REDRESSAL COMMISSION, MAHARASHTRA, MUMBAI

Consumer Complaint No.SC/27/CC/233/2021

1. Shri. Uttam Chatterjee
2. Smt. Anindita Chatterjee

   Both 1 and 2 above having address
   at 1601 A, Lokhandawala Residency,
   Off.Dr. E. Moses Road, Worli,
   Mumbai – 400018. …. Complainants

Versus

1. Shreeniwas Cotton Mills Ltd., having one address at 412, Floor-4, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai 400001, and having another address at Lodha Excelus, Apollo Mills Compound, N.M. Joshi Marg, Mahalaxmi, Mumbai – 400011.

2. Lodha Developers Ltd., having alias address at Lodha Excelus, Level 1, Apollo Mills Compound, N.M. Joshi Marg, Mahalaxmi, Mumbai – 400011, and having Another address at Lodha Pavilion, Apollo Mills Compound, N.M. Joshi Marg, Mahalaxmi, Mumbai – 400011.

3. Jawala Real Estate Pvt. Ltd., having address at Lodha Excelus, Level 1, Apollo

Mills Compound, N.M. Joshi Marg,
Mahalaxmi, Mumbai – 400011.

4. Macrotech Developers Ltd., having
address at 412, Floor – 4, 17G, Vardhaman
Chamber, Cawasji Patel Road, Horniman
Circle, Fort, Mumbai – 400001. ..... Opposite Parties

<u>BEFORE:</u>

Hon'ble Ms. Poonam V. Maharshi, Presiding Member
Hon'ble Mrs. Dr. Nisha Amol Chavhan, Member

<u>APPEARANCE:</u>

For the Complainant: Advocate Dharmin V. Sampat
For Opposite Party: Advocate Nitin Waghmare

<u>JUDGMENT</u>

<u>(Date: 13-03-2026)</u>

<u>Per: Hon'ble Mrs. Dr. Nisha Amol Chavhan, Member</u>

1. The present Consumer Complaint No. CC/233/2021 is filed under S.47 of the Consumer Protection Act-2019. (The 'C.P. Act' for short) by the complainants against Opponents.

2. The brief facts of the case of complainants that they are flat purchasers who are retired senior citizens and have used the money from their provident fund earned after their retirement. Opponent No. 1 is the entity who has issued several receipts to the Complainants, and has issued Allotment Letter. Opponent No. 2 is the entity who have been dealing and communicating with the

Complainants. Opponent No. 3 is the entity who has issued several receipts to the Complainants, and has issued Application Letter and Allotment Letter. Opponent No. 4 is mentioned as the Promoter and has registered the project on Maharashtra Real Estate Regulatory Authority's website.

3. The case of Complainant that they approached the opponents for booking a flat in the year 2015, for their residence. For that he booked a 3-BHK Flat No. 4002 (of 2015 sq. ft.) in the "West Wing-2" in the building "World Crest" in the project named "World Towers" of the Opposite Party No. 2 at Lower Parel, Mumbai, along with two 4-wheeler parking, by making payment of Rs. 18,00,000/-. The total consideration for the flat was Rs. 12,22,22,160/- exclusive of maintenance, stamp duty and other charges and Rs. 13,92,74,963/- The possession was to be delivered in December, 2015 as per oral submission. However, the Allotment letter failed to mention any possession date.

4. Complainants stated that they had booked the flat under a "20:80" payment scheme as a special offer during "Akshay Trithiya", and said scheme was confirmed by a representative of Opposite Party No. 2, namely Mr. Kingshuk Mazumdar in an e-mail dated 06/10/2016. Complainants would be able to take possession only after due notice and opportunity to them to sell their existing flats for booking with Opposite Party No. 2. Specifically, the Complainants would finance latter 80% of the total consideration after selling off their existing accommodations in order to raise funds.

5. Complainants stated that he received "Allotment Letter" on dated 19/05/2015 for the First Flat. Till date, there was no communication from Opposite Party No. 2 on status of construction, as well about delivery of the flat. In fact when complainants inquired about date of delivery/possession, the representative of Opposite Party No. 2, requested for 3 months more time and promised to deliver the same by March 2016.

6. Complainants further stated that opponents did not give the possession in time therefore he wanted to exit the project, since their daughter's marriage was planned in early 2016 But the representative of the Opposite Party No. 2 namely Mr. Kingshuk Majumdar, in or around January 2016, insisted the Complainants to consider shifting their booking from the First Flat to another project of the Opposite Parties, namely, a flat in the building named Marquise in the project named "The Park" in and around the same Worli area introduced a new flat 4-BHK, more premium flat with three Garages for an approximate consideration value of Rs. 8 Crores exclusive of maintenance, stamp duty and other charges. The Complainants were given to understand that the cost inclusive of maintenance, stamp duty and other charges would not exceed Rs. 10 Crores and possession date of the second flat was verbally promised in May/June 2018.

7. The Complainants stated that the per square foot rates of the First Flat and the Second Flat was approximately the same, i.e., approximately Rs. 69,000 per square foot and Rs. 68,000/- respectively. Even in the Second Flat, the Complainants were getting an extra bedroom and one more parking for the similar per-square-foot rate. At the request and arrangement made by Mr.

Majumdar, the Complainants and the Opposite Party No. 2's representatives held a meeting on 28/03/2016 to discuss the change in Complainant's booking from the First Flat to a Second Flat. Since the Complainants did not receive any formal written proposal of the outcome of the meeting.

8. The Complainants also stated that the payments made towards the First Flat i.e. Rs. 2.52 Crores approximately were agreed deemed to be transferred towards the Second Flat, after confirmation of the above and subsequently pay Rs. 1.5 Crores over 1.5 years. The remaining balance would (inclusive of stamp duty, registration, maintenance etc. be paid on possession. Finally after 4 months, on or about 04/08/2016, the representatives of the Opposite Party No. 2 verbally informed the Complainants about specific flat in the new project and the Complainants provided the documents demanded by the Opposite Party No. 2 to process and complete the booking. The Complainants offered a cheque dated 12/08/2016 of Rs. 9 Lakh as advised by the Opposite Party No. 2 to pursue the negotiated offer as a token amount. However, the Opposite Party No. 2 did not encash the cheque, the Opposite Party No. 2 allowed the cheque to lapse and did not confirm the booking for many months.

9. The Complainants also stated that in or around October, 2016, they received a phone call from Opposite Party No. 2 that the consideration price of the new flat was not Rs. 8 Crores in fact it was of Rs. 10 Crores, and not Rs. 10 Crores inclusive of maintenance, stamp duty and other charges but in fact Rs. 12 Crores. Moreover, the Opposite Party No. 2 was suddenly

demanding Rs. 2 Crores payment immediately. The sudden increase of price was totally unacceptable by the complainants and he requested to find a way of their exiting the project. The Representative of opposite party no.2 agreed to talk and revert back to complainants to check whether the complainants could exit the World Crest Project. The Complainants have voiced their grievance in e-mail dated 06/10/2016. The Opposite Party No. 2 has replied by e-mail dated 16/10/2016. Moreover, the representative of Opposite Party No. 2 on message dated 24/10/2016 told the Complainants that 10% cancellation fee would be levied upon the Complainant (forfeiture of 10% of the consideration value amount to approx. Rs. 1.2 Crores) for no fault of the Complainant.

10. In November, 2016, demonetisation took place in the country, and prices of real-estate market crashed and the complainants started getting phone calls from the marketing department of opposite party no 2 offering similar flats at around Rs 7 to 8 Crores the representative of the Opposite Party No. 2 had refused to accept these market rates and refused to extend the market benefits to the Complainants.

11. The Complainants submitted that they have made the payments of Rs.2.83.59.554/- till date and they did not receive any amount as refund till date. Booking is of 10 Years ago (2015), and Builder has terminated booking, But till today neither refund is given, nor Possession is given.

12. The Complainants stated that they are the lay-person and not expected to know the intricate technicalities of law. Hence, the Complainants has used the word "investment' to refer to the money spent by him for the flats purchased from the Opposite Parties. There is no intention of any commercial purpose. The Complainants had wanted to reside and occupy the flat for residence. It was only when the Opposite Parties were not delivering possession that the Complainants opted to exit the project and have asked for optimum deal for the same, and there was never any intention to make profit from resale. A common man will always look for appreciation in his property even after occupying for residence, and it is normal that. If the Complainants had commercial objective only in mind for making money by selling their first flat, they would have certainly not accepted the offer Rs. 10 Crores for the second flat made by the opposite party no. 2 for their residential purpose. In above circumstances complainants prayed that complaint may be granted.

13. Upon admission of the complaint, notice was issued to the Opponents. They appeared through counsel and opponents filed their Written Version with documents; the pleadings of both sides have been taken on record.

CONTENTION OF THE OPPONENTS

14. In defence, Opponents raised objections that complaint of the Complainants is a gross abuse of process of law that they were justified in law to terminate the agreement and to forfeit the earnest money equivalent to 10% of the consideration amount agreed upon by and between the Complainants and the Opposite

Parties owing to the incessant failure of the Complainants to take a proper workable stand and non-payment of the milestone payments.

15. Opponents submitted that the above complaint is further hopelessly time barred by limitation and no condonation of delay has been sought nor the delay caused in the matter been acknowledged by the Complainants. That admittedly, the ultimate cause of action occurred when the Complainants exited from the project vide email dated 20.05.2018 while the present complaint has been filed by the Complainants only on 27.12.2021.

16. Opponents submitted that, the Complainants are not consumers because the Complainants had a permanent address in Worli, Mumbai-400018 at the time of making application for purchasing subject flat with the Opposite Parties. That further, vide their emails dated 26.12.2016, 19.04.2018 and 20.05.2018, the Complainants have stated that they have decided to purchase the said flat purely for investment purposes as well as sought sanction from the Opposite Parties to alienate their rights to third parties for a profit. That at the given time alienation was impossible since the Complainants had not even entered into an agreement to sell of the said flat with the Opposite Parties. Another issue was the demonetisation which hit the purchasing power of the buyers thereby bringing down the prices of real estate. These two factors led the Complainants to reconsider their decision to purchase a premium flat from the Opposite Parties. The Opposite Parties stated that exhibit to their evidence affidavit are the copies of

emails wherein the Complainants have clearly stated that they had purchased the same for investment purposes.

17. Opponents submitted that Complainants called upon to make "within 21 days payment" but complainants defaulted in making time bound payments. Opponents submitted that as per, Vide email dated 02.04.2016, the Complainants requested for withdrawing from first flat and transferring the investment to the other second flat so that they would be able to get more time to mobilise funds and pay the same in a time bound manner. The Complainants has specifically and literally used the word "investment" in the said email. He also admitted that it will be difficult to arrange funds owing to his daughter's marriage and also owing to the market conditions because of which he is unable to sell the existing flat to generate funds. Even Complainants sent what's App message on 12.08.2016 to expressing his inability to obtain a loan owing to his age.

18. Further, The Opponents once again, issued allotment letter dated 10.04.2017 thereby allotting the second flat to the Complainants for a consideration value of Rs. 10,45,00,000/- (excluding other charges as mentioned in the Application form). The said allotment letter was unconditionally accepted by the Complainants. The Opponents issued demand letter dated 12/10/2017 and 13/10/17 and demanded payment towards mile stone. The Complainants once again defaulted. Opponents issued interest letter dated 14/02/2018 demanded interest owing to default.

19. Finally the Opponents was issued the pre termination notice on dated 20/06/2018 giving more opportunity to the Complainants to clear the overdue payments along with stamp duty registration within 15 days from the date of receipt failing which the amount paid by the Complainants till then and to the extent permissible as per the terms and conditions of the allotment letter.

20. The complainants kept on sending false and baseless email just to make their empty case strong and opposite parties kept on clarifying the issues which were a preparation to create documents against the Opponents.

21. Therefore clear that the Complainants has approached this commission with the most unclean hands and by supressing material facts and making false claims which are patently false and baseless. It is therefore crystal clear that there is no deficiency in services by the Opponents. There has been no violation of consumer rights and on the contrary the rights of the Opponents have been severely affected owing to the high handed and dishonest act of the Complainants. There has been no misleading advertisement. The Opponents prays that the above complaint be dismissed with compensatory costs in the interest of justice.

22. Heard the learned advocates for the parties at length; perused the complaint with annexures, the Written Version of Opponents, the affidavits of evidence of the both parties and the documents placed on record as well as citation of record filed by the both parties, upon a comprehensive appraisal of the pleadings,

materials and submissions available, the following points arise for our determination and are answered as set out hereinafter.

Sr. No.	Points	Findings
1	Whether complainant is consumer as per section 2(7) of the consumer protection Act-2019?	Affirmative
2	Whether this commission having pecuniary jurisdiction to entertain this complaint?	
3	Whether Opposite Party is guilty of deficiency in service and unfair trade practice in relation to the subject flat?	Affirmative
4	What order?	As per final Order

REASONS

Point No.1

25. In this present case, this Commission has carefully examined the preliminary issue of whether the complainant falls within the definition of a 'consumer' as contemplated under Section 2(7) of the Consumer Protection Act, 2019. To satisfy this statutory requirement, the complainant must demonstrate that they have purchased goods for a consideration which has been paid, promised, or partly paid. The Commission observed that the definition is wide enough to include any user of such goods or beneficiary of such services, provided such use is with the approval of the person who paid the consideration.

26. However, a crucial distinction must be maintained regarding the purpose of the transaction. Under the Act, any person who

obtains goods for resale or for any commercial purpose is explicitly excluded from the ambit of this definition. In the present case, the Commission notes that flat was purchased for his personal use rather than for large-scale profit-generating activities. Consequently, since the transaction involves a clear exchange of consideration for personal consumption, the complainant successfully meets the criteria of a 'consumer' under the Act, thereby vesting this Commission with the jurisdiction to adjudicate the dispute. In view of our finding given as to have point No.1 in affirmative.

Point No 2.

27. In this present case, this commission observed that in light of the notification dated December 30, 2021, which introduced ***the Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021,*** the pecuniary jurisdiction of the Consumer Commissions has undergone significant revision. For a complaint filed on December 27, 2021, the applicable law remains the Consumer Protection Act, 2019 as it stood on the date of filing. While the 2021 Rules revised the State Commission's jurisdiction to cases where the consideration paid ***exceeds 50 lakh but does not exceed 2 crore,*** these rules were published and came into force on December 30, 2021 three days after this complaint was instituted. Consequently, as per the principle of non-retrospectively of procedural changes affecting jurisdiction, and following the precedent that the jurisdiction is determined by the law prevalent at the time of filing, the State Commission's jurisdiction for this matter is governed by the original 2019 Act provisions. Under those provisions, the State Commission holds pecuniary jurisdiction for complaints where the value of goods or services paid as consideration ***exceeds 1 crore but does not exceed 10 crore.*** Therefore, in this complaint, consideration was paid of more than two crore is within that specified range, the state Commission possesses the requisite pecuniary jurisdiction to entertain the dispute. In view of our finding given as to have point No.2 in affirmative.

Point No 3

28. We may hasten to clarify that the power to direct refund of the amount and to compensate a consumer for the deficiency in not delivering the flat as per the terms of Agreement is within the jurisdiction of the Consumer Commission. The Commission, having examined the evidence on record, finds that the Opposite Party is squarely guilty of deficiency in service as defined under Section 2(11) of the Consumer Protection Act, 2019. The failure of the OP to deliver the subject flat within the contractually stipulated time frame constitutes a "shortcoming" and "imperfection" in the quality and manner of performance required by law. Under the 2019 Act, the scope of "deficiency" is interpreted broadly to include any act of negligence or omission that causes loss or injury to the consumer. In this instance, the OP's persistent delay amount to a fundamental breach of the builder-buyer agreement.

29. In this present case, after the perusal of record, The State Commission observed that the act of the opponent in unilaterally issuing a termination letter and deducting a substantial portion of the deposited amount solely on the grounds of a delay in payment

constitutes a clear deficiency in service and an unfair trade practice. While the builder contended that the complainant failed to adhere to the payment schedule, the Commission notes that a consumer's investment in a housing project is often tied to the progress of construction.

30. This commission having opinion that Opponent could not have, unilaterally, cancelled the agreement in question. Unilateral cancellation of the agreement to sell by one party is not permissible in law except where the agreement is determinable in terms of Section 14 of this Specific Relief Act. As well, as per the contention of complainant, he did not get the possession of flat till date; it is come under the deficiency in service.

31. Further State Commission observed that the conduct of the Opposite Party in relation to the subject flat squarely falls within the ambit of "unfair trade practice" as defined under Section 2(47) of the Consumer Protection Act, 2019. The evidence on record indicates that the OP made misleading representations regarding the failure to deliver the possession of the flat within the stipulated timeframe, and the demand for additional charges not specified in the initial agreement, constitutes a deceptive practice that unfairly prejudices the consumer. Under the 2019 Act, the scope of unfair trade practices has been significantly broadened to include the disclosure of personal information given in confidence and the refusal to withdraw defective goods or deficient services. In this instance, by retaining the complainant's hard earned money while failing to fulfil fundamental contractual obligations, the OP has not only committed a breach of trust but has also engaged in a practice

intended to cause wrongful gain to themselves and undue harassment to the consumer. Consequently, this Commission finds the OP guilty of adopting unfair trade practices. In view of our finding given as to have point No.3 in affirmative.

As to point no.4

32. In view of our findings as to point no. 1, 2 & 3 in Affirmative, it is clear that the opponents has committed deficiency in service as well as unfair trade practice towards the complainants. Therefore, this commission came to the conclusion that complaint is hereby needs to be allowed. It is directed to Opponents jointly and severally to refund the amount of Rs.2.83.59.554/- with 10% interest from the termination of allotment on dated 10/08/2018 within 2 months from this order.

31. In addition, it is directed to the opponents jointly and severally to pay to the sum of Rs. 1, 00,000/-towards the compensation for the stress, inconvenience, harassment, mental torture & agony suffered by the Complainants; As well as pay to the Complainants a sum of Rs. 25,000/- towards the Legal and incidental expenses incurred by the Complainant. Hence, in an answer to point no. 4 we pass the following order.

ORDER

1. Complaint is hereby partly allowed.

2. It is directed to Opponents jointly and severally to refund the amount of Rs.2,83,59,554/- with 10% interest from

termination of allotment on dated 10/08/2018 within 2 months from this order.

3. In addition, It is directed to the Opponents jointly and severally to pay to sum of Rs. 1,00,000/- towards the compensation for the stress, inconvenience, harassment, mental torture & agony suffered by the Complainants; As well as pay the sum of Rs. 50,000/- towards the Legal and incidental expenses incurred by the Complainants.

4. The copy of the judgment be furnished to the both side free of cost.

[Poonam V. Maharshi]
Presiding Member

[Dr. Nisha Amol Chavhan]
Member