NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

RESERVED ON: 08.05.2025
PRONOUNCED ON:23.06.2025

FIRST APPEAL NO. 683 OF 2022

(Against order dated 28.10.2021 in Complaint No.651/2013 of State Commission, Delhi)

WITH

IA/8759/2022 (Condonation of delay) IA/13330/2023 (Setting aside of Ex-parte)

Vishal Saxena
Son of Late Shri Rakesh Saxena
Resident of 1060, Sector 49A,
Rajdhani Apartments,
Chandigarh-160047 ... Appellant

Versus

1. Taneja Developers & Infrastructure Limited
9, Kasturba Gandhi Marg,
New Delhi-110001.
2. State Bank of Patiala
99-107, Sector 8-C, Madhya Marg,
Chandigarh 160008. ... Respondents

BEFORE:
HON'BLE AVM J. RAJENDRA AVSM VSM (RETD.), PRESIDING MEMBER
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN, MEMBER

For Appellant : Mr. Prateek Gupta & Mr. Raghav Tiwari, Advocates
For Respondents : Ms. Niharika Ahluwlaia, Adv. (VC) &
Mr. Arpit Sharma, Advocate for R-1
Ms. Jaya Tomar, Advocate for R-2 (VC)

JUDGEMENT

Air Vice Marshal J. Rajendra AVSM VSM (Retd.)

1. The Appellant/Complainant filed this Appeal against State Consumer Disputes Redressal Commission, Delhi. ("State Commission") Order dated 28.10.2021 in Consumer Complaint No. 651/2013, wherein the State Commission partly allowed the Complaint.

2. As per Registry report, there is 292 days delay in filing this Appeal. For the reasons stated in IA No. 8759/2022 and in the interests of justice, the delay is condoned.

3. For convenience, the parties in the present matter are being referred to as per position held in the Consumer Complaint.

4. Brief facts of the case, as per the Complainant, are that the Complainant booked a residential plot with OP-1 on 22.08.2005. Thereafter, vide letter dated 06.03.2009, OP-1 issued an Allotment Letter dated 15.12.2008 allotting plot No. 795 to the Complainant. OP-1 also informed the Complainant that OP-2 was an approved loaning bank for the said project. On this assurance, the Complainant approached OP-2 for sanction of his loan. Despite various communications by the Complainant, OP-1 failed to provide the requisite No Objection Certificate (NOC) to the Complainant, due to which he could not get the loan sanctioned and this could not make the payment on time to OP-1. While over a period of time, the Complainant had paid Rs.5,21,250 to OP-1 as and when demanded, vide letter dated 03.12.2009 OP-1 had cancelled the booking of the Complainant on account of failure to make the payments. Aggrieved, the Complainant filed the instant consumer complaint.

5. On being issued notice, in their written statement OPs raised preliminary objections regarding the maintainability of the complaint. OP-1 contended that the complainant was not a consumer under the Consumer Protection Act, 1986 as he had invested his money to earn profit, which amounted to a commercial purpose. The complainant was required to complete the bank formalities, which he failed to. The record also showed that the NOC was to be taken from Indian Bank and not from OP-1. The complainant defaulted in making payments, due to which his booking was rightly cancelled vide letter dated 03.12.2009. OP-2 contended that the complainant failed to submit a NOC from the Indian Bank and, therefore, there was no deficiency on their part. Pressing the aforesaid objections, it was prayed that the complaint should be dismissed.

6. The learned State Commission vide its order dated 28.10.2021 partially allowed complaint of the Complainant with the following directions:

> ***16. It is admitted by the opposite party no. 1 that the cost of the plot is Rs. 21,50,000/- It is clear that the 20% of the sale price of the said plot amounts to Rs. 4,30,000/-, which the opposite party no. 1 could forfeit as per clause 9 of the allotment letter dated 15.12.2008. It is noted that the total amount paid to the opposite party no. 1 by the complainant till date is Rs. 5,21,250/-.***
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> ***17. Keeping in view the facts and circumstances of the present case, we direct the opposite party no. 1 to refund the balance amount after deducting 20% of the sale price of the plot i.e. Rs.91,250/- to the complainant subject to surrendering the original receipts by the complainant to the opposite party no.1.***

18. Consequently, the complainant is directed to surrender the Original receipts issued by the opposite party no. I to them within 15 days from the date of judgment. Thereafter, the opposite party no. 1 is directed to refund Rs. 91,250/- to the complainant within 15 days from the date of receiving the said original receipts.

19. In case the Opposite Party no. 1 fails to refund the amount as per the aforesaid para 18, the entire amount is to be refunded along with an interest @ 6% p.a. calculated from the date of this judgment till the actual realization of the amount."

7. Being aggrieved by the impugned order dated 28.10.2021, the complainant filed this present Appeal no. 683 of 2022 seeking to:

a. Admit the present appeal and set aside the impugned judgment dated 28.10.2021 passed by the Hon'ble State Consumer Dispute Redressal Commission, Delhi and allow the complaint filed by the appellant.

b. Pass any other/further orders as this Hon'ble Commission may deem fit and proper in the fact and circumstances of the case.

8. In the grounds of the instant appeal, the Appellant mainly contended that he applied for NOC from OP-1 on 08.10.2009 using OP-1's prescribed format. However, OP-1 neither issued the NOC nor executed the required tripartite agreement with OP-2. OP-2 clearly stated that the loan could not be disbursed without these documents, which OP-1 failed to provide, thereby obstructing the loan process. OP-1 was responsible for obtaining NOC from its mortgagee bank, as required by RBI guidelines and the Master Circular on Housing Finance, which mandated developers to

provide such service. The State Commission overlooked that the Complainant neither had the locus nor the means to secure the NOC independently. Cancellation of the plot was motivated by OP-1's dishonest intent to resell the property at a higher market price following an increase in its value. Despite his bonafide efforts to secure a loan, including from DHFL, OP-1 unjustifiably refused to revoke the cancellation, without providing any valid or lawful reason. OP-1 accepted booking amounts even before formally launching the project, which was against legal norms. The allotment letter lacked essential information such as sale consideration and payment schedule. There was also an unexplained six-month delay in the loan sanctioning process, which further prejudiced the complainant. OP-1 issued illegal demand letters for amounts exceeding 25% of the sale price without executing or registering a sale agreement. He had already paid over 30% of the cost, and no sale agreement was executed at the time of cancellation. Therefore, any further demand for money was illegal, and he could not be held in default for non-payment of unlawful demands. The State Commission failed to consider that OP-1 named OP-2 as preferred financier in its advertisements, thereby taking responsibility to facilitate all documentation required by OP-2. The NOC, being a permission from the mortgagee bank for sale of the property, only OP-1 could have obtained it.

9. The learned counsel for the complainant reiterated the facts of the complaint and the grounds taken in the appeal. He argued that obtaining NOC from OP-1's banker was beyond the complainant's control and responsibility, as this duty rested with OP-1 under established practice and RBI guidelines. He asserted that the complainant applied for the NOC on 08.10.2009 using a form provided by OP-1, but despite repeated follow-ups, OP-1 neither issued the NOC nor communicated any rejection, thereby breaching its duty. He argued that OP-1's cancellation of the complainant's plot allotment in 2009 was not justified, given that the complainant had paid 30% of the sale price and had taken all necessary steps to secure financing through OP-2, the bank approved by OP-1. The failure to provide NOC and tripartite agreement resulted in non-disbursement of loan and was solely due to OP-1's deliberate inaction. He contended that the State Commission erred in absolving OP-1 of its liability and that OP-1's conduct constituted deficiency in service and violation of the Punjab Apartment and Property Regulation Act, 1995, which prohibited accepting over 25% of the sale price without a registered sale agreement. He argued that cancellation was a covert attempt by OP-1 to usurp the complainant's property rights after realizing the appreciation in market value. He asserted that directing refund of amounts paid after deducting 20% of the sale price was unjust, as the

complainant was deprived of his legal entitlement to the plot. Thus, he prayed for quashing the impugned order, revoking the cancellation, and directing OP-1 to allot a plot of equal size in the same area at the original rate to the complainant.

10. Per contra, the learned counsel for OP-1 argued that the complainant was not a 'consumer' under the Consumer Protection Act, as the plot was purchased for investment and not personal use. He noted the complainant’s Chandigarh residency undermined claims of intent to reside in the Mohali property. Thus, as an investor and not an end-user, the complainant was ineligible for consumer protection, rendering the complaint not maintainable. He argued that OP-1 had fulfilled its contractual duties without fault. It was rather, the complainant who repeatedly failed to follow the agreed payment schedule, despite several reminders issued on 17.01.2007, 11.12.2007, 23.02.2009, 22.05.2009, 06.07.2009, and 08.09.2009. Consequently, OP-1 had no choice but to cancel the agreement, which was a justified response to the complainant’s continued non-compliance and not arbitrary action. He clarified that OP-1 had no involvement in recommending or associating with OP-2 for the loan sanction or disbursement, having neither advised the complainant to approach OP-2 nor indicated it as an approved lender; OP-1 was

completely uninvolved in the loan process and not responsible for any failure by OP-2, as the complainant's decision to approach OP-2 was independent and any resulting issues could not be attributed to OP-1. He relied on ***Ravneet Singh Bagga v. KLM Royal Dutch Airlines***, (2000) 1 SCC 66, ***SGS; India Ltd. v. Dolphin International Ltd.,*** (CA No. 5759 of 2019), and ***Indigo Airlines v. Kalpana Rani Debbarma***, (2020) 9 SCC 424, and argued that mere allegations unsupported by credible evidence could not constitute deficiency in service. He argued that the forfeiture of Rs. 4,30,000, amounting to 20% of the sale consideration, was in strict conformity with Clause 9 of the allotment letter dated 15.12.2008, which was mutually agreed upon and binding on the parties. He asserted that the impugned order dated 28.10.2021 did not suffer from any infirmity warranting interference. Accordingly, he prayed for dismissal of the complaint with costs.

11. The learned counsel for OP-2 contended that OP-2 was neither necessary nor a proper party to the present dispute. She argued that the appeal was bad for misjoinder of parties and thus liable to be dismissed. She asserted that there was no deficiency in service on the part of OP-2 and submitted that the complainant had approached OP-2 for a home loan, which was duly sanctioned vide letter dated 01.10.2009.

However, the disbursement of the loan was expressly made conditional upon the submission of a No Objection Certificate (NOC) from Indian Bank, which had reportedly financed the project of OP-1, and a duly executed tripartite agreement signed by the appellant and OP-1. She emphasized that despite repeated communications, including letters dated 26.10.2009 and 02.11.2009, the complainant failed to furnish these documents. She contended that OP-2 acted in accordance with standard banking procedure and that the complainant's own non-compliance with the pre-disbursement requirements resulted in the non-release of the loan amount. The learned counsel further argued that the complainant did not qualify as a 'consumer' under the Consumer Protection Act, as the subject property was purchased for investment purposes, i.e., for commercial use, and therefore the complaint itself was not maintainable. She affirmed that the impugned order dated 28.10.2021 passed by the State Commission was based on a proper appreciation of facts and evidence on record, and did not suffer from any legal infirmity. Therefore, she prayed for dismissal of the appeal.

12. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

13. It is undisputed that the Complainant booked a residential plot with OP-1 on 22.08.2005. Subsequently, OP-1 issued an allotment letter dated 15.12.2008, allotting Plot No. 795. It is not in dispute that the Complainant could not complete the payment of consideration as per schedule, leading to OP-1 cancelling the booking on 03.12.2009. It is and admitted position that the complainant paid Rs.5,21,250 to OP-1 towards the Plot in question. The primary issue for consideration is whether OP-1 is liable for deficiency towards providing the NOC and to execute the tripartite agreement with OP-2 Bank?

14. The Complainant argued that OP-1 failed to provide the required NOC and did not execute the necessary tripartite agreement, which blocked the loan approval despite timely payments, making the cancellation unjustified and amounting to deficiency in service. In response, both OP-1 and OP-2 contend that the Complainant is not a consumer since the plot was purchased for investment purposes. OP-1 denies any fault and asserts that the cancellation was due to the Complainant's repeated failure to pay in time, while OP-2 maintains that the loan disbursement was conditional on documents the complainant failed to submit, and therefore, there is no deficiency on their part. OP-2 also argued that it was wrongly included as a party in the complaint. Both OPs have prayed for dismissal of the complaint.

15. The State Commission in its order averred that there was no material brought forth to substantiate the allegation that the Complainant was engaged in the business of purchasing and selling houses and/or plots on a regular basis with the sole objective of earning profit from such transactions. It was observed that a mere assertion regarding the purchase of the subject property for commercial purposes could not, by itself, be a ground for rejecting the consumer complaint. Accordingly, the objection raised by OP-1 in this regard was negated. We affirm this finding. The State Commission further recorded that the requirement of obtaining an NOC was incumbent upon the Indian Bank and not upon OP-1. It was also noted that the Complainant was required only to procure and furnish the NOC and relevant documents from OP-1 and that no further act or obligation was cast upon OP-1 for the purpose of disbursement of the loan amount. However, the Complainant failed to fulfill the necessary conditions for loan disbursement, which led to a default in making timely payments to OP-1. Consequently, the State Commission held that the cancellation of the booking by OP-1, vide letter dated 03.12.2009, was justified. After due consideration of the facts of the case and the admitted position that the Complainant had not paid the consideration due in respect of specific notices, we find no reason to interfere with the same.

16. It is settled position in law that the terms of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line on a contract framed by the builder. In the case of ***Central Inland Water Transport Corporation Limited and Another v. Brojo Nath Ganguly and Another***, 1986 AIR 1571, the Hon'ble Supreme Court had held that the courts will not enforce an unfair and unreasonable contract or an unfair and unreasonable clause in a contract, entered into between Parties who are not equal in bargaining power. In the present case also, the Complainant had no option but to agree with the terms of allotment. Mere fact that a contract term is printed or set forth in the allotment letter does not render it immune from judicial scrutiny. If the purchaser had no option but to accept the terms under economic/ practical duress, such term can be moderated or set aside to prevent injustice.

17. We also rely on ***Godrej Projects Development Limited v. Anil Karlekar & Ors***., 2025 LiveLaw (SC) 150, decided on 03.02.2025:

> ***"38. It can be seen that this Court has held that if the forfeiture of earnest money under a contract is reasonable, then it does not fall within Section 74 of the Indian Contract Act, 1872, inasmuch as, such a forfeiture does not amount to imposing a penalty. It has further been held that, however, if the forfeiture is of the nature of penalty, then Section 74 would be applicable. This Court has further held that under the terms of the contract, if the party in breach undertook to pay a sum of money or to forfeit a sum of money which he had already paid to the party complaining of a breach of contract, the undertaking is of the nature of a penalty.***

39. Relying on the aforesaid observations of this Court, the NCDRC, in a series of cases right from the year 2015, has held that 10% of the BSP is a reasonable amount which is liable to be forfeited as earnest money. The NCDRC has initially taken this view in the case of DLF Ltd. v. Bhagwanti Narula (supra). The said view has been followed subsequently in various judgments of the NCDRC. We see no reason to upset the view consistently taken by the NCDRC based on the judgment of this Court in the case of Maula Bux (supra).

40. Though we are not inclined to interfere with the direction of the NCDRC for refund of the amount in excess of 10% of the BSP, we however find that the NCDRC was not justified in awarding interest on the amount to be refunded."

18. It is an admitted fact on record that the total sale consideration for the allotted plot was Rs. 21,50,000. The complainant, in response to various demands raised by OP-1, had paid a cumulative amount of Rs. 5,21,250. Clause 9 of the allotment letter provided for builder to forfeit up to 20% of the total sale consideration in the event of cancellation due to payment default and 20% of the sale price amounts to Rs.4,30,000. The State Commission, relying upon this clause, directed that OP-1 was entitled to forfeit this amount and refund the balance of Rs. 91,250 to the complainant. Keeling in view of the facts and circumstances of the case, and keeping in line with the principle that forfeiture must not be excessive or punitive, we hold that a deduction of 10% of the sale price, amounting to Rs. 2,15,000, would be just and reasonable.

19. Accordingly, the appeal is partly allowed. The Opposite Party No.1 is directed to refund Rs.3,06,250 (i.e., Rs.5,21,250 - Rs.2,15,000) to the Complainant, along with interest @ 9% per annum from the date of deposit till the date of final payment, within a period of two months for the date of this order. In the event of default, the interest rate applicable shall be @ 12% per annum for the entire period.

20. Considering the circumstances of the case, the OP-1 is directed to pay Rs.50,000 as costs of litigation.

21. With the above directions, FA No. 683 of 2022 is disposed of. All pending Applications, if any, are also disposed of accordingly.

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(AVM J. RAJENDRA, AVSM, VSM (RETD.)
PRESIDING MEMBER

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(DR. SUDHIR KUMAR JAIN, J.)
MEMBER

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