

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1083 OF 2023

(Against the Order dated 11/01/2023 in Appeal No. 2553/2006 of the State Commission
Maharashtra)

1. M/S. KALINDI ENTERPRISES

.....Petitioner(s)

Versus

1. SURESH G KUMAR

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, PRESIDING
MEMBER**

FOR THE PETITIONER : MR. ANAND V. PATWARDHAN, ADVOCATE

Dated : 01 May 2024

ORDER

1. This revision petition has been filed in challenge to the Order dated 11.01.2023 in Appeal No. 2553 of 2006 of the State Commission Maharashtra arising out of Order dated 31.10.2006 of the District Commission in Complaint no. 68 of 2005.

2. Heard learned counsel for the petitioner and perused the record including inter alia the Order passed by the State Commission as well as by the District Commission and the memo. of petition.

3. The present petition has been filed against the concurrent findings returned by the two Fora below. The perusal of the record reveals that the contents of the complainant have been referred to in the Order passed by the District Commission and have also been narrated and discussed by the State Commission. In fact, the State Commission has dealt with the facts of the case and the allegations made in the complaint and the defence put forth by the opposite party / petitioner even more elaborately than the District Commission. It shall not serve any additional purpose to once again narrate them afresh. However, in order to bring for the hub of the matter which constitutes the central theme of complainant's grievance and the deficiency of service or the unfair trade practice committed by the petitioner / opposite party the relevant extract from the Order passed by the State Commission which succinctly captures the facts germane to the controversy may be usefully quoted hereinunder which reads as follows:-

2] The respondent/complainant had filed complaint against the appellant/opponent before the Thane District Consumer Disputes Redressal Commission bearing No. 68 of 2005. It was alleged that the complainant was in need of accommodation. Therefore, in the year 1998 he approached the opponent for booking of flat in the scheme of the opponent. It was contended that opponent/appellant was constructing the flats in the building known as 'Vrindavan Avenue', situated at Shanti Park, Mira Road (East), Thane. Complainant booked the flat for Rs.5,56,990/-, He paid Rs.31,000/- as initial

advance amount and balance amount was paid to the opponent during the period August 1994 to September 1996. It was contended that the opponent failed and neglected to handover possession of the flat booked by the complainant. It was alleged that the opponent gave false assurance that they would complete the project and handover the possession. But the possession was not handed over till March 2003. Hence, the complainant decided to cancel the agreement for sale of flat booked with the opponent. It was contended that there was compromise between the opponent and the complainant and it was agreed that the opponent would pay Rs.8,11,000/- to the complainant and accordingly 5 cheques were issued in the name of the complainant. The first two cheques amounting to Rs.3,50,000/- were returned unpaid with remark 'expected arrangement' present again. Those were again deposited. But those were dishonoured. Hence, the opponent paid Rs.3,50,000/- and Rs.75,000/- by way of pay order. Remaining three cheques were dishonoured. Hence, the complainant did not receive Rs.4,61,000/- from the opponent. Hence, he issued notice. It was contended that on 09/10/2003 the complainant visited the site of the opponent and came to know that in the month of June 2002 the flat of complainant bearing No.604 was sold to the third party namely Ramashray Singh and Sukumari Devi. It was contended that opponent gave false information and misguided the complainant and created third party interest in the flat booked by the complainant. Opponent was guilty of deficiency in service and unfair trade practice. Hence, complaint came to be filed.

4. The grievance which the complainant had in such circumstances as against the petitioner / opposite party was brought before the District Commission in order to seek redressal. The District Commission proceeded in the matter in accordance with law and in the wake of the glaring facts of the case allowed the complaint and passed the award which reads as thus:-

1) The Complaint No. 68/2005 is partly allowed and the Opp. Party is directed to pay Rs. 5000/-(Rupees Five Thousand Only) as the cost of this complaint to the Complainant and shall bear their own expenses.

2) This forum directs that the Opp. Party shall pay Rs. 4,61,000/- (Rupees Four Lakhs and Sixty-one Thousand Only) with interest at the rate of 12%p.a. from 25/08/2003 till the realization as returnable amount to the Complainant.

3) This forum also directs that the Opp. Party shall pay Rs. 50,000/- (Rupees Fifty Thousand Only) for the mental agony.

4) The forum also directs that the Opp. Party shall execute this judgement within 2 months from the receipt of the judgement and if they failed to do so, then the Opp. Party shall pay the interest at the rate of 3%p.a. as an additional fine on the amount of

**Rs. 4,61,000/- (Rupees Four Lakhs and Sixty-one Thousand Only) from 25/08/2003.
(As per the translated copy furnished by the petitioner)**

5. Having lost in the District Commission, the petitioner / opposite party filed the appeal before the State Commission which heard the matter thoroughly but did not find much worth in the appeal and, therefore, proceeded to dismiss the same. The present petition has been filed by the petitioner feeling aggrieved by the concurrent findings recorded against it.

6. Learned counsel has once again tried to reiterate the submissions which have already been raised before the Forums below and seem to have been rightly rejected. It has been submitted that the money which the complainant gave was a kind of money lending transaction for the purpose of investment which did not establish the relationship of consumer and service provider in between the complainant and the petitioner.

This Bench does not find any force in this submission. There is no such convincing material which may go to substantiate this allegation. Initially, Rs. 31,000/- was paid by the complainant towards booking of the flat. The total consideration was fixed as Rs.556990/-. Accordingly, the total amount of Rs. 556990/- was paid to the opposite parties / petitioner on various dates. The State Commission has considered the receipts of payment made by complainant on various dates and it has also referred to those dates in its Order as being on 16.04.1996, 26.06.1996, 17.07.1996, 22.07.1996, 31.07.1996, 05.09.1996, 10.08.1996 and 26.08.1996. (There appears to be some discrepancy in these dates as per available record but the variance shall make much difference in the adjudication of the case and, therefore, is not being detailed herein). It appears that as the project could not be completed in time and the possession could not be handed over for a long time the complainant obviously protested against the same and eventually some compromise was struck in between the parties and accordingly the complainant had to cancel the allotment of flat in lieu of a lump sum amount of Rs. 8,11,000/- to be paid to the complainant. That letter issued by complainant which was addressed to the petitioner was also brought on record and was duly considered. The defence raised by the petitioner trying to wriggle out from its liability by calling the transactions which took place with the complainant as being money lending transaction appears to be just a bald defence having nothing to corroborate the same.

7. It further transpires that in consequence of the compromise some cheques were issued but a number of them got dishonoured and out of the agreed amount which was to be paid to the complainant an amount of Rs.4,61,000/- remained outstanding and the petitioner did not honour the terms of settlement, in its entirety. The receipts produced by the complainant which relate to several dates are a matter of record and were never denied by the petitioners.

8. It further transpires, and has also been submitted by the learned counsel, that a criminal complaint under Section 138 of Negotiable Instrument Act was also filed by the complainant as the cheques issued in complainant's favour had been dishonoured. It is also not insignificant to note that having found guilty for committing the offence under N.I. Act the petitioner has already been convicted and has been awarded the sentence of imprisonment and fine both. The memo of revision petition clearly mentions the fact of conviction recorded by the criminal court.

9. Learned counsel has also tried to argue that as the fine has also been imposed by the trial court out of which the complainant has also been given some amount as compensation, now there is no justification for the consumer commission to once again pass any Order awarding the additional compensation to the complainant. Submission is that it will thus become a case of *double jeopardy*. According to learned counsel on this principle the award passed by the Consumer Commission becomes legally vulnerable and deserves to be set aside.

10. With regard to this submission it may be observed that as per Section 100 of the Act 2019 (corresponding to Section 3 of the Act 1986) the remedy provided by the Consumer Protection Act is in addition to and not in derogation of any other law. The said Section is reproduced below for ready reference:

100. Act not in derogation of any other law.—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

The compensation that has been awarded by the consumer commission is not a sentence of conviction nor the same can be termed to be a punishment. The criminal courts operate in an altogether different legal arena where the offender committing certain offences is tried and the doctrine of jurisprudence which calls for proof beyond reasonable doubt with regard to the commission of the culpable offences is brought into application. No such doctrine of strict proof beyond all reasonable doubt can be brought to bear upon in matters of consumer complaints which allege and relates to the acts of deficiency or unfair trade practice committed by the service providers and not to the offences committed by them *per se*. The proceedings of a consumer complaint under the Consumer Protection Act are of summary nature and the separate jurisdictions of consumer commission to determine deficiency of service or unfair trade practice committed by a service provider on the one hand and the jurisdiction of criminal courts on the other hand are not mutually exclusive to each other. Both can, and do, co-exist simultaneously and do not exclude each other. The concept of preponderance of probability which applies in matters of civil nature or quasi civil nature can be more suitably brought into application in the proceedings relating to the consumer cases. The principle of double jeopardy cannot be out-stretched in matters like this. If, while committing an act of unfair trade practice or deficiency of service, a service provider or the seller of goods has also simultaneously committed an offence punishable under a penal law there is no reason why he may not be tried for committing such offence and be convicted if found guilty. If fine is imposed upon an offender or if the victim of an offence is monetarily compensated by a court of criminal jurisdiction, the scope, ambit and the contours of such jurisdiction are distinctly distinguishable from the canvas of Consumer Protection Act which exclusively deals with and is meant to determine the acts of deficiency of service or an unfair trade practice and provide condign compensation to the victims of such deficiency or unfair practice for the loss or injury suffered by them. Sometimes in certain contexts some legal jurisdictions may sound to have an outwardly overlapping texture but that does not imply that they should be called mutually exclusive jurisdictions. The express language of Section 100 of the Consumer Protection Act leaves no scope of ambiguity or misinterpretation in this regard. That is why the remedy which provides for

compensation under the Consumer Protection Act is in addition to and not in derogation of other laws. The submission made by learned counsel in this regard appears to be equally untenable and cannot be accepted.

11. The State Commission has also taken cognizance of the fact that much before the cancellation of agreement the subject flat in question had been sold by the petitioner to a third person. This conduct on the part of the petitioner has not weighed favourably with the State Commission and has been adversely commented upon as being a kind of unfair trade practice.

12. After considering all the evidence and material available the State Commission gave findings in sync with the District Commission and in its concluding paragraph proceeded to observe as follows:-

7] It is the case of the complainant that he had booked the flat and paid the amount of consideration from the year 1996 till 2003. Possession was not handed over to the complainant. Therefore, complainant cancelled the agreement and demanded refund of amount which opponent had agreed. Accordingly opponent had issued five different cheques amounting to Rs.8,11,000/- but all of the cheques were dishonoured. Therefore, complainant filed the complaint. So there is no question of any concealment of facts. It can be said that the opponent has played unfair trade practice by issuing cheques with intention not to honour the same. Similarly, he made part payment of Rs.4,25,000/-and cheques for remaining amount were dishonoured. Therefore the ruling cited supra is not applicable to the facts of the present case. The District Commission has rightly considered and appreciated the facts in proper perspective and there is no need to interfere in the findings of the District Commission.

13. Learned counsel has not been able to point out any such feature which may be termed to be an error of jurisdiction committed by the fora below. It may also be observed that while sitting in revisional jurisdiction this Bench has to operate within the statutory confines of the law as has been provided under Consumer Protection Act. Unless it can be shown that the fora bellow transgressed its jurisdiction or that it abstained to exercise the jurisdiction which was vested in it, this Commission is loath to meddle with the findings arrived at by the fora below. Learned counsel has also not been able to point out any such material irregularity, much less than illegality or jurisdictional error which may persuade the Bench to interfere in the findings returned by the two Commissions below. There is certainly no element of perversity visible in the impugned Order which could be said to have vitiated the same. Suffice is to say that the Bench finds the Order passed by the State Commission to be well-appraised and well-reasoned. The Bench does not notice any jurisdictional error or material irregularity as may go to vitiate the findings. It also does not find any reason to make fresh *de novo* re-appreciation of the evidence in revision. There is no good ground for interference in the impugned Order in the exercise of the revisional jurisdiction of this Commission. The Bench has also not been able to discern any legal principle having been overlooked or wrongly ruled by the State Commission. Certainly the State Commission cannot be castigated either to have overstepped or transgressed its jurisdiction or to have omitted to exercise the same rightfully. The facts and circumstances appear to have been weighed and

vettèd well and to our satisfaction. (Refer: Order dated 08.09.2022 of Hon'ble Supreme Court in Civil Appeal No. 5928 of 2022 Rajiv Shukla Vs. Gold Rush Sales and Services Ltd. & Anr. and *Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd. – (2011) 11 SCC 269*)

The petition lacks merits and stands dismissed.

14. The Registry is requested to send a copy each of this Order to all parties in the petition and to the learned counsel for the petitioner. The stenographer is requested to upload this Order on the website of this Commission immediately.

.....J
KARUNA NAND BAJPAYEE
PRESIDING MEMBER