

SCDRC MAHARASHTRA

MUMBAI

O.W. NO.: 4/44

DATE: 11.08.2025

639
2025

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
MAHARASHTRA, MUMBAI.**

Consumer Complaint No. CC/19/583

Suresh Kumar T

A-703, Orion Vasant Galaxy,
Bangur Nagar, Goregaon (West),
Mumabi - 400 104.

..... Complainant

Versus

1. Lucina Land Development Limited
Indiabulls Finance Centre,
Elephinstone Mills Compound,
612/613 Senapati Bapat Marg,
Elphinstone Road (W),
Mumbai - 400013.
Through its Managing Director

2. Ramkumar Sheokand
Director
Lucina Land Development Limited
Indiabulls Finance centre,



.....Opposite Party

BEFORE:

Hon'ble Mr. Mukesh V. Sharma, Presiding Member

Hon'ble Ms. Poonam V. Maharshi, Member

KK+RRP

APPEARANCE:

For the Complainant: Advocate K.M. Nair

For Opposite Party : Advocate Ajay Pawar

JUDGMENT**(30-06-2025)****Per: Hon'ble Ms Poonam V. Maharshi, Member.**

1] The complainant has filed present complaint under section 12 of the Consumer Protection Act, 1986 alleging deficiency in service and unfair trade practice within the meaning of section 2(1)(g) and 2(1)(r) of the Consumer Protection Act, 1986 against the Opposite Parties. The Opposite Party is a registered company registered under the Companies Act, 1956 and having their Corporate office at the address mentioned in the clause title of the complaint.

2] The case of the complainant in short is that, the complainant had submitted an application form for booking of residential apartment no. 903 in Sector 6 B Apartment No.903 consisting 1245 Sq.ft. in the project called "INDIABULLS GREENS" presently known as "INDIABULLS PARK" at Panvel, for total consideration of Rs.54,04,300/-. The complainant had paid an amount of Rs.5,40,430/- to the Opposite Parties. As per one of the clause of the application form, if the Opposite Parties are not executing an agreement within 24 months, the Opposite Parties will pay 6% interest on Rs. 5,40,430/- for the said 24 months. It is further submitted by the complainant that, the Opposite Parties informed the complainant in the year 2013 that due to some internal problems



between Promoters, they are unable to execute the agreement and requested to wait for another 24 months and they will allot the same apartment at the said agreed rate only. The complainant waited like all other apartment owners; but the Opposite Parties neither executed the promised agreement nor refunded the amount with interest. Thereafter, the complainant demanded a written letter from the Opposite Party on 23/01/2016. The Opposite Parties wrote letter to the complainant that he has been allotted apartment in "COSMOS-3C/901" against the complainant's old allotted apartment no. 6B-903. The complainant visited the office of the Opposite Parties and requested them to allot the same flat, which was allotted to him earlier for which he has paid the part consideration. But the complainant surprisingly received letter dated 07/07/2017 from the Opposite Parties forcing him to accept the allotment as per their wish and threatened to cancel the allotment. After receipt of the said letter, the complainant informed the Opposite Parties by letter dated 07/07/2017 to refund him the paid amount with interest. As the Opposite Parties failed to refund the said amount and comply the terms and conditions as agreed on 06/01/2011, this amounts to deficiency in service and hence the complainant approached this Commission with the prayer to direct the Opposite Parties to pay Rs.12,21,372/-, and the amounts as per the particulars of the claim and interest from 17/06/2019 @18% on Rs.5,40,403/- and amount of compensation and costs.

3] The complaint was admitted. Notices were issued to the Opposite Parties for filing written version. The Opposite Parties



appeared and resisted the complaint by filing written version. It is contended by the Opposite Parties that the Complainant is not a 'Consumer'. It is further contended that there is misjoinder of the parties. The Opposite Party No.2 Mr. Ramkumar Sheokand in his personal capacity being impleaded instead of incorporating post of Director of the Opposite Party No.1. The Opposite Party No.2 was one of the Directors of Opposite Party No.1 and he cannot be made personally liable in the present matter in exclusion to others without there being any specific allegation against him of unfair trade practice. The Opposite Party 2 is not connected with day-to-day activity of the Opposite Party No.1 and hence cannot be made liable in the present dispute. The Opposite Parties have further submitted that as per Order-I, Rule-10 of Code of Civil Procedure 1908, provides that, 'the Court may strike out a party, if it appears to the Court that name of a party has been improperly joined. The Hon'ble Apex Court, in the matter of Kasturi Vs. Uyyamperumal, has held that as follows:

" It is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are – (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party."

It is clear that there is no right to any relief against Opposite Party No.2, since he was never party to the transactions that took place between the complainant and the Opposite Party No.1. Also, there are no specific allegations or pleadings against the Opposite

Party No.2. It is submitted that the name of the Opposite Party No.2 required to be struck off by this Commission; since he is neither necessary party nor proper party to the present complaint. The Opposite Party No.2 has also filed in record the copy of Form No.DIR-12 showing Opposite Party No.2 is not associated with the company from 10-03-2020. The Opposite Parties have further contended that the complainant was provided with all the necessary information and clarification related to the title of the company in respect of the land. The complainant had gone through each and every document pertaining to the said project, understood the terms and conditions and details set off in the application form, after which he has put his signature on every page of the document. The complainant, being aware of the above mentioned facts and circumstances is now hit with the Doctrine of Estoppel. It is further contended that, the complainant has himself annexed the letter dated 23/01/2016 showing that he was informed by the Opposite Party No.1 of the new flat "Cosmos 3C-901 being allotted to him as against the old booking of 6B-903. He was also forwarded a cause sheet, which was to be signed by him and then send to Opposite Party No.1, which he failed to do. It is submitted that pursuant to the signing of cause sheet and confirmation of new allotment by the complainant, the agreement to sale would have been executed. The actual lapse lies with the complainant who has failed to deliver the signed cause sheet to the Opposite Party No.1, which would confirm the allotment. It is further contended that the letter dated 12/02/2017 addressed to the Opposite Party No.1 wherein the complainant had asked for refund



of the booking amount along with interest. There is no proof by the complainant to show that the said letter was ever received by the Opposite Party No.1. It is further contended that the notice dated 20/05/2019 was issued after two years of change in allotment and the same was never received by the office of the Opposite Parties. As such the Opposite Parties have neither committed any deficiency in service nor adopted unfair trade practice. Hence the Opposite Parties prayed for dismissal of the complaint.

4] Considering the rival contentions of the parties, following points arose for our consideration. We have recorded our findings thereon with the reasons stated below: -

Sr. No.	POINTS FOR CONSIDERATION	FINDINGS
1.	Whether the complainant is a 'consumer' of the Opposite Parties?	In the affirmative
2.	Whether the Opposite Parties have committed a deficiency in service towards the complainant?	In the affirmative
3.	What order?	As per the final order.

REASONS

As to the Point No.1-

5] It is the contention of the Opposite Parties that the complainant is not a 'consumer', but on perusal of the complaint it appears that the complainant has booked the said flat for residential purpose in



the project of the Opposite Parties. Thus it is clear that the complainant is a 'consumer' within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986. Hence, we answer point no. 1 in affirmative.

As to the Point No.2-

6] The Opposite Parties in written version has contended that the complainant is estopped from making any allegations, as he has read each and every documents pertaining to the said project, understood the terms and conditions and details and put his signature on each and every page of the said documents. Advocate for the complainant during course of the argument has placed reliance upon the judgements of Hon'ble Supreme Court of India in case of "**Kolkata West International City Pvt. Ltd. V/s. Devasis Rudra**" mentioned as below,

'The essential aspect of the case which is required to be analysed is whether the buyer was entitled to seek a refund or was estopped from doing so, having claimed compensation as the primary relief in the consumer complaint. The Buyers Agreement is dated 2 July 2007. In terms of the agreement, the date for handing over possession was 31 December 2008, with a grace period of six months. Even in 2011, when the buyer filed a consumer complaint, he was ready and willing to accept possession. It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the



agreement. Even according to the developer, the completion certificate was received on 29- March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified.'

Here in the present case also complainant had paid booking amount in the year 2011 and in the year 2016, the Opposite Parties wrote letter to the complainant that he has been allotted apartment "Cosmos 3C-901" against the complainant's old apartment No. 6B-903. But the complainant informed the Opposite Parties by letter dated 12/02/2017 to refund the said amount along with interest. The complainant had also sent a legal notice, which was not replied by the Opposite Parties. Though it is the contention of the Opposite Parties that the complainant in his application form read and understood the terms and conditions and thereafter put his signature on every page and hence it is hit with the Doctrine of Estoppel. The Advocate for the complainant has also placed reliance upon the judgment of Hon'ble National Consumer Disputes Redressal



Commission, New Delhi in case of **"Raj Caprihan & Anr. Vs. Tata Housing Development Co.Ltd."** wherein it is mentioned as below,

' So far as change of allotment of villa into apartment is concerned. The Complainants has already deposited Rs.1,47,74,134/- and demanded for refund of his money, in August 2016, but the opposite party did not accept the demand rather threaten that in case of refund major portion would be forfeited and only nominal amount will be returned. The complainants had no option except to accept the offer of the opposite party for conversion of the allotment of the villa into allotment of apartment. Allotment dated 09-12-2016 binding upon the complainants. On its basis, the Opposite Party cannot raise a plea that the complainants were not entitled for delayed compensation for delay in possession which was otherwise payable under the agreement dated 02-05-2012. The opposite party arbitrarily denied delayed compensation to the complainants.'



Similarly in the present case also terms and conditions of the application form are one sided and not binding upon the complainant.

7] The Opposite Parties have also relied upon the following citations.

- (1) Gajpal Singh & Ors. Vs. Jaiprakash Associates Ltd. & Ors. – I (2017) CPJ 325 (NC)

- (2) Bimlesh Sakhuja Vs. Ansal Housing & Construction Ltd.
I (2016) CPJ 459 (NC)
- (3) Rajasthan State Industrial Dev. & Invest. Corpn. Vs.
Diamond & Gem Development Corpn. Ltd. & Anr. -
(2013) 5 SCC 470
- (4) Martin Cashin and Ors. Vs. Peter J Cashin
- 1938 Law Suit (PC)55
- (5) M/s. Usha (India)Ltd. Vs. State Estate Management Pvt.
Ltd. - 1986-2005 Vol.2 SC & NC pg.619
- (6) Bharat Tractors, Muzaffarpur Vs. Shri. Ramchandra Pandey
- 1986-2005 Vol.3 SC & NC pg.779

We have carefully perused the above referred judgments the facts of these cases are not similar to present case. Thus, these judgments do not assist Opposite Parties in the escaping liability.

8] The complainant has produced receipts on record. On perusal of the same it appears that the complainant has paid an amount of Rs.5,40,300/- to the Opposite Parties in the year 2011 and there was delay in handing over possession of the flat. After receiving letter dated 23-01-2016 from the Opposite Parties for changing flat, the complainant by letter dated 07/07/2017 informed the complainant to refund the paid amount with interest. After receiving the said letter also the Opposite Parties failed to refund the said amount nor handed over the possession of the said flat as per agreed terms and conditions. This amounts to deficiency in service, as there is huge delay in refund of the said amount. The complainant is entitled for



interest on the consideration amount, as the same was already paid to the Opposite Parties. We find that the complainant has claimed interest @ 18% p.a. But the same is on higher side. Hence we direct the Opposite Parties to refund an amount of Rs.5,40,430/- with 12% p.a. from the date of respective payment till realization along with cost and compensation. Hence we answer point no. 2 in the affirmative.

9] Though it is contended by Opposite Parties that, there is no privity of contract between the complainant and the Opposite Party No.2 and the Opposite Part No.2 was neither party in any of the transaction took place between the complainant and the Opposite Party No.1. He has filed on record the copy of Form No. DIR-12 showing Opposite Party No.2 has resigned from company on 10-03-2020, but on the date of transaction he was one of the Director of Company. Hence Opposite Party No.2 is a necessary party to the said complaint. In view of the above discussion, we proceed to pass the following order.



ORDER

1. The complaint is partly allowed.
2. The Opposite Party No.1 and 2 are jointly and severally directed to pay an amount of Rupees 5,40,430/- (Rupees Five Lakh Forty Thousand Four Hundred Thirty only) to the complainant with interest thereon @ 12% p.a. from the date of respective payment till realization.

3. The Opposite Party No.1 and 2 are jointly and severally directed to pay an amount of Rupees 50,000/- (Rupees Fifty Thousand only) towards compensation and an amount of Rupees 25,000/- (Rupees Twenty Five Thousand Only) as a cost of complaint. to the complainant.

4. The Opposite Party No.1 and 2 are jointly and severally directed to comply the aforesaid order within two months from the date of receipt of copy of this order.

5. A certified copy of this order be provided free of cost to both parties.



FREE CERTIFIED COPY

Serial No. of the Application _____

Date of receipt of Application 06.08.2025

Name of the applicant Adv. G. K. Sharma Nair

Date of Disposal 20.06.2025

Date of Preparation of copy 11.08.2025

Date of dispatch of free certified copy of Order _____

By Hand / By Post _____

11.08.2025

m.v. sharma
[Mukesh V. Sharma]

Presiding Member

[Poonam V. Maharshi]

Member

FREE CERTIFIED COPY

Registrar (Legal),
State Consumer Disputes Redressal
Commission Maharashtra Mumbai