

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 1721 OF 2016**

(Against the Order dated 17/02/2016 in Appeal No. 32/2016 of the State Commission Haryana)

1. M/S. TDI INFRASTRUCTURE LTD.

(THROUGH ITS AUTHORISED REPRESENTATIVE)  
REGISTERED OFFICE AT 9, KASTURBHA GANDHI  
MARG,  
NEW DELHI-110001

.....Petitioner(s)

Versus

1. RAJ KUMARI

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. C. VISWANATH, PRESIDING MEMBER  
HON'BLE MR. SUBHASH CHANDRA, MEMBER**

**For the Petitioner :** Mr Vaibhav Agnihotri, Mr Ankit Khera  
Advocates

**For the Respondent :** Mr Vivek Gupta, and Mr Ashwani Kumar  
Advocates

**Dated : 27 Mar 2023**

**ORDER**

**PER MR SUBHASH CHANDRA**

This revision petition filed under section 21 (b) of the Consumer Protection Act, 1986 (in short, 'the Act') assails the order dated 06.12.2012 in FA no. 672 of 2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, 'the State Commission'). This order had dismissed the appeal against the order of the District Consumer Disputes Redressal Forum (in short, 'the District Forum') in CC no. 575 of 2009 dated 06.01.2010.

2. The facts in brief, as stated by the petitioner, are that the respondent had registered on 01.12.2005 for allotment of a residential plot of 350 sq yards in the petitioner's project named 'TDI City', Kundli by paying an amount of Rs.5,95,000/- by way of cheque. A time bound payment plan was agreed upon whereby the respondent was required to make periodical payments. On 15.01.2006 plot no. K 69 measuring 350 sq yards was allotted and the respondent made payments amounting to Rs.24,46,500/- against a sale consideration of Rs.27,12,500/-. It is stated by the petitioner that the respondent did not execute the Plot Buyers Agreement with the petitioner despite the admitted service of a letter dated 04.10.2007 forwarding the same. The respondent was also required to pay the balance amount of External Development Charges (EDC) to the petitioner. However, the respondent failed to take possession of the plot or make payment in time till March 2010. The respondent filed a consumer complaint before the District Forum, Sonapat, alleging that the petitioner had failed to hand over possession as per the terms of the application and was deficient in providing services. The petitioner cancelled the registration of the respondent vide letter dated 31.07.2010 on the ground that despite the petitioner reminding the respondent repeatedly to make the balance payment, there was no payment or response for the same. Hence, petitioner was compelled to cancel the allotment vide letter dated 31.07.2010. The petitioner contends that the complaint before the District Forum was

barred by time and was beyond its pecuniary jurisdiction as the relief being claimed by the respondent related to a plot for which exceeded Rs.20 lakh that had been paid and was beyond the pecuniary jurisdiction of the District Forum at that time. The order of the District Forum dated 06.01.2010 allowing the complaint was challenged before the State Commission in FA No. 672 of 2012 on these grounds by the petitioner. Vide order dated 06.12.2012, the State Commission dismissed the appeal, which was challenged before this Commission. The appeal was allowed on 03.12.2015 and the matter remanded to the State Commission. As the State Commission again dismissed the appeal on 17.02.2016 the same is now impugned before this Commission.

3. This revision petition is filed on the grounds that the impugned order of the State Commission is erroneous as the cost of the subject property exceeds the District Forum's pecuniary jurisdiction of Rs.20 lakh under the Act which was erroneously ignored by the State Commission. It is also stated that the order is a non-speaking order and has been passed without reasons. It is also argued that the District Forum had erred in condoning the delay in filing the appeal and the allotment of the respondent has been cancelled prior to the filing of the complaint which has not been dealt by the *fora* below. It is also argued that the State Commission has erred in not considering that the District Forum should not have given any finding regarding the issue of limitation since the last payment made by the respondent was in December 2006 whereas the complaint was filed in 2009. It has therefore, been prayed that the order of the State Commission dated 17.02.2016 be set aside.

4. The respondent has by way of written submissions submitted that a residential plot measuring 350 sq yards had been booked by her and plot number K 69 measuring 350 sq yards in Block K, TDI City, Kundli, Sonapat, was allotted by the respondent. A total amount of Rs.24,46,500/- had been deposited by her. It is admitted that 15.11.2006 a Plot Buyers Agreement was forwarded vide letter dated 04.10.2007 by the petitioner which she did not sign since the size of the plot had been wrongly mentioned as 250 sq yard @ of Rs.5250 sq yd., which translated to a sale consideration of Rs.13,12,500/- plus EDC @ of Rs.719 per sq yd., aggregating to Rs.15,10,000/- whereas the respondent had already paid an amount of Rs.24,46,500/-. A notice dated 24.07.2009 demanding a further payment of Rs.3,35,868/- towards EDC charges is stated to have been sent by the petitioner which was replied to by the respondent. It is averred that the petitioner had indicated the cost of the plot at Rs.8500 per sq yd vide its payment schedule dated 23.01.2006 which was subsequently revised to Rs.7750 sq yd., against the indicated cost of the plot @ Rs.5250 per sq yd as per the Plot Buyers Agreement. It is submitted that the petitioner also did not disclose the cost of the plot in the allotment letter dated 15.01.2006. The petitioner had, however, admitted receipt of payment of Rs.24,46,500/- towards the cost of the plot and EDC but has mentioned the plot size as 250 sq yds in the Plot Buyers Agreement. Therefore, the respondent served a legal notice on the petitioner and thereafter, filed CC no. 575 of 2009 dated 15.12.2009 before the District Forum. During the pendency of the complaint before the District Forum, the petitioner cancelled the allotment of the plot on 02.08.2010 which was contested by the respondent on 09.08.2010. The State Commission allowed the appeal of the respondent and ordered in her favour. The appeal filed by the petitioner was dismissed by the State Commission. During arguments, the petitioner limited arguments to challenging the order of the State Commission.

5. We have heard the learned counsel for both the parties and perused the documents on record carefully.

6. Admittedly, the respondent had been allotted residential plot no. K – 69, K TDI City, Kundli, Sonapat, ad- measuring 350 sq yds and payment of Rs.24,46,500/- was also made in stages by her to the petitioner. As per the Plot Buyers Agreement dated 26.07.2007, forwarded by the petitioner, the plot size was, however, shown as 250 sq yds and the cost of the same indicated as Rs.5250/- per sq yd making the cost of this plot Rs.13,12,500/-. The respondent admits to not signing the Plot Buyers Agreement by making further payment in view of the document indicating a plot of 250 sq yd against 350 sq yds booked at a lower rate per square yard by her. The demand for total EDC charges of Rs.3,35,868/- has also been contested in view of the above. The respondent claims that these actions amount to unfair trade practice and deficiency in service.

7. The District Forum in its order dated 06.01.2011 had allowed the complaint, which reads as under:

6. *After hearing both the learned counsel for the parties at length and after going through the entire relevant records placed on the file by both the parties, this forum finds the respondent deficiency in their services.*

*There is also no dispute with regard to the payment of Rs.24,46,500/- made by the complainant to the respondent till 15.11.2006 and they are utilising the said amount without providing any services or facilities to the complainant. As per the complainant herself, the rate of the plot was Rs.7750/- per sq yards.*

*As per the respondent, they have cancelled the registration of the plot of the complainant on 02.08.2010. During the course of arguments, learned counsel for the complainant has submitted that when no development is made in the block K where the plot to the complainant was allotted and now as per respondent, they have cancelled the registration, the complainant may kindly be allotted an alternate plot measuring 350 sq yards in a developed site of the project.*

*This forum finds force in the arguments advanced by the learned counsel for the complainant and taking into consideration the same, this forum hereby directs the respondent to allot plot in Block K measuring 350 sq yards to the complainant at the rate of rs.7750/- per sq yards, for which, the respondent can charge Rs.2,66,000/- (Rs27,12,500 tentative price of the plot minus Rs.24,46,500/- already lying deposited with the respondent) from the complainant. It is also directed that the complainant shall also pay the EDC charges to the Government and also shall complete all the requisite and required formalities of the respondent. However, in the opinion of the Forum, definitely, the complainant is entitled to get interest on the amount of Rs.24,46,500/- from the date of its payment. Accordingly, the respondent is also directed to pay interest at the rate of 9% per annum on the amount of Rs.24,46,500/- to the complainant with effect from 15.11.2006 till the actual physical possession of the plot is delivered to the complainant. The respondent is further liable to compensate the complainant to the tune of Rs.5000/- for rendering deficient services, for causing mental agony and harassment and further to pay a sum of Rs.5000/- under the head of litigation expenses.*

*With these observations, findings and directions, the present complaint stands allowed and the respondent is directed to make the compliance of this order within one month from the date of pronouncement of this order.*

**8.** The State Commission vide its order dated 17.02.2016 disallowed the appeal on the ground that it was barred by limitation. However, it also considered the appeal on merits and dismissed it observing as under:

*14. As per own admission of the builder, the possession was to be delivered within 12 months. The date of booking is not disputed as 01.12.2005. The builder has not delivered possession even till date. The complaint was filed on 15.12.2009. The District Forum, thus, rightly directed that since the complainant has paid the amount of Rs.24,46,500/- out of the total cost of Rs.27,12,500/- the complainant would pay the balance amount besides EDC etc., and complete the formalities. The District Forum has directed to pay interest @ 9% per annum from 15.11.2006 till the actual physical possession is delivered to the complainant, which we feel is in conformity with the agreement executed between the parties. Therefore, even on merits no case for interference is made out.*

**9.** The Hon'ble Supreme Court in *M/s Singal Udyog vs National Insurance Company Ltd.*, in Civil Appeal no. 9161 of 2019 decided on 02.12.2019 has held that "when the matter is barred by time, the National Commission could not have dealt with the merits of the matter". A consumer court is required to consider preliminary issues/ objections in any matter before it. In view of the fact that consumer fora are set up in order to expeditiously address complaints and grievances through a summary approach, a special provision for considering limitation under the Act has been provided under section 24 A. The intention of the Act is to ensure that matters under its ambit get addressed expeditiously and without recourse to litigation over a prolonged period of time that does not provide finality to matters. In view of the Hon'ble Supreme Court's order in *M/s Singal Udyog (supra)*, this petition is liable to succeed since the State Commission having disallowed the appeal on the threshold of limitation should not have proceeded to consider it on merits.

**10.** In view of the foregoing, the revision petition is liable to succeed. The order of the State Commission is set aside and the matter remanded to the State Commission to consider the matter afresh. Parties are directed to appear before the State Commission on **2<sup>nd</sup> May 2023**.

.....  
**C. VISWANATH**  
**PRESIDING MEMBER**  
.....  
**SUBHASH CHANDRA**  
**MEMBER**