

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3401 OF 2011

(Against the Order dated 09/08/2011 in Appeal No. 869/2009 of the State Commission Madhya Pradesh)

1. AVINASH KUMAR PANDEY & ANR.

S/o Shri Maniram Pandey, R/o HIG/H-25, Madhav Rao, Scandia
Enclave, Thatipur

Gwalior

M.P

2. Smt Geeta Pandey

S/o Shri Maniram Pandey, HIG/H-25, Thatipur,

Gwalior

M.P

.....Petitioner(s)

Versus

1. MADHYA PRADESH HOUSING BOARD & ORS.

Through its Commissioner, Paryawas Bhawan, Jail Road

Gwalior

M.P

2. Estate office Madhya Pradesh Housing Board

Division no-1 Deendayal Nagar

Gwalior

M.P

3. Executive Engineer Madhya Pradesh Housing Board Division

No-1

Deendayal Nagar

Gwalior

M.P

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

For the Petitioner : Mr R K Tanwar, Advocate with

Mr Ujjwal Kumar, Advocate

For the Respondent : Mr R C Mishra, Sr Advocate with

Mr Mahendra Kumar

Dated : 10 Apr 2023

ORDER

The present revision petition has been filed by the petitioner against the order dated 09.08.2011 passed by the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal (in short, 'the State Commission') in FA no.869 of 2009.

2. The brief facts of the case as stated by the petitioner are that the petitioner is a retired employee of Madhya Pradesh State Road Transport Corporation and is a handicapped person. The employees of M P State Road Transport Corporation are not entitled for pension on retirement. Petitioner intended to settle down at Gwalior after his retirement. On 10.10.2002, the respondent, i.e., M P Housing Board (in short, 'the Housing Board') published an advertisement in the daily newspaper 'Dainik Bhaskar' for a housing society by name and style of 'Darpan Enclave' which was subsequently changed to 'Madhav Rao Scindia Enclave'

without intimating the petitioner as well as other flat holders till date. The petitioner has alleged that the act of the Housing Board was malicious. The petitioner has stated that the petitioners had booked a flat in the said society by depositing the registration fees of Rs.85,000/- in the office of the Housing Board at Gwalior. The Housing Board had assured the petitioners that they will be providing high quality construction, open space, shopping mall and club house in the Society. The Housing Board collected varying amounts on various dates from the petitioner. The petitioner has stated that the petitioners has deposited the service tax too on the demands of the Housing Board, otherwise, failing which it was informed that they would cancel the registration of the petitioners.

3. On 17.01.2006, the Housing Board issued an allotment order in favour of the petitioners. Sale deed and lease agreement were executed on 10.05.2006 in the Office of Sub-Registrar, Gwalior in respect of Flat no. SH/FF/25 for a consideration of Rs.8,78,756/- and lease rent was fixed at Rs.4624/- per annum for the land involved for 30 years. The respondent – Housing Board issued an order of possession no. 995 on 22.02.2007 and, accordingly, the petitioners took possession of the flat on 23.06.2007. However, petitioner states that they were shocked to see the quality of the construction as the flat was full of defects and with poor quality work. The petitioners immediately wrote complaint/ representation regarding the poor quality and defects in the construction of the said flat. The Housing Board orally assured the petitioners that it would rectify the defects in the flat; however, nothing has been done by the respondent – Housing Board. As there was no response forthcoming from the respondent – Housing Board, the petitioners sent a legal notice to the respondent – Housing Board, which was neither replied to or the defects repaired. Thereafter, the petitioners approached the District Consumer Disputes Redressal Commission, Gwalior (in short, ‘the District Forum’) alleging deficiency in service by the respondent - Housing Board.

4. The respondent – Housing Board admitted in their reply before the District Forum that there were several defects in the flat and they were repaired at that time including several areas like service area, common area etc., in the flat total area. Respondent – Housing Board has admitted in their reply that the defects pointed on 30.08.2006 by the petitioners were repaired at that time and on 23.06.2007, the possession was handed over to the petitioners after their full satisfaction. The petitioners allege that the version of the respondent was not true because the petitioners have submitted a complaint/ representation regarding defects in the flat on the same day, i.e., 23.06.2007. On behalf of the Housing Board it has been argued that this Commission has limited jurisdiction in revisional matters in view of the concurrent findings of facts by the lower fora. It has been argued that the MP Land Development Rules do not apply in the case. It has also been argued that the petitioner did not object on the issues of areas of flat at the time of execution of the sale deed or even before that. Having executed the sale deed on 10.05.2006 the issue was raised after nearly 2 ½ years on 12.12.2008. It also been argued that the possession was handed over on the basis of the calculation of super built-up area of 143.15 sq mtrs which included the carpet area of the house, common areas and areas of rules.

5. After hearing the counsel for the parties, the District Forum observed in its order “that the petitioners should get the report regarding actual size, super built up area and cost of repairing/ defects by chartered engineer but no affidavit has been submitted by the petitioners before the District Forum. However, the petitioners submitted the affidavit of the Chartered Engineer as pointed out by the District Forum before the State Commission in appeal which was not considered by the State Commission”.

6. Aggrieved by the order of the District Forum, the petitioners filed an appeal before the State Commission, Bhopal. Respondent was unrepresented before the State Commission and the State Commission passed an order on 09.08.2011 which reads as under:

“The next question that learned counsel has raised is that on account of delay in granting possession of the house service tax became applicable and if the house had been delivered as per scheme the service tax was leviable and this service tax therefore, be saddled on the housing board. He has also submitted that now it is not possible to provide covered parking space.

So far as the covered parking space is concerned, this point has been considered by the District Forum and it is was also one of the defects points out and the District Forum has given necessary directions. However, since there is circular dated 05.10.2006 of the M P Housing Board no. 10 of 2006, we direct that in matters relating to charging of service tax the same be brought to the notice of the housing board and if the housing board finds that in view of the last instalment having

preceded the implementation of the notification, the appellant is not liable to pay service tax, it shall take a decision in this behalf.

With the above additional directions to the respondents, this appeal is disposed of with no order as to costs.

7. Dissatisfied by the order of the State Commission, the petitioners have filed the present revision petition before us.
8. We have heard the learned counsel for the petitioners as well as the senior counsel for the respondent.
9. Learned counsel for the petitioner has submitted that attracted by the newspaper advertisement regarding 'Darpan Enclave' the petitioner paid an amount of Rs.85,000/-, in lieu of the flat built by respondent no.1. The petitioners were prompt in making all the instalments of payment on time. Learned counsel for the petitioner submits that the allotment letter was issued on 17.01.2006, sale deed was executed on 10.05.2006 and the possession was handed over on 22.02.2007. Learned counsel for the petitioner has stated that the petitioners made the first complaint on 30.08.2006 regarding the poor quality work even before the possession was taken. Even after possession the defects remained and the petitioners made a representation to the Estate Manager and the Site Engineer on 23.06.2007 regarding the poor quality of construction. Seeing no response from the respondents, the petitioner himself got abstract cost of alteration work and detailed measurement of area from a Chartered Engineer and the tentative cost of Rs.2,66,000/- was estimated for removal of defects. Thereafter, the petitioners approached the District Forum, wherein the complaint was allowed in part and the respondents were directed to rectify the defects and pay Rs.1200/- as litigation cost. The State Commission has also upheld the order of the District Forum in toto. Learned counsel for the petitioners have prayed that the respondents be directed to pay an interest @ 12% per annum for the period of delay in delivery of possession of about 8 months; to pay Rs.29,579/- against the payment of service tax; to pay Rs.2,66,000/- for rectification of the defects, provide closed parking as originally advertised and promised; to pay Rs.55,000/- towards the delivery of 14.91 sq mt less area that the original promised; and to refund the extra payment of Rs.1,04,032/- along with interest @ 12% per annum.
10. Learned Senior Counsel for the respondent in his reply has stated that the respondent Board published an advertisement in Dainik Bhaskar on 10.10.2002 for allotment of residential flats in an housing Society namely 'Darpan Enclave'. Later on the name of the Society was changed to Madhav Rao Scindia Enclave. Learned Sr Counsel for the respondent argued that as per the Board's Circular dated 16.06.2005, service tax was payable by the petitioners on purchase of residential properties. For the purpose of service tax, if any amount was due and payable towards the sale consideration amount after the service tax became applicable on the flats built and sold by the Board, the transaction came within the purview of the service tax regime. Learned Sr Counsel for the respondents submits that the service tax paid by the petitioners has been deposited with the department. Therefore, refund, if any, will have to be sought by the petitioners. This is without prejudice that the claim of petitioners for service tax amount from the respondents is misconceived and untenable. He further submitted that the possession of flat no. H 25 was handed over to the petitioners on 26.06.2007 after due inspection and to their satisfaction. Learned senior counsel for respondent reiterated that the petitioners have been agitating the same issues which have already been discussed by both the *Fora* below. He further stated that there is no provision of covered parking and the same was not indicated or proposed to the petitioner and no amount has been charged by the Housing Board for providing covered parking. He also submitted that the petitioners are demanding that open spaces should be covered for providing covered car park area. He submits that the claims of the petitioners are illegal and no permanent construction can be carried out in the open area/ common areas. Learned senior counsel submits that the Housing Board made a representation to the Chief Property Officer, Bhopal stating that if the transaction is prior to 16.06.2005, then the service tax should not be applicable. He also submits that the petitioners have referred to rules of M P Bhoomi Vikas Rules 1984 which are not applicable to the facts of the case as there was no provision of a covered car park area in the Brochure or in the plan.
11. This Commission has limited revisional jurisdiction under the Act. The Hon'ble Supreme Court in ***Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd.***, (2011) 11 SCC 269 held that:

"23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima

facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora.”

12. Reiterating this principle, the Hon’ble Supreme Court in ***Lourdes Society Snehanjali Girls Hostel and Ors vs H & R Johnson (India) Ltd., and Ors*** (2016) 8 Supreme Court Case 286 held:

“17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons.”

13. Again, the Hon’ble Supreme Court in ***T Ramalingeswara Rao (Dead) Through LRs and Ors vs N Madhava Rao and Ors***, dated 05.04.2019 held as under:

“12. When the two Courts below have recorded concurrent findings of fact against the Plaintiffs, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be perverse, a case for interference may call for by the High Court in its second appellate jurisdiction.”

14. In a recent judgment, the Hon’ble Apex Court in ***Rajiv Shukla vs Gold Rush Sales and Services Ltd., and Ors.***, (2002) 9 SCC 31 while affirming its earlier view taken in the case of ***Rubi (Chandra) Dutta vs United India Insurance Company*** (2011) 11 SCC 269 held that the National Commission has no right to interfere with the concurrent finding of facts of the *Fora* below in its Revisional Jurisdiction, as under:

“At this stage, it is required to be noted that on appreciation of evidence on record the District Forum as well as the State Commission concurrently found that the car delivered was used car. Such findings of facts recorded by the District Forum and the State Commission were not required to be interfered by the National Commission in exercise of the revisional jurisdiction. It is required to be noted that while passing the impugned judgment and order the National Commission was exercising the revisional jurisdiction vested under Section 21 of the Consumer Protection Act, 1986. As per section 21 (b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21 (b) of the Consumer Protection Act.”

15. From the records it is apparent that the petitioner has challenged the impugned order on the very same grounds which were raised before the District Forum as well as the State Commission in appeal. The concurrent findings on facts of these two *foras* are based on evidences led by the parties and documents on record. The present revision petition is therefore an attempt by the petitioner to urge this Commission to re-

assess, re-appreciate the evidence which cannot be done in revisional jurisdiction. Learned counsel for the petitioner has failed to show that the findings in the impugned order are perverse.

16. The *foras* below have pronounced orders which are detailed and have dealt with all the contentions of the petitioner. It is seen that the orders of these *fora* are based on evidence on record. In view of the settled proposition of law that where two interpretation of evidence are possible, concurrent findings based on evidence have to be accepted and such findings cannot be substituted in revisional jurisdiction, this petition is liable to fail.

17. I, therefore, find no illegality or infirmity or perversity in the impugned order. The present revision petition is, therefore, found to be without merits and is accordingly dismissed.

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**SUBHASH CHANDRA
PRESIDING MEMBER**