

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 1769 OF 2016**

(Against the Order dated 28/10/2015 in Appeal No. 212/2015 of the State Commission  
Haryana)

1. M/S. TANEJA DEVELOPERS & INFRASTRUCTURE  
LTD.

THROUGH ITS MANAGING DIRECTOR, 9, KASTURBA  
MARG,  
NEW DELHI-110001

.....Petitioner(s)

Versus

1. SHILPA MEHTANI  
D/O. SH. PREM NARAIN MEHTANI, R/O. C-1, SUJAN  
SINGH PARK  
SONEPAT  
HARYANA

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. BINOY KUMAR, PRESIDING MEMBER**

FOR THE PETITIONER : MS. SNEHAL KAILA, PROXY COUNSEL FOR  
MR. VAIBHAV AGNIHOTRI, ADVOCATE

FOR THE RESPONDENT : MR. ANSHUL GUPTA, ADVOCATE  
MR. SHUBHAM KAUSHIK, ADVOCATE

**Dated : 18 July 2023**

**ORDER**

1. The present Revision Petition under Section 21(b) of the Consumer Protection Act, 1986 (hereinafter referred to as "Act") has been filed by M/s Taneja Developers & Infrastructure Ltd. (hereinafter referred to as the "Petitioner/ Builder") against Shilpa Mehtani (hereinafter referred to as "Respondent/ Complainant) challenging the Impugned Order of the State Consumer Disputes Redressal Commission, Panchkula, Haryana (hereinafter referred to as the "State Commission") dated 28.10.2015, in First Appeal No. 212 of 2015 whereby the Appeal filed by the Respondent/ Complainant was partly allowed.
2. Brief facts of the case as per the Complaint are that one Mr.Parvesh had booked a 2 Bedroom Flat, admeasuring 1110 Sq. Ft. (hereinafter referred to as "Unit") at the rate of Rs.1650/-Sq. Ft., in a future project of the Petitioner/ Builder purportedly in Kingsbury Apartments, Sonapat, Haryana (hereinafter referred to as "Project") and paid Rs.3,00,000/- as registration amount for the same. On 28.02.2007, the Respondent/ Complainant purchased this registration from Mr. Parvesh and paid Rs.3,00,000/- and Rs.2,50,000/- for the same. Thereafter on 11.11.2008, the Respondent/ Complainant further paid Rs.1,83,072/- to the Petitioner/ Builder towards the Unit. The Respondent/Complainant thus paid a total sum of Rs.7,33,072/-. However, the Petitioner/ Builder failed in providing any Allotment Letter to her despite many

communications and verbal requests and was provided a vague offer for allotment after a delay of about 3 years on 22.06.2011. Aggrieved by the act of the Petitioner/ Builder in failing to give any allotment, the Respondent/ Complainant filed Consumer Complaint before the District Commission.

3. After hearing both the Parties and appreciating the facts of the case, the District Commission partly allowed the Complaint with the following Order:

***“However, in our view, the ends of justice would be fully met if the directions are given to the respondent to refund the amount to the complainant alongwith interest because the respondent is utilizing the huge amount of the complainant without providing her any services. Thus, we have no hesitation to direct the respondent to refund the deposited amount to the complainant alongwith interest at the rate of 10% per annum from the date of filing of the present complaint till realization.*”**

***With these observations, findings and directions, the present complaint stands allowed.”***

4. Aggrieved by the Order of the District Commission, the Respondent/ Complainant filed Appeal before the State Commission with the following prayer:

***“It is, therefore, respectfully prayed that this Hon’ble Commission may kindly be pleased to accept the present appeal and consequently set-aside the impugned order dated 06.02.2015 passed by the learned District Consumer Forum, Sonapat and issue directions to the respondent company to allot a flat of 1110 Sq. Feet as per the rate which was prevailing in the year 2006 at the time of booking, or in the alternative, if the respondent are unable to allotment they may kindly be directed to pay the interest to the appellant from the date of deposit of the amount i.e. 21.02.2006 till realization at the rate of 18% per annum, in the interest of justice, equity and fair play.*”**

***AND/OR***

***Any other order or direction which this Hon’ble commission may deem fit and proper in the peculiar facts and circumstances may be issued in favour of the appellant.”***

5. The Respondent/ Complainant stated before the State Commission that the District Commission did not consider the prayer of the Respondent/ Complainant for allotment of a flat. The District Commission did not give any findings on the said issue and

wrongly ordered for refund of the booking amount. The District Commission wrongly observed that there were lapses on the part of both the parties. The District Commission further wrongly awarded interest from the date of filing of complaint instead from the respective date of deposits.

6. Upon notice, the Petitioner/ Builder appeared before the State Commission and filed their Reply. The Petitioner/ Builder argued that the District Commission did not have pecuniary jurisdiction as the total price of the flat was over Rs.20 Lacs. The Petitioner/ Builder further argued that the booking was not done in any specific project and hence the complaint should be dismissed.
7. The State Commission, after appreciating the facts and going through the records stated the following in its Order:

***“It is not in dispute that the complainant booked the flat with the respondent/opposite party and has paid a total of Rs. 7,33,072/- but the opposite party failed to allot flat within the period assured by it. The complainant sought refund of the deposited amount which the District Forum ordered, however, the interest was awarded from the date of filing of the complaint. Since the builder-opposite party has utilized the amount from the date of deposits, therefore, the complainant is entitled to interest from the date of deposit. It is ordered accordingly.*”**

***The impugned order is modified to the extent indicated above and the appeal stands disposed of.”***

8. Aggrieved by the Order of the State Commission, the Petitioner/Builder filed Revision Petition before this Commission with the following prayer:

***A. Pass an order allowing the present Revision Petition of the Petitioner and set aside the Order dated 20.10.2015 passed by the Ld. State Commission, Haryana in First Appeal No. 212 of 2015 in Complaint Case No. 311/2014.***

***B. Call for the records in First Appeal No. 212 of 2015 of the Ld. State Commission;***

***C. Pass any other order(s)/ direction(s) that this Hon’ble National Commission may deem fit in the interest of justice.***

9. In the Revision Petition, the Petitioner/ Builder raised following key issues:
  - a. The State Commission ought to have appreciated the preliminary objections raised by the Petitioner/ Builder especially with regard to pecuniary jurisdiction of the

District Commission to entertain the complaint filed by the Respondent/ Complainant.

- b. The impugned Order passed by the State Commission is based on conjectures and surmises as there exists no cogent evidence for the State Commission to have modified the Order dated 06.02.2015 passed by the District Commission to the extent that the refund was to be made from the date of deposit.
- c. The impugned Order passed by the State Commission was a non-speaking Order and suffers from absence of cogent reasons that warranted modification of the Order passed by the District Commission.
- d. The State Commission ought to have taken into consideration the fact that the primary relief claimed was allotment and therefore the pecuniary jurisdiction becomes pivotal for its consideration.
- e. The State Commission failed to appreciate the fact that it was the Respondent/ Complainant that failed to comply with the terms and conditions of the Advance Registration Form (ARF) by failing to deposit/ clear the outstanding dues towards the said flat in question.
- f. The State Commission failed to appreciate the fact that the last deposit was made by the Respondent/ Complainant way back in February, 2008 and thereafter the Respondent/ Complainant filed the Complaint on 10.07.2013 after a gap of over 5 years.

10. We have heard the Learned Counsel of both the parties and have gone through material available on record.

11. The Learned Counsel for the Petitioner/ Builder has argued that the original booking was done on 18.02.2006 and the Respondent/ Complainant purchased the registration from another person on 20.02.2007, therefore the Respondent/ Complainant is a 2<sup>nd</sup> purchaser. The Respondent/ Complainant made the last payment of Rs.1,83,072/- on 11.11.2008, and no further payments were made by her even till filing of the Complaint in 2013. The Complaint is liable to be dismissed as the District Commission gave Order on the Complaint without having pecuniary jurisdiction as the total cost of the Flat in question was over Rs.23 Lacs, thus beyond the limit of Rs.20 Lacs of the District Commission at that time. The Complaint is time barred as the Offer of Allotment Letter was sent on 22.06.2011 while the Complaint before District Commission was filed on 10.07.2013, which is beyond 2 years of cause of action which is barred under the Limitation Act, 1963. The State Commission wrongly enhanced the period of computation for interest from the date of deposit till date of realization while the District Commission had restricted the interest from the date of filing of Complaint till realization. The Learned Counsel for Petitioner/ Builder further argued that there was no communication between the Parties from 2008 to 2013. The Learned Counsel has placed reliance on the Orders of the Hon'ble Supreme Court in the cases of *State Bank of India v. B.S. Agriculture Industries, (2009) 5 SCC 121*, decided on 20.03.2009 and *Haryana Urban Development Authority & Ors. v. Tej Refrigeration Industries Ltd. (2013) 14 SCC 758*, decided on 16.07.2013 with regard to the limitation period. The Petitioner/ Builder has deposited the amount awarded by the State Commission with the District Commission since 20.09.2016.

12. The Learned Counsel for the Respondent/ Complainant has argued that the Complaint was within pecuniary jurisdiction of the District Commission as the Respondent/ Complainant had justly claimed refund of the amount of Rs.7,33,072/- along with interest, Rs.10,00,000/- towards compensation and Rs.2,00,000/- towards damages and compensation which was within the pecuniary jurisdiction of the District Commission. Further, the cost of the Unit itself was about Rs.16,50,000/-. It was observed by the District Commission in its Order that 2 letters were sent by the Respondent/ Complainant to the Petitioner/ Builder, on 20.12.2011 and 24.07.2012 requesting for Allotment. The Learned Counsel for Respondent/ Complainant further argued that the Complaint is within limitation period as the cause of action is a continuing one, since no Allotment has been made. The Learned Counsel placed reliance on the case of ***Samruddhi Coop. Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd., (2022) 4 SCC 103***, decided on 11.01.2022, wherein it was held that a Complaint is within limitation if there is a continuing wrong.
13. We will only deal with the main issues raised by the Petitioner/ Builder as it has reiterated issues which have already been dealt with by the State Commission and District Commission. The main issues raised by the Petitioner/ Builder are with regard to the maintainability of the Complaint before the District Commission under the heads of pecuniary jurisdiction and bar of limitation.
14. The objection of the Petitioner/ Builder regarding pecuniary jurisdiction is based on their argument that the cost of the Unit is over Rs.23 Lacs which was beyond the jurisdiction of the District Commission at that time. As per the table of *Tentative Flat Sizes and Rate Chart* in the Advance Registration Form, placed as Annexure P-IV, the net cost of the Unit of 1,000 Sq. Ft. at the rate mentioned therein, i.e. Rs.1650/Sq. Ft., comes out to be Rs.16,50,000/-, the Complainant in her Complaint filed before the District Commission had also prayed for Rs.1,00,000/- as compensation for mental agony, Rs.1,00,000/- for damages in delay of allotment, Rs.10,00,000/- as damages for illegal use of money as and Rs.25,000/- for litigation costs. All of the amounts prayed for and the cost of the Unit in total exceeds the pecuniary limit of Rs.20,00,000/- of that time. The objection of the Petitioner/ Builder is correct on this particular issue. It is apparent from the records that the present Complaint was filed in District Commission in the year 2013; appeal was filed in State Commission in the year 2015, and Revision Petition was filed before this Commission in the year 2016. As almost seven (7) years have elapsed in this Commission, I find it will not be in interest of justice to remand the case to the State Commission due to technicality at this stage. Therefore, I will decide the Complaint on its merits.
15. The other objection of the Petitioner/ Builder is with regard to the bar of limitation on the Complaint as it was filed after expiration of 2 years from the date of cause of action. The contention of the Petitioner/ Builder is that the Offer of Allotment Letter was dated 22.06.2011, the date for cause of action should be the said date and limitation period should be computed from the same, and since the Complaint before District Commission was filed on 10.07.2013, after 2 years from the Offer of Allotment Letter's date, the Complaint should be dismissed for being barred due to limitation. There are several Orders of the Hon'ble Supreme Court which have held that in cases of continuing breach, a fresh period of limitation begins to run at every moment of time during which the breach continues. It is pertinent to refer to the Order of the Hon'ble

Supreme Court in *Samruddhi Coop. Housing Society Ltd. (supra)*, the relevant portion is reproduced hereunder:

***“11. Section 24A of the Consumer Protection Act 1986 provides for the period of limitation period for lodging a complaint. A complaint to a consumer forum has to be filed within two years of the date on which the cause of action has arisen. In the instant case, the appellant has submitted that since the cause of action is founded on a continuing wrong, the complaint is within limitation.***

***12. Section 22 of the Limitation Act 1963 provides for the computation of limitation in the case of a continuing breach of contract or tort. It provides that in case of a continuing breach of contract, a fresh period of limitation begins to run at every moment of time during which the breach continues. This Court in Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneswar Maharaj Sansthan elaborated on when a continuous cause of action arises. Speaking for the three-judge Bench, Justice PB Gajendragadkar (as the learned Chief Justice then was) observed that:***

***“31. [...] Does the conduct of the trustees amount to a continuing wrong under Section 23? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in diem as claimed by the appellants? In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked.”***

As the Petitioner/ Builder has failed to allot any Flat to the Respondent/ Complainant till date, the breach is continuous and so the instant Complaint is within the limitation period. Therefore, this objection of the Petitioner/ Builder is rejected.

16. There is definitely deficiency of service on the part of the Petitioner/Builder as they have failed to give any Allotment Letter to the Respondent/ Complainant till date despite payment made by her way back in 2008 and also keeping the amount with them

till date. The Complainant should be given delay compensation for these deficiencies on the part of the Builder.

17. I notice that in both the lower Commissions, the decision was made on merit. There is a concurrent finding of both fora for giving refund with delay compensation. In view of discussion above, I would like to draw attention toward the Order of Hon'ble Supreme Court in *Treaty Construction v. Ruby Tower Coop. Housing Society Ltd., (2019) 8 SCC 157* decided on 19.07.2019, wherein it was held as under:

***“The contention on the part of the Appellants as regards pecuniary jurisdiction has only been noted to be rejected. The National Commission has observed, and rightly so, that such a plea was not specifically raised before the State Commission having already decided the matter on merit, such a technical objection as regards pecuniary jurisdiction could not have been countenanced before the National Commission. We find no error in the National Commission rejecting this plea as being wholly untenable at the given stage”.***

18. In view of the discussion above, the present Revision Petition is dismissed partly allowing the Order of the State Commission with the modification as under:
- a. The Petitioner/ Builder shall refund the entire amount deposited by the Respondent/ Complainant, i.e. Rs.7,33,072/- along with delay compensation @ 9% p.a. (simple interest) from the respective dates of deposits till the date of realization within 10 weeks of this Order.
  - b. If there is any delay in payment by the Petitioner/Builder beyond 10 weeks of this Order, the Petitioner/Builder shall pay the interest @ 12% p.a. (simple interest) for the same period.
  - c. The Petitioner/ Builder shall pay Rs.50,000/- as cost of litigation.

19. Pending application, if any, stands disposed of.

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**BINOY KUMAR**  
**PRESIDING MEMBER**