

# Prateek Infra Projects India Pvt. Ltd. vs Nidhi Mittal on 5 June, 2020

**Bench: D.Y. Chandrachud, Hemant Gupta, Ajay Rastogi**

SLP(C) D.9026/2020

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal No 2504 of 2020  
[Diary No 9026/2020]

Prateek Infra Projects India Pvt. Ltd.

Appe

Versus

Nidhi Mittal and Another

Resp

ORDER

1 Delay condoned.

2 Admitted.

3 By its order dated 15 January 2020, the National Consumer Dispu

Commission directed the appellant to refund to the respondents an amount of Rs 2,96,89,370 with interest computed at the rate of twelve per cent per annum (liable to stand increased to fourteen per cent if payment is not made within a period of forty-five days). The basis of the above direction is that by the agreement which was executed in March 2015, the appellant agreed that possession of the flat which was allotted to the respondents was to be handed over by December 2016. The flat buyer paid the aforesaid amount. Despite the passage of three years construction had not been completed. The amount has has been directed to be refunded with interest. 4 The NCDRC was moved after it emerged that the builder was not in a position to hand over possession of constructed premises. The NCDRC has held that after a lapse of three years of the date on which possession was to be granted to the respondents, there was no obligation on the part of the flat purchasers to pursue the remedy for obtaining possession.

5 Two submissions have been urged on behalf of the appellant by Mr Gaurav Mitra, learned counsel. First, it has been submitted that under the terms of the tripartite agreement that was entered into between the appellant, the respondents and HDFC Limited, certain payments were made, for the first two years by the appellant directly to the financial institution under the terms of a subvention scheme. it has been urged that on 29 March 2015, an amount of Rs 29,79,103 was disbursed through HDFC Limited to the appellant while on 12 August 2016, an amount of Rs 2,53,549 was disbursed. Under the terms of the tripartite agreement, interest was paid by the builder to HDFC Limited over the first two years of the agreement. Mr Mitra submitted that the obligation to refund the principal sum must be to the exclusion of the above two amounts since the builder has under the terms of the subvention scheme paid the amount over to HDFC Limited. The second submission is that the interest which has now become payable at the rate of fourteen per cent per annum should be scaled down having regard to market conditions and the orders of this court in similar cases involving refunds to flat buyers. 6 Responding to the above submissions, Mr Shyam Divan, learned senior counsel submitted that the entire amount of Rs 2,96,89,370 is the consideration which has been paid over to the developer. Of this amount, some amount has been paid over directly to the builder by the buyers. The rest of the amount was paid over by the bank directly or in terms of the subvention scheme. However, it has been submitted, that the entire consideration which was paid to the developer has to be refunded to the flat buyer. The flat buyer has entered into a settlement with the financial institution, but that in the submission of Mr Divan is of no concern to the builder. On the issue of interest, Mr Divan has fairly left the matter for the determination of this Court. 7 The total amount of consideration which has been received by the developer is Rs 2,96,89,370. This is not in dispute. Under the terms of the subvention scheme, interest was payable by the developer to the bank for a stipulated period. This, however, cannot dilute the responsibility of the developer to refund the entire amount of consideration which has been received for the flat to the flat buyers. We are consequently of the view that the order for refund in the amount of Rs 2,96,89,370 does not warrant any interference. However, in view of the orders which have been passed by this Court in other cases, and having due regard to market conditions we scale down the interest to nine per cent per annum.

8 The Court has been apprised that in execution of the order of the NCDRC, four bank accounts of the builder have been attached. Mr Gaurav Mitra, learned counsel has undertaken on behalf of the appellant that the entire amount computed on the above basis, as directed by this Court, shall be paid over to the respondents within two weeks from today. Immediately after the payment of the aforesaid amount, the attachment which has been levied by the NCDRC in the course of the execution proceedings shall stand lifted. We, however, vacate the direction of the NCDRC restraining the builder from deducting tax at source, which shall be in accordance with law. 9 The appeal is disposed of in the above terms. There shall be no order as to costs.

.....J. [Dr Dhananjaya Y Chandrachud]  
 .....J. [Hemant Gupta] .....J. [Ajay  
 Rastogi] New Delhi;

June 05, 2020

ITEM NO.13

Virtual Court 4

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No.9026/2020

(Arising out of impugned final judgment and order dated 15-01-2020 in CC No. 1508/2018 passed by the National Consumers Disputes Redressal Commission, New Delhi) PRATEEK INFRA PROJECTS INDIA PVT. LTD. Petitioner(s) VERSUS NIDHI MITTAL & ANR. Respondent(s) (With appln.(s) for exemption from filing c/c of the impugned judgment, stay, exemption from filing O.T., c/delay in filing civil appeal and permission to file additional documents/facts/Annexures) Date : 05-06-2020 This petition was called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE HEMANT GUPTA HON'BLE MR. JUSTICE AJAY RASTOGI For Petitioner(s) Mr. Gaurav Mitra, Adv.

Mr. Yudhist Narain Singh, Adv.

Mr. Tanvir Nayar, AOR

For Respondent(s)

Mr. Shyam Divan, Sr. Adv.  
Mr. Amol Chitale, Adv.  
Ms. Sugandha Yadav, Adv.  
Mrs. Pragya Baghel, AOR

UPON hearing the counsel the Court made the following O R D E R 1 Delay condoned.

2 Admitted.

3 The appeal is disposed of in terms of the signed order.

4 Pending application(s), if any, stand disposed of.

(Chetan Kumar)  
A.R. -cum-P.S.

(Saroj Kumari Gaur)  
Court Master

(Signed order is placed on the file)