

Pushpa Jagannath Shetty vs Sahaj Ankur Realtors on 28 February, 2025

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Bench: Sanjay Karol

2025 INSC 294

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3160 OF 2023

PUSHPA JAGANNATH
SHETTY & ORS.

... APPELLANT(S)

VERSUS

M/S. SAHAJ ANKUR REALTORS
& ORS.

... RESPONDENT(S)

ORDER

1. This appeal is under Section 67 of the Consumer Protection Act, 2019 and is directed against the judgment dated 14th March 2023 passed in Consumer Case No.238 of 2019 by the National Consumer Disputes Redressal Commission, New Delhi .

2. The short facts giving rise to the present appeal are that the Reason: 1 hereinafter NCDRC respondents are a partnership firm that owned the building named "Madhav Baug" in the village of Andheri, Mumbai. The complainants were tenants in two flats on the ground floor in Building-A. The former decided to demolish this building and construct a new one and, in furtherance thereof, executed, a Permanent Alternate Accommodation Agreement dated 20 th September 2013, allotting Flat No. 801, carpet area 700 sq. ft. on the 8th floor of the B-Wing of the new building. The agreement provided 24 months from the date of the issue of the commencement certificate, along with a grace period of 6 months to complete such construction. The proposed redevelopment however could not be completed in the stipulated time, as such, on 10th January 2015, the respondents executed an "Indemnity- cum-Undertaking" to allot two flats numbered 301 and 302

having carpet area of 650 sq. ft. and 667 sq. ft. in B-Wing, free of cost, if necessary approvals could not be obtained within 6 months. This agreement further provided that if the respondents failed to give either of the two options to the appellants, they would be entitled to compensation for 1317 sq. ft. carpet area at market value plus 25% additional value thereon.

3. Vacant possession of the old flats was handed over in December 2014 and necessary monetary consideration for alternative accommodation stood transferred to the appellants within time. The contractual period of 24 months expired in December 2016. The respondent continued payment of rent of alternate accommodation of the appellants at the applicable rates till January 2019. Balance of the dislocation compensation i.e. Rs.2,50,000/-, remained pending thereafter. Several letters were exchanged, and meetings were held between the parties. The appellants wrote a letter dated 13 th August 2018 to Mr. Mahesh Jani, the solicitor and escrow agent, asking him to hand over the papers of the flats in escrow to them. In a meeting held on 26th September 2018, the respondents were informed by Mr. Jani that if the approved layout plan was not produced, the flats put in escrow could be released to the appellants on 11 th October 2018. Further time was sought on two occasions, but the flats in escrow were finally released to the appellants on 17 th December 2018.

4. Having received the said flats, the instant complaint case 2 came to be filed on 6th February 2019 seeking the following reliefs, inter alia :

“a) That this Hon’ble Court, Direct and Order the opposite party to allot Flat Nos.301 & 302 on the third-floor admeasuring of 650 and 667 square feet carpet area, along with Podium Car Parking, respectively in the “B” Wing of the proposed new buildings with A Wing, B wing and C Wing to be developed on the property currently known as “Madhav Baug” bearing C.T.S. Ns. 657 and 657/1 to 19 of Village Andheri, Taluka Andheri situated at Andheri Kurla Road, Andheri (East) Mumbai – 400 069, and have the Agreements in respect of the same, Registered with the Sub-Registrar of Assurances, Mumbai, in the name of the Complainants.

AND/OR in the Alternative, This Hon’ble Court direct and order the opposite party to pay to the Complainants, a Sum of Rs.4,59,96,225/- (Rupees Four Crores Fifty-Nine Lakhs Ninety-Six Thousand Two Hundred Twenty-Five only) as market value and 25% compensation for the Flats and further interest thereon at the rate of 12% Per annum till payment or realization from the date of filing of this Complaint.

b) That this Hon’ble Court, Direct and order the opposite party. The Opposite Party to be restrained by an order and direction of this Hon’ble Curt not to create any third-Party rights or encumber two flats Nos.301 and 302 2 Annexure A-10 of the Paperbook respectively on the third-floor admeasuring of 650 and 667 square feet carpet area, respectively in the “NB” Wing of the proposed new buildings with A Wing, B wing and C Wing to be developed of the property on the currently known as “Madhav Baug” bearing C.T.S. Nos. 657 and 657/1 to 19 of Village Andheri, Taluka Andheri situated at Andheri Kurla Road, Andheri (East), Mumbai – 400 069.

c) That this Hon'ble Court, Direct and Orser the Opposite Party to pay the Complainant rent from January 2019 onwards at the rate of 51,537/- per month till the final disposal and hearing of this Complaint.

d) That this Hon'ble Court, Direct and Order the Opposite Party to pay the arrears of Rupees 2,50,000/- which was due on 29th October 2017 along with interest at 12% per annum to the Complainant.

e) That this Hon'ble Court, Direct and Order the Opposite Party to pay Rupees Two Lakhs towards the cost of this Complaint."

5. The relevant extract of the consideration on merits by the NCDRC is as under:

"7. We have considered the arguments of the consel for the parties and examined the record. The complainants sought to enforce "Indemnity-cum-Undertaking" dated 10.01.2015, under which, the owner undertook to allot Flat Nos.301 & 302, carpet area 650 sq.ft. and 667 sq.ft., in "B" wing, free of cost, if the owner fails o obtain necessary approval of the plan within six months from the date hereof as mutually agreed by the parties in writing.

None of the parties have produced any separate writing in respect of mutually agreed date as such, six months period has to be counted from 10.01.2015. Cause of action for enforcement of "Indemnity-cum-Undertaking" arose on 10.07.2015. This complaint was filed on 19.02.2019. The complaint is time barred and no application for condonation of delay has been filed."

As such, the application for compensation was dismissed vide the impugned order.

6. In the facts above, the question that arises for our consideration pertains to the calculation of limitation in preferring the complaint case. According to the impugned order, six months are required to be counted from the date of the indemnity cum undertaking, i.e. 10th January 2015. The flats in escrow were to be given requisite permissions, which could not be obtained within a period of six months; hence, the cause of action arose on 10th July 2015. The complaint case came to be filed on 19th February 2019, as such, the same was barred by limitation.

7. The application before the Commission was filed on 6 th February 2019, hence the matter shall be governed by the Consumer Protection Act, 1986. Section 24-A of the Act prescribes the limitation period to be two years. The proviso thereto also provides for the possibility of the commission condoning delays beyond this point, but when doing so, it is to record its reasons.

As already observed, the parties have agreed to keep the papers in escrow with a third party. In our view, this was done for the purpose of property implementation of the terms of the agreement. It is not in dispute, as is also evident from the record, that specific talks/parlays were ongoing inter se the parties and the escrow, about the implementation of the terms of the agreement. The escrow, in response to the appellants' communication dated 16th November 20183, has responded vide

communication dated 14th December 2018, appraising the instant respondent of the instant appellants' concerns about the non-implementation of the contractual obligations. The escrow, as is evident from the said communication⁴ and had inter alia conveyed as under –

1. Further to the meeting held in our office on 12/10/2018,. It appears that Miss. Atita Shetty and her family are not satisfied with the non-

performance of the promises made by you, that you 3 Annexure A-7 of the Paperbook 4 Annexure A-9 of the Paperbook will tender an approved plan of proposed flat to be given to her and her family which you have failed and neglected to do as per her letter dated 16/11/2018, and accordingly has asked us to handover the escrow documents to her.

2. It was decided and agreed to handover the escrow documents to Miss Atita Shetty on 7 th December, 2018 and the same was postponed to 14th December 2018.

3. Unfortunately, at the last moment you had called up in our office to cancel today's appointment, we have fixed it on Monday viz., 17th December 2018. We will fix the appointment on Monday viz., 17 th December 2018 and whether you attend or not, nor we will postpone any further date and on 17 th December 018 we will hand over the escrow documents to Miss Atita Shetty without fail, which kindly take note.”

8. Only in the absence of any response, did the appellants set up their claims in terms of the complaint preferred before the NCDRC on 6th February 2019. Even before the said forum, the instant respondents committed default in filing their response and, as is evident from the order dated 1 st July 2019, were subjected to payment of cost quantified at Rs.25,000/-. The focus of the respondents herein was to get the complaint dismissed on merits. It appears that the NCDRC has dismissed it on the grounds of limitation.

9. In our considered view, considering the consistent efforts back and forth, inter se the parties, with regard to the implementation of the terms of the contract, there was no question of dismissal of the complaint on the issue of limitation. It was a continuing cause of action, and, only when escrow expressed helplessness that the complainant was forced to file the complaint.

10. In our view, the stand of the NCDRC defeats the ends of justice. The initial cause of action indeed arose in July 2015 after the six-month period expired, however, the Court cannot be amiss to the fact that the parties had been pursuing the matter with the respondent by way of letters, meetings, and even with the escrow agent, who, in turn, did his own back and forth with the owner, before finally releasing the flats in escrow in favour of the appellants. Further, as can be seen from the reliefs extracted supra, what has been claimed is the security of the title they received upon the respondent's default. The complaint case has not been filed seeking the flats in escrow for which the cause of action did arise on 10th July 2015, and hence the same limitation cannot be applied to a subsequent situation, which is that the appellants already have the flats with them. They only seek that the same be registered in their name and not alienated to any third party henceforth.

11. Limitation, while important as a feature of law, is not meant to defeat a substantive right. Efforts, in earnestness, to secure possession of the flats cannot be discounted in order to compute the applicable limitation. The NCDRC ought to have taken a holistic view of the situation and then proceeded to examine whether the relief as claimed may be granted in favour of the appellants.

12. As such, we hold the NCDRC to have committed an error on the face of record. Finding the view taken by it to be ex-facie erroneous, we quash and set aside the impugned order with particulars mentioned in paragraph 1 of this order. We hold that the complaint filed by the appellant is within time. The same is restored to its status and number. We direct the parties to appear before the NCDRC on 17th March 2025. We request that the matter be decided expeditiously and preferably within six months from today. Observations made herein are only for the purpose of determining the issue of limitation, and as such, save and except this limited issue, the Commission shall decide the petition on its own merit. All other contentions are left open.

13. The appeal is disposed of in terms as aforesaid. It is clarified that it shall be open for either party to approach this Court should the need so arise.

Pending application, if any, shall also stand disposed of.

.....J. (SANJAY KAROL)J. (MANMOHAN) New Delhi;

February 28, 2025.