

The Chief Officer, Nagpur Housing And ... vs Manohar Burde on 26 March, 2025

Author: Aravind Kumar

Bench: Aravind Kumar, J.K. Maheshwari

2025 INSC 398

NON-REP

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ of 2025
SPECIAL LEAVE PETITION (CIVIL) NO. 3802 OF 2024

THE CHIEF OFFICER, NAGPUR
HOUSING AND AREA DEVELOPMENT
BOARD (A MHADA UNIT) AND OTHERS

...APPE

VERSUS

MANOHAR BURDE

...RESPON

JUDGMENT

Aravind Kumar, J.

1. Leave granted.

2. Heard learned counsels appearing for the parties. In the present appeal, the order dated 29.01.2024 passed by the High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Writ Petition No. 5052 of 2022, whereby the Writ Petition came to be allowed, and order dated 27.07.2022 passed by the National Consumer Disputes Redressal Commission (herein after referred to as "NCDRC" in short) in Appeal No. 796 of 2019 came to be quashed, is being questioned. The parties are referred to as per their rank in the High Court.

3. The facts in brief leading to filing of this appeal are as under – The Respondents launched a Group Housing Project in year 2009. Pursuant to the same, the petitioner applied for a 3 BHK flat and deposited the requisite amount of Rs. 4,00,000/- on 23.09.2009 and by virtue of lottery drawn on 03.01.2010, petitioner was allotted a flat. In furtherance of the allotment, the petitioner had to pay the balance consideration in eight (8) instalments, out of which he deposited seven (7) instalments between 31.12.2011 to 31.03.2013 and the eighth (8th) instalment was deposited on 26.08.2013 on the assurance that possession of flat will be delivered timely. The prime grievance of the petitioner is two-fold, firstly, the delivery of possession of the flat was delayed and secondly, demand of additional amount posing the threat of cancellation of allotment. The said amount was

paid by the petitioner, however in vain, it did not yield any result or possession of the flat was delivered to the petitioner.

Hence, alleging deficiency in service and unfair trade practice, the petitioner filed a complaint before the State Consumer Disputes Redressal Commission (in short “SCDRC”), which came to be allowed vide order dated 20.02.2017 with a direction to the authorities to deliver possession within six (6) months and to pay interest @ 15% p.a. for the period of delay w.e.f. July 2013 till handing over of possession. The same was challenged by the respondents in First Appeal No. 1741 of 2017 and the case was remitted to the SCDRC for adjudication on merits afresh.

4. On remand, the SCDRC by order dated 07.02.2019 partly allowed the complaint and directed the respondent to complete the construction of the allotted flat along with a direction to Respondent Nos. 1, 2 & 3 therein to pay interest @ 15% p.a. to the complainant for the delayed period w.e.f. 01.07.2013 till delivery of the possession of flat on the amount paid by the complainant. It was further ordered that, in the event construction is not completed, the amount paid by the complainant should be refunded along with interest @ 15% p.a. from the date of respective payments till realization along with compensation of Rs. 10,00,000/- towards loss suffered by him; and, Rs. 1,00,000/- towards physical and mental harassment along with Rs. 25,000/- towards litigation cost.

5. The respondents being aggrieved, preferred appeal before NCDRC which was partly allowed by order dated 27.07.2022 and respondents were directed to refund the entire amount deposited by the complainant with interest @ 9% p.a. against interest @ 15% as directed by SCDRC. The NCDRC also directed payment of Rs. 50,000/- as consolidated costs. The respondents filed a review being R.A. No. 180 of 2022 seeking review of the order dated 27.07.2022, which was also dismissed by NCDRC vide order dated 26.08.2022.

6. The respondents being aggrieved by the orders dated 27.07.2022 and 12.08.2022, filed Special Leave Petition (C) No. 25157 of 2023 before this Court, which stood dismissed by order dated 06.11.2023.

7. However, being aggrieved by the aforesaid order dated 27.07.2022, the petitioner (complainant) filed W.P. No. 5052 of 2022 before the High Court of Judicature at Bombay, Nagpur Bench, which was allowed vide impugned order setting aside the order passed by the NCDRC and granting the reliefs as sought in the Writ Petition.

8. The High Court opined that there was delay on the part of the respondent in not completing the construction within the agreed period and there has been delay at all stages. It also took note of the fact that the reduction in the rate of interest by NCDRC to 9% p.a. from 15% p.a. was not for any justifiable reason. Hence, setting aside the order passed by NCDRC, the High Court awarded interest @ 15% p.a. on the entire amount paid by the petitioner from the date of respective deposit till date of payment/refund of the amount. Therefore, this appeal.

9. This Court while issuing notice on the present Special Leave Petition vide order dated 19.02.2024 had passed the following orders:

“1. On instructions, it is stated by Mr. Shyam Divan, learned senior counsel for the petitioners that approximately 100 cases are coming against the petitioners, which may have adverse impact, if payments are allowed, under the impugned order.

2. It is also informed by Mr. Shyam Divan, learned senior counsel that the petitioners have already deposited the entire amount along with the interest at the rate of 15% per annum including Rs. 10 Lakhs.

3. Considering the aforesaid, issue notice, returnable in six weeks.

4. Further, we direct that in execution or otherwise, the respondent would be entitled to receive the amount under the order impugned along with the interest at the rate of 9% per annum and the remaining amount of interest and Rs.10 Lakhs, shall be detained in the account. The remaining amount shall be kept in short term auto renewal fixed deposit.”

10. On service of notice, the petitioner appeared in-person and filed the counter affidavit reiterating the contentions raised before the SCDRC and High Court.

11. We have heard the arguments of Mr. Tushar Mehta, learned Solicitor General appearing for the respondents and Shri Manohar Burde, appearing in person and perused the material placed on record.

12. Mr. Tushar Mehta appearing for the respondents strenuously argued that the High Court was not justified in exercising its supervisory jurisdiction under Article 227 of the Constitution of India to modify the well-reasoned findings of NCDRC which had balanced the scale by evaluating the evidence of the parties including pleadings and thus allowing the Writ Petition by granting enhanced interest @ 15% p.a. is not only exorbitant, but also contrary to the principles of law enunciated by this Court. He also urged that when petitioner had opted for refund of amount, at the most the interest at a reasonable rate could have been awarded as was done by the NCDRC. Awarding an interest @ 15% p.a. on payment made by the complainant coupled with additional compensation of Rs. 10,00,000/- is unjustifiable. Hence, he prayed that appeal be allowed and impugned order be set-aside.

13. The petitioner appearing as party in person argued in support of the impugned order and contended that there have been repeated defaults on the part of the statutory authorities and explicit deficiency of service on part of the developer, hence interest @ 15% p.a. on account of inordinate delay is just and appropriate warranting no interference under Article 136 of the Constitution of India. Hence, he prayed for dismissal of the appeal.

14. Having heard the learned advocates appearing for the parties and on perusal of the case papers, we are of the considered view that the NCDRC having taken note of the relevant aspects including the factum of delay and the fact that petitioner had opted for refund of money deposited, rightly held that as a home buyer, petitioner cannot be compelled to take possession of the flat after such long time, and as such ordered for refund of entire amount deposited with interest of 9% p.a. Placing reliance on the law laid down by this Court in ‘Bangalore Development Authority v. Syndicate Bank, (2007) 6 SCC 711’, wherein a co- ordinate Bench of this Court dealing with the question of grant of relief to a consumer in cases of delay of delivery of possession held that when possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid with reasonable interest thereon from the date of payment till the date of refund. The Court summarized the general principles and in particular para 10(f) observed as follows – “(f) Where the plot/flat/house has been allotted at a tentative or provisional price, subject to final determination of price on completion of the project (that is acquisition proceedings and development activities), the development authority will be entitled to revise or increase the price. But where the allotment is at a fixed price, and a higher price or extra payments are illegally or unjustifiably demanded and collected, the allottee will be entitled to refund of such excess with such interest, as may be determined with reference to the facts of the case.” In the present case, the High Court by the impugned order modified the finding of NCDRC and awarded interest @ 15% p.a. primarily relying upon the judgment of this Court in ‘Rohit Chaudhary and another v. Vipul Ltd., (2024) 1 SCC 8’, wherein this Court in order to balance the equities and to compensate the loss caused to the purchaser/complainant who had booked an office premise for his use, directed the refund of the amount paid along with interest @ 12% p.a. from the date of complaint till the date of payment. However, the issue in the instant case relates to allotment of a 3 BHK flat after payment of sale consideration and delay in delivery of same. As such, the NCDRC considering the entirety of the facts and circumstances of the case, had awarded interest @ 9% p.a., which in our view was fair and reasonable. The interest @ 15% p.a. awarded by High Court is excessive. Therefore, the impugned order hereby is set- aside and the order dated 27.07.2022 passed by NCDRC in so far as it relates to award of interest @ 9% on the respective deposit till the date of actual payment is restored.

15. As already discussed above, this Court at the time of issuing notice on this appeal, noted that the appellants have already deposited the entire amount with interest @ 15% p.a. including Rs.10,00,000/- as ordered by SCDRC. Having regard to the fact that the appellant herein is an instrumentality of State, the delay if any, cannot be attributed to any personal animosity of the officers manning the institution and they have been discharging the statutory duties. Considering the aforesaid and in the peculiar facts and circumstances of the case, we deem it proper to reduce the compensation payable from Rs. 10,00,000/- to Rs.7,50,000/- as it would meet the ends of justice. Accordingly, the order stands modified to the extent above referred to. The appeal stands partly allowed with no order as to costs. Pending application(s), if any, shall stand consigned to records.

....., J.

[J.K. MAHESHWARI], J.

[ARAVIND KUMAR] New Delhi;

March 26, 2025.