

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 290 OF 2011

(Against the Order dated 31/05/2011 in Complaint No. 28/2003 of the State Commission
Chandigarh)

1. SURINDER SINGH SAINI

PROPRITOR, SURINDRA BUILDERS AND
ENGINEERS, SCO NO. 2, FIRST FLOOR,
SECTOR-34-C,
CHANDIGARH
PUNAJB

.....Appellant(s)

Versus

1. BLOSSOM COOPERATIVE HOUSE BUILDING
FIRST SOCIETY LTD. & ORS.

BUILDING FIRST SOCIETY LIMITED, THROUGH
ITS PRESIDENT SHRI KISHAN DASS, FLAT NO.
854, THE BLOSSOM COOPERATIVE HOUSE
BUILDING FIRST SOCIETY LIMITED, SECTOR-48A,
CHANDIGARH
PUNJAB

2. VINOD JOSHI

A.N. ARCHITECT GROUP, HOUSE NO. 521,
SECTOR-45-A,
CHANDIGARH
PUNJAB

3. H.L. BHATTI

FORMER PRESIDENT, THE BLOSSOM
COOPERATIVE HOUSE BUILDING FIRST SOCIETY
LIMITED, FLAT NO. 814, THE BLOSSOM
COOPERATIVE HOUSE BUILDING FIRST SOCIETY
LIMITED, SECTOR 48A,
CHANDIGARH
PUNJAB

4. T.N. THUKRAT

FORMER SECRECTARY, THE BLOSSOM
COOPERATIVE HOUSE BUILDING FIRST SOCIETY
LIMITED, FLAT NO. 830, THE BLOSSOM
COOPERATIVE HOUSE BUILDING FIRST SOCIETY
LIMITED, SECTOR 48A,
CHANDIGARH
PUNJAB

.....Respondent(s)

FIRST APPEAL NO. 291 OF 2011

(Against the Order dated 31/05/2011 in Complaint No. 28/2003 of the State Commission
Chandigarh)

1. VINOD JOSHI

A.N. ARCHITECT GROUP, SCF NO. 2, SECTOR-21,
CHANDIGARH
PUNJAB

.....Appellant(s)

Versus

1. THE BLOSSOM CO-OP. HOUSE BUILDING FIRST
SOCIETY LTD. & ORS.

SECTOR 48-A, CHANDIGARH PREVIOUSLY, THE
BLOSSOM COOP. HOUSE BUILDING SOCIETY
LTD., THROUGH ITS PRESIDENT/HONY.
SECERATRY, FLAT NO. 854, THE BLOSSOM CO-OP.
HOUSE BUILDING 1ST SOCIETY LTD. SEC-48-A,
CHANDIGARH
PUNJAB

2. SURINDRA BUILDERS AND ENGINEERS,
SCO NO. 2, 1ST FLOOR, SECTOR-34/C,
CHANDIGARH
PUNJAB

3. SHRI H.L. BHATTI
FLAT NO. 814, THE BLOSSOM COOP. HOUSE
BUILDING FIRST SOCIETY LTD. SECTOR-48A,
CHANDIGARH
PUNJAB

4. SHRI. T.N. THUKRAL
FLAT NO. 830, THE BLOSSOM COOP. HOUSE
BUILDING FIRST SOCIETY LTD., SECTOR-48A,
CHANDIGARH
PUNJAB

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE V.K. JAIN, PRESIDING MEMBER

For the Appellant : IN FA No.290/2011

For the Appellant : Ms.Manmeet Arora, Advocate &
Ms.Mansi Sharma, Advocate &
Mr.Harkirat Singh, Advocate
IN FA No.291/2011

For the Appellant : Mr.Anil Amrit, Advocate

For the Respondent : IN FA No.290/2011
For the Respondent No.1 : Mr.Anil Amrit, Advocate
For the Respondent No.2 : NEMO
IN FA No.291/2011
For the Respondent No.1 : NEMO
For the Respondent No.2 : Ms.Manmeet Arora, Advocate

Dated : 19 Aug 2019

ORDER

These appeals are directed against the common order of the State

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Commission dated 31.05.2011 whereby the State Commission directed
the appellants here in as under :

“ In view of the above discussion, we are of the opinion that the present complaint must succeed and the same is accordingly, allowed. The Ops No.1 and 2 are directed to pay, jointly and severally, a sum of Rs.28,64,714/- (as mentioned in Annexure C-9 to C-49) plus Rs.10,00,000/- for the reduced life of the building and Rs.5,00,000/- as compensation for mental tension, along with litigation costs of Rs.10,000/- to the Complainant, within 30 days from the date of receipt of the copy of the order. If the entire amount of Rs.43,74,714/- is not paid within the aforesaid period, the Ops No.1 and 2 would be, jointly and severally, liable to pay the same, along with interest @ 9% per annum, since the filing of the present complaint i.e. 04.07.2003, till the same is actually paid or deposited with the complainant.”

(2) I have heard the learned counsel for the appellants. No one has appeared for the complainant namely Blossom Cooperative House Building First Society Ltd. when the matter is called for hearing though the date was fixed in the presence of the counsel of the complainant on 09.07.2019.

(3) The complainant society had entered into an agreement with Mr.Surinder Singh Saini appellant in FA No.290/2011 where under he was to construct 30 dwelling units for the members of the said society.

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As per Clause 12 of the agreement executed between the parties the laying of steel and shuttering was to be checked by the architect/engineer of the society in the presence of the representative of the society, before casting of each slab or any of the RCC work. The retention money of the contractor was to be released in two instalments within nine months of the complaint of the work.

The possession of 29 out of 30 flats was accepted by the society through its President, Vice-President, General Secretary, Cashier and two members on 16.04.2001 and the entire payment to the contractor was made. Thereafter, the retention money was also released to the contractor.

(4) The society then approached the concerned State Commission by way of a consumer complaint alleging therein that the work executed by the contractor was not as per the agreed specification and there were several defects and deficiencies in the work executed by him. In order to prove the alleged shortcomings, defects and deficiencies, the society relied upon the report submitted by Shubh Consultants which was to be paid for the job at Rs.500/- per flat by the society/member and 5% of per member, in case of succeeding in the court, of amount decreed by the court. It would mean that except for the consolidated fee of Rs.500/- per flat, the rest of the fee payable to the engineer was dependent upon the

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amount, if any, to be awarded by a court based upon his report. To this extent, the agreement between the society and builder was a contingent contract.

(5) Though the affidavit of Mr. Ashok Tayal, engineer was filed to prove his report, no opportunity was given to the appellants to cross examined him despite his having filed an application before the State Commission seeking cross examination of Mr. Ashok Tayal, by his architect. No order according to the learned counsel for the contractor was passed on the above referred application. There is no reference to the said application in the impugned order. Rather it is stated in the said order that the aforesaid engineer was not cross examined.

(6) In my opinion once such an application had been filed the State Commission ought to have been passed an appropriate order on it. In case the cross examination by the architect of the contractor was not to be allowed, an opportunity ought to have been given to the contractor to cross examine the engineer Mr.Ashok Tayal through his counsel who could be assisted by the architect for the purpose of cross examination. The appellants have been seriously prejudiced in their defence, on account of opportunity for cross examination having not been given to them, despite an application for this purpose having been filed by the

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contractor who is appellant in FA No.290/2011. The impugned order is therefore set aside and the consumer complaint is remitted back to the State Commission to decide the same afresh after giving opportunity to both the appellants here in i.e. the appellant in FA No.290/2011 and appellant in FA No.291/2011 to cross examination the witness Mr.Ashok Tayal, Engineer. The parties are directed to appear before the State Commission on **23.09.2019** . On that date, the State Commission shall fix an appropriate date for cross examination of the witness. The State Commission shall decide the complaint afresh in terms of this order within three months of the parties appearing before it.

(7) Vide in terms of Order dated 24.05.2018, this Commission had allowed the appellant in FA No.290/2011 to file additional documents which the said appellant has filed before this Commission. The said documents can now be filed before the State Commission on or before the next date of hearing.

(8) The amount which the appellant had deposited in compliance of the order of this Commission dated shall remained deposited till the complaint is decided afresh and final order with respect to the disbursal of the said amount and interest which accrues on it, shall be passed by the State Commission while deciding the complaint afresh.

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The record of the State Commission, if received, in this Commission be sent back immediately alongwith the copy of this Order.

The appeals are accordingly disposed of.

.....J
V.K. JAIN
PRESIDING MEMBER