

2022 SCeJ 1133

SUPREME COURT OF INDIA

*Before: Justice Aniruddha Bose, Justice
Vikram Nath*

**ASHOKA INVESTMENT CO. v. UNITED
TOWERS INDIA (PVT.) LTD.**

CIVIL APPEAL NO(s).4913 of 2015

11.10.2022

**Consumer Protection Act, 1986, S. 23-
Builder – Refund - Rate of interest
awarded by NCDRC is only 9% - Under the
agreement, in the event of default, the
complainants liability to pay interest on
the defaulted amount could go up to 18% -
Just and proper that 18% interest be
awarded on the refund amount. [Para 11]**

Cases referred to:

1. *Para 1: M/s. Ashoka Investment Company Vs. M/s. United Towers India (Pvt.) Ltd., Petition No.377 of 2000*

JUDGEMENT**Vikram Nath, J.**

1. This appeal by the Consumer under Section 23 of the Consumer Protection Act, 1986 In short “the 1986 Act” has been filed assailing the correctness of the order dated 16.03.2015 passed by the National Consumer Disputes Redressal Commission In short “NCDRC”, (NCDRC), Delhi in Original Petition No.377 of 2000 between M/s. Ashoka Investment Company Vs. M/s. United Towers India (Pvt.) Ltd. By the said order, the NCDRC directed the respondents to refund an amount of Rs.4,95,000/- (four lakhs and ninety five thousand) being total sale consideration to the appellant with interest @ 9 % per annum w.e.f. 17.01.1995 till the date of refund/compliance.

2. The admitted facts are that, the appellant on 12.05.1980 applied for purchase of two flats bearing Nos.501 and 502 on the 5th Floor, 1st Block, Krishna Apartments,

Bangalore for a total sale consideration of Rs.4,95,000/- (four lakhs and ninety five thousand). Along with the application, the appellant paid Rs.1,00,000/- (one lakh) each for the two flats by way of two Demand-Drafts.

3. An agreement to sell was executed between the parties on 17.05.1980. As per para 3 of the agreement, possession was to be delivered within a period of 18-21 months under normal conditions subject, however, to the availability of cement, steel and other building materials, electrical or power connections, drainage connection and subject to and including any Act of God, drought, flood or any other natural calamity and/or war restrictions by the Government, Municipal Corporation or any other public authorities or any other acts beyond the control of the builders.

4. Under paragraph 6 of the agreement, it is provided that if there was any default in payment of installments, the builder would be at liberty to insist for payment of the amount due together with interest @ 18% per annum from the date of default till the date of payment on the defaulted amount.

5. The entire amount of Rs.4,95,000/ (four lakhs and ninety-five thousand) has since been paid by the appellant to the respondent. A dispute arose sometimes in 1991 when the respondent raised demand of Rs.1,56,046/(one lakh fifty six thousand and forty six) with respect to one apartment and Rs.1,62,202/(one lakh sixty two thousand and two hundred two) for the other apartment. These demands were raised vide bill dated 15.12.1991. These demands were objected to by the appellant and a request was made to hand over the possession of the two flats.

6. Apparently, possession was not given and, thereafter, it appears that in January, 1999, the appellant visited the apartments only to find that both the apartment Nos.501 and 502 had been transferred by the respondent in favour of third parties. It

was thereupon that the appellant made enquiries and came to know that the respondent had cancelled the allotment on 17.01.1995 and, thereafter, transferred it to the third parties.

7. After giving due notice, the appellant approached the NCDRC by way of a complaint praying for following reliefs:

"(a) To direct the Opposite Party to forthwith hand over to the Complainant vacant and peaceful possession of the flats allotted to it being Flats No.501 and 502, Krishna Apartments, Corporation No.13, Ali Asker Road, in Corporation Division No.59, Bangalore and to further pay a sum of Rs.22,50,000/ towards delayed delivery till the date of the application together with damages in the sum of Rs.3,00,000/ as specified in para 22 of the application:

(b) In the alternative to pay to the Complainant a sum of Rs.48,27,000/ as detailed in Paras 21 and 22 above, with pendente lite and further interest at the rate of 18% per annum.

(c) Costs of and incidental to these proceedings be provided for, and

(d) Such other and further orders as this Hon'ble Commission may deem fit and proper in the circumstances of the case be passed."

8. The respondent contested the complaint on technical grounds as also on merit. According to the respondent, the appellant was not a consumer and further that the cancellation had taken place after several opportunities and due notice. The appellant had disputed receiving of any notice.

9. The NCDRC by the impugned order held that the appellant was a consumer as the amendment in the 1986 Act has been brought in 2003 whereby a person who obtains goods for resale or for any commercial purpose was not to be treated as a consumer within the meaning of the definition of consumer provided under Section

2(1)(d)(i) of the 1986 Act. Further, the NCDRC also found fault on the part of both the parties. The appellant not approaching the Commission with clean hands, with much delay and further the respondent conducting himself in a high handed and arbitrary manner. It accordingly disposed of the complaint by directing the respondents to refund the amount along with interest @ 9% w.e.f. 17.01.1995 till the date of refund/compliance.

10. After hearing learned counsel for the parties and perusing the material on record, we enquired from the respondents, as to whether, the amount as awarded by the NCDRC in the impugned order dated 16.03.2015 has been paid to the appellant or not. We were informed that amount has not been paid so far. No justification has come forward as to why the awarded amount was not tendered to the appellant. The appellant has pressed for the entire complaint being allowed as per the relief claimed therein. On the other hand, the respondent has sought to justify the order of NCDRC. However, there is no appeal by the respondent. The appellant has also pressed vehemently that respondent should be called upon to produce the sale deeds of the two flats in question, transferred in favour of the third parties and that the said amount ought to be paid to the appellant along with other claims, the respondent has unjustly enriched itself by the aforesaid conduct. On the other hand, this request has been resisted by the respondents.

11. Having considered the submissions of the learned counsel for the parties, we are in agreement with the findings recorded by the NCDRC regarding the conduct of both the parties, however, we feel that in the fitness of things and in the interest of both the parties considering the nature of agreement made and also their conduct that the order of the NCDRC requires to be modified. The rate of interest awarded is only 9%. Once, we find that under the agreement, in the event of default,

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the appellant's liability to pay interest on the defaulted amount could go up to 18%, it would be just and proper in the facts of the present case that 18% interest be awarded on the refund amount.

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12. We accordingly partly allow this appeal and in partial modification of the impugned order of the NCDRC, we direct that respondent will refund the amount of Rs.4,95,000/- (four lakhs and ninetyfive thousand) being the total sale consideration to the appellant along with interest @ 18% per annum w.e.f. 17.01.1995 till the date, it is paid. The said amount be paid at the earliest and in any case within a period of four weeks from today.

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13. There shall be no order as to costs.

14. Pending application(s) if any, is/are disposed of.

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