STATE CONSUMER DISPUTES REDRESSAL COMMISSION
WEST BENGAL
CONSUMER COMPLAINT NO. SC/19/CC/51/2020

Rohit Bhatt
PRESENT ADDRESS - S/o Vishnu Shankar Bhatt, A/4/13, Annapurna Nagar Colony, near Kashi Vidyapeeth University, Dist. Varanasi, Uttar Pradesh, Pin-221 010.,WEST BENGAL.

.....Complainant(s)

Versus

Santosh Kr. Chowdhury
PRESENT ADDRESS - S/o Sri Ashok Kr. Chowdhury, 24, Dr. Probodh Kr. Banerjee Road, P.S.-Howrah, Howrah-711 101.,WEST BENGAL.

.....Opposite Party(s)

BEFORE:

HON'BLE MR. RAJES GUHA RAY , JUDICIAL MEMBER
HON'BLE MR. SANTANU SAHA , MEMBER

FOR THE COMPLAINANT:
Rohit Bhatt, Mr. Amitabha Shukla, Mr. P.C.Pandey (Advocate)

FOR THE OPPOSITE PARTY:
Santosh Kr. Chowdhury, Ms. Keka Chakraborty.Mr. Suman Mallick. (Advocate)

DATED: 27/07/2026

ORDER

Mr. Rajes Guha Ray, Judicial Member

1. This case was filed on 17.01.2020 but due to intervention of Covid- 19 Pandemic, absence of full Bench and other reasons delay has been caused in its disposal.

This case has been filed by the Complainant Rohit Bhatt against the OP namely Santosh Kumar Choudhury under Section 17 of the Consumer Protection Act, 1986 contending inter alia that he is a teacher and residing in Varanasi, Uttar Pradesh. The OP is the owner of the land and structure at Premises No. 27, Doctor Probodh Kumar Banerjee Road, P.S-Howrah. The Complainant's father had been employed in a Bank in Kolkata and due to his affinity with Kolkata he wished to purchase a residential flat in or around Kolkata and in course of searching the complainant came in contact with the OP. The Opposite Party represented that he has duly authorised to raise construction on

the said premises and it also entitled to sell and transfer the flats/spaces constructed by him as per Plan sanctioned by Howrah Municipal Corporation and he handed over a sight plan of the said flat a copy of which is annexed to the complaint petition. Being impressed by such representations the Complainant agreed to purchase a flat measuring 790 sq.ft. more or less to be located on the first floor of newly constructed building at said premises for a total consideration of Rs. 19,75,000/- . The Complainant and OP did not enter into any agreement with writing and on the basis of verbal agreement the Complainant already made full payment of Rs. 19,75,000/- to the OP towards sale consideration of said flat on different dates as mentioned in paragraph 6 of the complaint petition in the following manner:

Date	Name of the Bank	Amount (Rs)	Mode of payment
22.09.2012	Bank of India	5,92,500.00	By Cheque
17.10.2012	Axis Bank Ltd.	5,92,500.00	By Demand Draft
03.08.2013	Do	1,97,500.00	Do
10.02.2014	Do	1,97,500.00	Do
15.02.2014	Do	3,95,000.00	Do
	Total =	**19,75,000.00**	

1.2. It is contended that the entire payment was made through bank. The OP has assured the Complainant that he would be handing over possession of said flat within six months from the date completion of construction. The Complainant contends further that as he was residing in Varanasi it was not possible for him to personally inspect the progress of the construction work and he had to rely on the inputs provided by the OP and OP assured the complainant over telephonic conversion that the construction of flat and the registration of the same shall be done within 16th November, 2016 and further confirmed that the possession of the said flat was handed over to the

complainant at the time of registration. The Complainant also states that in course of discussion the OP informed that they have initiated the process of getting electricity connection from CESC limited for the aforesaid flat. Subsequently, the complainant came to know that an electricity connection in the name of his father Bishnu Sankar Bhatt was taken for the said flat allotted to the Complainant in the month of August, 2014. On 01.11.2016 the Complainant sent a letter to the OP stating all his difficulties and requesting the OP to honour his commitment. The complainant in the month of December, 2018 sent a legal notice to the Opposite party by speed post dated 05.12.2018 through advocate Mr. Amitabh Sukhla but the OP did not take any step to handover possession of the flat. The copy of said legal notice dated 05.12.2018 and track report obtained from the side of postal department has been annexed to the complaint petition. The complainant contends that the fault on the OP tantamounts to deficiency in service causing tremendous loss and injury, mental agony and harassment to the Complainant etc. Hence, this case and the complainant has prayed for direction to the OP to forthwith execute and register a deed of conveyance in respect of said flat in favour of the Complainant, to handover possession of said flat in time frame. Alternatively, the OP be directed to refund to the complainant a sum of Rs. 19,75,000/- along with interest thereon @ 24% p.a. from the date of payment of said sum and direction to the OP to pay compensation of Rs. 10,00,000/- for causing loss and injury and mental agony and harassment and Rs. 5,00,000/- towards the punitive damages and Rs. 1,00,000/- as litigation cost.

2. By filing written version the OP has contested the case denying the allegations in the complaint petition substantially contending inter alia that the Petitioner being guilty of deliberate suppression of material fact is not entitled to get any Order as prayed for.

The specific case of the OP is that the flat at the premises no. 27, Doctor Probodh Kumar Banerjee Road, P.S-Howrah was given to the Petitioner by the OP on licence basis for temporary measures at the request of the Petitioner and his father for the period of February, 2012 to February, 2019 @ Rs. 25,000 /- per month as they were facing difficulties in maintaining their work affairs at Kolkata etc. and the entire amount received by the OP is nothing but the licence fees collected at the behest of the OP for occupying the aforesaid flat and a sum of Rs. 1,50,000/- it also outstanding towards the entire licence fees of such period despite the payment as shown by the Petitioner. There was never execution of agreement for sale between the parties. The question of registration and/or execution of any deed of sale is nothing but a sheer myth.

It is contended that Complainant is to prove all those allegations strictly in accordance with law by production of necessary papers and documents in support of his contention.

2.1. It is further submitted that no notice was either tendered or served upon the OP by any mode of service at any material point of time the purported document showing the service of notice if there be any, must have been procured and/or manufactured by the complainant in collusion and conspiracy with the concerned Department for the purpose of this case.

2.2. It is further stated by the OP that he is a renowned developer within the ambit of Howrah Municipal Corporation and has been running numerous project therein and the Petitioner and his father came to the OP in the month of January, 2012 and approached the OP to occupy a flat in temporary measures as licencee as they were facing difficulties in maintaining their work affairs at Kolkata being the original resident of Varanasi. Being persuaded by such avowal the OP who was then raising construction over the holding no. 27, Probodh Kumar Banerjee Road, P.S-Howrah allocated the scheduled flat to the petitioner, his father and his brother from the developer's allocation purely on licence basis for temporary measures and the Petitioner, his father and brother stayed at the said flat from February, 2012 to February, 2019 at a monthly licence fees of Rs. 25,000/- and accordingly they have transferred the aforesaid amount on various occasions towards yearly licence fees and there is still an outstanding of Rs. 1,50,000/- only.

2.3. It is also submitted that ultimately sometimes by the end of 2018 the OP required the scheduled noted flat for his own requirement and approached the petitioner, his father and his brother to vacate the scheduled noted flat but they refused to vacate the same. However, after dozens of of appeals at the behest of the opposite party, the Petitioner and his family members vacated the flat. After vacating the flat the Petitioner, his father and his brother also approached the OP several times to sell the same in favour of the Petitioner but the OP refused to sell the same as the OP was already under a contract to sell the same to some other person. So, the Petitioner ultimately filed this case levelling concocted and unfounded allegation against the OP and has prayed for setting aside the case.

3. In this case the Complainant, Rohit Bhatt has filed his evidence-in-chief on affidavit, against which questionnaires filed on behalf of the OP and in reply to the questionnaires the Complainant gave answers on affidavit.

On the part of the OP, he has filed his affidavit-in-evidence against which the Complainant filed questionnaires and in reply thereto. The OP has filed his answers but without being supported by any affidavit.

4. Now, from the pleadings of both sides to following points are framed for consideration in deciding this case.

POINTS FOR CONSIDERATION

1. Whether the case is maintainable;

2. Whether the Complainant is a consumer of the OP;

3. Whether the OP is guilty of any deficiency of service towards the Complainant;

4. Whether the Complainant is entitled to get any relief as prayed for;

5. To what other relief/reliefs that the Complainant is entitled;

DECISIONS WITH REASONS

Point nos. 1, 2 and 3:

5. All the point nos. 1, 2 and 3 are taken up together for consideration and discussion for the sake of conveyance and to avoid unnecessary repetitions.

Ld. Advocates for both parties have filed their respective written notes of arguments in conformity with their respective cases. It has been argued on behalf of the complainant that all the answers to the questionnaire put to the opposite party are evasive in nature. It is argued that most of the electricity bills of the Meter installed for said flat for the period 2012 to 2018 have “0” reading as no one was residing in that flat, it is highly unbelievable that the complainant or any person shall pay advance licence fee when the period or tenure of stay as licensee was not fixed; the payments were made in course of 18 months. He has argued pointing out the manners of payments of alleged licensee fees including quantum of each payment etc.

It has been argued on behalf of the opposite party that there exists no legal relationship of consumer and service provider between the complainant and the opposite party; a mere occupation of a property on a licence basis does not confer any right parallel to ownership or contractual obligation for sale

6. In this case admitted position is that a total sum of Rs. 19,75,000/- has

been paid on behalf of the complainant. The mode of payments as stated in the complainant is also not disputed. The dispute is over the purpose of such payments. As per complainant's case those payments were made towards the payments of consideration money for purchase of the case flat. The O.P. has clearly denied any agreement for sale of sale of said flat to the complainant. As per defence case the complainants and, his father and elder brother allotted that flat to stay there as licensee and those payments were made towards yearly licence fee. So, unless it is proved that said payment of total Rs. 19,75,000/- was made as consideration money for purchase of the flat in question, the complaint case goes. In this neither the complainant nor the opposite party has any written agreement in support of their respective claim. But, in as much as the payment is admitted so only one of them can be right in respect of his claim.

7. So far the claim of the complainant is concerned, he has to establish that he entered into a contract with the O.P. for purchasing the flat in question. It is position of law that an oral contract is permissible. So, his case cannot be thrown away only on the ground of absence of any written agreement to that effect. Since he has no supporting written agreement so, he has to establish his claim by other means or evidences brought on records. On the other hand the O.P. has to prove that those payments were made as licence fees. The O.P. has also no written agreement to prove said licence. In this situation he has also to prove his claim of licence on the basis of materials or evidences on records. Accordingly, to unearth the truth the following points are taken into consideration and discussion for arriving at a conclusion:

i) Total payments of Rs. 19,75,000/- by the complainant, manner of payments as asserted in the complaint petition and its receipt by the O.P. are admitted.

ii) whether such alleged licence for years together can be legally permissible orally or without written document.

iii) Undisputedly, the Electricity bill stands in the name of the father of the complainant.

iv) whether the subject flat was readily available at the relevant point of time in the year 2012.

vi) Whether it was the usual or normal rate of rent or licence fees @ Rs. 25,000/- per month in the year 2012 within Howrah Municipal Corporation.

8. So far the significance of aforesaid electricity bill is concerned, it usually happens in our real life that a licensee or even a tenant under a private person does not get separate electricity connection in his name for his short or temporary stay in the flat or house. So, the existence of electricity in the name of the complainant's father itself does not render any help to the O.P. to establish that the complainant and his father were licensees. Rather, it helps the complainant by establishing link between the complainant and the subject flat and also existence of some right in it. The consumption of units shown in the bills if any, cannot establish the fact that the present complainant or his family members consumed electricity by residing therein. Such consumption by other reasons cannot be ruled out. Therefore the sole point that the electricity meter stands in the name of complainant's father itself is not sufficient proof to establish the claim of the O.P. regarding licence.

9. In this case save and except the aforesaid two purposes for the payment of Rs. 19,75,000/- i.e. payments towards consideration money for purchasing the flat and payments as licence fees, no other cause or purpose of payments is forthcoming. So, only one of aforesaid two is to be correct.

10. As regards the demand notice, the complainant has filed copy of the same along with document relating to service of it. The O.P. has denied its service levelling allegation of collusion in between the complainant and postal authority. In absence of any definite proof such allegation is bogus and unwarranted. We are inclined to hold that the demand notice was duly served.

11. In as much as an oral contract is permissible in law so, by establishing the facts of payments of total money of Rs. 19,75,000/- and by linking him with the subject flat through the undisputed existence electricity bill so also by unanswered demand notice sent on behalf the complainant, the complainant has discharged his onus of claiming over the subject flat as proposed purchaser; those payments were made towards the consideration money and also that the opposite party has failed and neglected to complete the process of sale etc. Now the onus shifts upon the opposite party to prove that those payments were made as licence fees in respect of the flat and also to disprove the claim of the complainant.

11.1. In this case no written licence agreement has been made. Now it is to be considered whether any such licence or even tenancy agreement for a period of more than one year or several years as in this case, can exist without any written document to that effect. Any such transaction relating to an immovable property exceeding one year is compulsorily registrable as per provision of the

Registration Act 1908. If that be so, no such contract without any written agreement can be registered. So, the alleged licence if any, is hit by the relevant provisions of the Registration Act. In this position this Commission cannot legally hold that it was a leave and licence agreement between the parties or the complainant was inducted in the subject flat as a licensee.

11.2. As per case of the O.P. the licence fee was @ Rs. 25,000/- per month. Apparently, such amount looks absurd or abnormal in respect of a flat measuring about 790 sq. ft. within the area of Howrah Municipal Corporation and that too in the year 2012. It is quite hard to concede that in the year 2012 the rate of rent or licence fees was of Rs. 25,000/- per month for such a flat within that area. Again, as per pleadings of the written version of the O.P. at the relevant point of time the O.P. was raising construction over the holding no. 27, Probodh Kumar Banerjee Road, P.S.- Howrah i.e. the construction including the building in which the subject flat is lying was under construction or in incomplete condition. If that be so, the existence of the subject flat at the material point of time is questionable. It cannot be ascertained whether at that time i.e. in February 2012 the flat was at all ready with habitable condition or not. It is quite hard to believe that in an incomplete building, a flat has been made ready to live along with basic amenities like water supply, electricity connection, basic sanitary system etc. Since it is the case of the complainant that at that time the flat was not in existence and subsequently, the O.P. has got electricity in the name of his father so, it is not the complainant's onus to prove that at that time the flat was not existing. A negative assertion or fact cannot be proved by any direct evidence. As the O.P. has taken the plea of licence, which is a positive assertion, it is the onus of the O.P. to prove that at the relevant point of time the subject flat was existing with all necessary amenities and also prove that the complainant and his family member were inducted there as licencees. He could have produced evidence of any surrounding neighbour or local person which was not a tough task for him unlike the complainant. It is not an easy task for the complainant to manage any local people for adducing evidence in his favour. As the plea of licence has been taken by the O.P. So, it is his duty to establish it by producing cogent evidence in support of his case. But no such evidence has been brought on records. Save and except denial of the complainant's assertions he has done almost nothing to prove his own case. By making evasive denial the opposite party cannot absolve his onus to prove his own case.

11.3. It also strikes our mind that despite having no written agreement and or without getting any initial payment in advance the O.P. has inducted the

complainant in the subject flat as licence. It is not the case of the opposite party that the complainant and or his father or elder brother were/was very close and intimate to the O.P. and due to such intimacy and acquaintance or cordial relationship he allowed them to occupy the flat on good faith without any written agreement to that effect or keeping any security deposit like advance payments, specially, when the complainant and his family member are admittedly the permanent residents of U.P. This act on the part of the O.P. looks very unusual and far from reality in life and definitely it creates doubts regarding his stated case.

11.4. As per complainant's The Complainant's father had been employed in a Bank in Kolkata and due to his affinity with Kolkata he wished to purchase a residential flat in or around Kolkata. There is no case of requirement of flat or accommodation for works purpose and as such they had no need to have a flat on rent or licence under any compulsion. It is the contention of the O.P. that as they were facing difficulties in maintaining their work affairs at Kolkata being original residents of Varanasi etc. and being requested by them he allotted a flat from the developer's allocation. So, it is the onus of the O.P. to prove that the complainant and his father and elder brother were facing difficulties in their work affairs. Unless a stringent situation arises, one who is permanent resident of U.P. does not get such a flat on licence on payment of such a rate of licence fee of Rs. 25,000/- per month which is apparently abnormal and absurd and that too by paying a huge amount at a time as lump sum like Rs. 5,92,500/-, 3,95,000/- etc. and thus paid the total of Rs. 19,75,000/- within a period from 22.09.2012 to 15.02.2014 i.e within a span of about just one and half years.

11.5. The manner of payments including the sums so paid at a time and the intervals between those payments are also very curious. Those payments are not disputed. The manner of payments shows that the first payment of Rs. 5,92,500/- was made only on 22.09.2012 i.e. after about 7 months of the alleged induction of the complainant in the subject flat. In absence of any special reasons like close and cordial relationship etc. between the parties it does not occur in real life. There is no case of any such special reason to justify such delayed payment. Such delay in making payment without any reaction on behalf of by the O.P. which creates doubt regarding the alleged licence.

11.6. The manner of payments, intervals amongst those payments, so also the quantum of each payment are also very important factors for consideration to arrive at a decision in this case. Even if for argument sake, the case of the O.P. is considered as true i.e. those payments were towards the licence fees at the

rate of Rs. 25,000/- per month and the total period of licence was from February, 2012 to February 2019 i.e. for a total of 84 months then the complainant had option to pay sum of Rs. 25,000/- month by month and he could easily avail that option instead of making payments in advance in hot haste. He had no compulsion or obligation to pay in advance and that too by such huge lump sum like Rs. 5,92,500/- twice at an interval of less than a month (22.09.2012 to 17.10.2012) and thereafter on 03.08.2023 another payment of Rs. 1,97,500/- i.e. after about 10 months from the previous one. Thereafter on 10.02.2014 i.e. after an interval of less than 6 months a further sum of Rs. 1,97,500/- was paid. Then again on 15.02.2014 i.e. after an interval of only 04 days the last payment of Rs. 3,85,000/- was made. Thus the entire licence fees, the payment of which could be made spreading over 07 years, has been paid within a period of about 1 and 1/2 years. Naturally question arises as to what or who prompted the complainant to make such payment in such a manner even by losing a good amount of banking interest. Such manner of payments of alleged licence fees is not at all logical in normal situation and definitely those payments do not suggest such payments as licence fees as alleged. It smells a rat in the matter. In his written version it has been asserted by the O.P. to the effect that the licence fee collected at the behest of the opposite party for occupying the aforesaid flat etc. Such version of the O.P. can throw light on the mystery. It goes to suggest that those payments were not made by the complainant spontaneously but as per demand or command of the O.P. If that be so, then it makes the matter clear. In a case of simple leave and licence it cannot be believable that the landlord or flat owner can demand the payments of licence fees in such a manner and a licensee, who had no such compulsion to stay there, as in this case, fulfilled such demands. Definitely, such type of irrational manner of payments goes against the opposite party.

11.7. Generally in case of advance payments of the licence fees or rents as the case may be, the licensee or the tenant makes such advance payment at a time for the whole calendar months i.e. without any fraction of a month. In this case those payments show that fractions of months have been included. For instance, a sum of Rs. 5,92,500/- and Rs. 3,95,000/- were paid. In both the cases alleged licence fees have been paid at a time for more than 23 months and 15 months respectively. Those making of payments including fractions of a month are not illegal but in real life it does not occur. Such types of payments can suit for part payments of total consideration money. So, it goes in favour of the complainant.

11.8. To prove the alleged fact that the complainant, his father and the elder brother were inducted in the flat as a licence, or at least to prove that they were living in that flat from February 2012 to February 2019, the opposite party could have produced any other supporting evidence by calling local witnesses, which was not difficult for him as he is also a local person or was constructing the building there. Such an advantage is not available to the complainant because admittedly he was resident of Uttar Pradesh and also it is his case that he never stayed there and even he could not make a visit to the spot etc. So, the existence of the electricity bill in the name of the father of the complainant cannot effectively help the opposite party so much to prove licence.

12. Unlike a criminal proceeding a dispute in civil nature can be proved by preponderance probability. The consumer dispute is civil in nature and also be decided summarily. We cannot shut our eyes to the realities of life. The disputes should not be adjudicated mechanically. The nomenclature of the Act itself shows the intention of the legislature to protect the interest of consumers. Therefore, having considered the conduct of the parties as discussed above in foregoing paragraphs in this order the case of the complainant is found more trustworthy than that of the OP. All the points so discussed above definitely run counter to the case of the opposite party and at the same time it directly and indirectly supports the case of the complainant. The opposite party has miserably failed to defy the complainant's claim and failed to prove that those payments were made towards the licence fees. Thus this Commission finds those payments made by complainant to the O.P. for purchase of subject flat is more probable than payments towards the alleged licence fees.

13. Accordingly, it is held that the complainant has made payments of the entire consideration money to the O.P. for purchase of the subject flat and thereby is a consumer of the opposite party. It is also held that despite demand on behalf of the complainant the opposite party has failed or neglected to complete the sale process and thereby is guilty of deficiency in service. There is cause of action for filing this case and it is not barred by limitation or any other laws in force, this Commission has jurisdiction to entertain this case. So the case is maintainable.

Thus, all the point nos. 1 , 2 and 3 are decided in favour of the complainant.

Point nos. 4 & 5:

14. Both the point nos. 4 and 5 are taken together for discussion.

All the foregoing points have been decided in favour of the complainant. It has been established that as per verbal agreement for purchase of the subject flat, the complainant has made the entire payments of the consideration money to the opposite party but the opposite party has failed to complete the sale process in favour of the complainant. So, it is held that the complainant is entitled to get relief in this case.

15. Now, it is to be considered as to what relief or reliefs can be granted to the complainant. Save and except the fact that the complainant entered into a contract for purchasing the subject flat, the detail terms and conditions are not available. There is no written agreement. Apparently, in the subject building there are some other flats and common areas. No terms and conditions have been brought on records regarding use and enjoyment of said common areas and other amenities which are related or attached to the subject flat. In such a position no order can be passed regarding registration and delivery of possession of that flat as such order may not be executed. In this circumstances it would be proper and justified to refund the paid amount of Rs. 19,75,000/- along with banking interest to the complainant by the O.P. The complainant is also entitled to get compensation for harassment and mental agony. However, in the present case knowingly or unknowingly the complainant has some contribution to his own harassment and mental agony so also in incurring litigation cost etc. He is also responsible for arising this situation and that should to be taken into consideration in awarding the compensation etc.

Thus, both the point nos. 4 and 5 are decided.

Accordingly, the complaint case succeeds.

16. Hence, it is

o r d e r e d

that the complainant case being no. SC/19/CC/51/2020 is hereby allowed on contest with cost.

The opposite party is directed to refund the sum of Rs. 19,75,000/- (Rupees nineteen lakh seventy five thousand) to the Complainant along with interest @ 9% per annum accrued thereon with effect from the date of filing of this case till its realization.

The opposite party is also directed to pay sum of Rs. 30,000/- (Rupees

Thirty Thousand) to the complainant as litigation cost and a sum of Rs. 1,00,000 (Rupees One Lakh) to the complainant for mental agony and harassment.

The aforesaid directions shall be complied by the opposite party within 60 days from the date of this order failing which the complainant shall be at liberty to put this order into execution as per law.

Supply the copies of this order to the parties free of cost.

Office is to do needful.

.....
RAJES GUHA RAY
JUDICIAL MEMBER

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SANTANU SAHA
MEMBER