STATE CONSUMER DISPUTES REDRESSAL COMMISSION

WEST BENGAL

CONSUMER COMPLAINT NO. SC/19/CC/79/2024

SMT. KRISHNA SEN .....Complainant(s)
PRESENT ADDRESS - 3B, CHLOROPHYLL GARDEN, 22, G.C. GHOSH ROAD, POST OFFICE - LAKE TOWN, POLICE STATION - LAKE TOWN, KOLKATA -700048,WEST BENGAL.

Versus

SMT. PAPIYA BAKULY .....Opposite Party(s)
PRESENT ADDRESS - 22/1A, KANKURGACHI, 2ND LANE, POLICE STATION - PHULBAGAN, KOLKATA -700054,WEST BENGAL.
SRI TITTER BAKULY
PRESENT ADDRESS - 22/1A, KANKURGACHI, 2ND LANE, POLICE STATION - PHULBAGAN, KOLKATA -700054,WEST BENGAL.
SRI DARSHANA BAKULY
PRESENT ADDRESS - 22/1A, KANKURGACHI 2ND LANE, POLICE STATION - PHULBAGAN, KOLKATA -700054,WEST BENGAL.
SMT. MUKUL BOSE
PRESENT ADDRESS - 58B, RAMKANTA BOSE STREET, POLICE STATION - SHYAMPUKUR, KOLKATA -700003,WEST BENGAL.
SRI SANJIB MUMAR BOSE
PRESENT ADDRESS - 58B, RAMKANTA BOSE STREET, POLICE STATION - SHYAMPUKUR, KOLKATA -700003,WEST BENGAL.
SMT. SAGARIKA DUTTA
PRESENT ADDRESS - 58B, RAMKANTA BOSE STREET, POLICE STATION - SHYAMPUKUR, KOLKATA -700003,WEST BENGAL.
SMT. MINATI BOSE
PRESENT ADDRESS - 58B, RAMKANTA BOSE STREET, POLICE STATION - SHYAMPUKUR, KOLKATA -700003,WEST BENGAL.
SRI SOMDEV BOSE DASGUPTA
PRESENT ADDRESS - 58B, RAMKANTA BOSE STREET, POLICE STATION - SHYAMPUKUR, KOLKATA -700003,WEST BENGAL.
SMT. SOMALI GHOSH
PRESENT ADDRESS - 58B, RAMKANTA BOSE STREET, POLICE STATION - SHYAMPUKUR, KOLKATA -700003,WEST BENGAL.
SMT. AMA DASGUPTA
PRESENT ADDRESS - 58B, RAMKANTA BOSE STREET, POLICE STATION - SHYAMPUKUR, KOLKATA -700003,WEST BENGAL.
SRI SUBRATA CHAUDHURI
PRESENT ADDRESS - 43A, CHARKA DANGA ROAD, POST OFFICE -

UTTARPARA, POLICE STATION - UTTARPARA, DISTRICT -
HOOGHLY, PIN -712258,WEST BENGAL.

BEFORE:

HON'BLE MR. JUSTICE BIBHAS RANJAN DE , PRESIDENT
HON'BLE MRS. MRIDULA ROY , MEMBER

FOR THE COMPLAINANT: MADHUPARNA DEY (Advocate)

FOR THE OPPOSITE PARTY: NEMO

DATED: 20/08/2026

ORDER

HON'BLE MR. JUSTICE BIBHAS RANJAN DE, PRESIDENT

1. Invoking the protective mantle of Section 35(1)(a) of the Consumer Protection Act, 2019, this complaint comes before this Forum to address a profound deficiency of service, as statutorily defined and condemned within the ambits of Section 2 (11) of the Act, 2019.

2. This is a Consumer Complaint alleging inter alia that the Complainants entered into an agreement for sale on 4th February, 2019 with all opposite parties including the Developers as well as the land owners.

3. It is further alleged that earlier one intending purchaser entered into an agreement with the Developers and owners with respect to the subject flat on 25th September, 2010 but subsequently the said purchaser/Proforma Opposite Party No.11 herein declined to purchase the flat and one cancellation of agreement was entered into between the parties on 4th day of February, 2019 and the said agreement for sale dated 25.09.2010 was cancelled in terms of cancellation agreement.

4. It is alleged that all the earnest money along with interest was refunded to the Proforma Opposite Party No.11, earlier purchaser, by the complainant. It is further alleged that by the cancellation of agreement, both the agreements for sale as well as possession certificate issued in favour of the said Proforma Opposite Party No.11/earlier purchaser was cancelled. It is alleged that subsequently the complainant entered into an agreement for sale on 4th February, 2019 and in terms of the agreement, he paid entire amount of Rs.67 lakhs and possession certificate was issued in favour of the complainant. Thereafter, it is alleged that after taking possession of the subject flat, the complainant sent a letter to the

Developers/Opposite Party No.1-3 for execution & registration of the Deed of conveyance in favour of the complainant by an Advocate's letter dated 18.06.2024. But nothing was yielded and that is why complainants filed this consumer complaint seeking direction upon the opposite parties to execute and register the deed of conveyance in respect of subject flat and to hand over the copy of the completion certificate to the complainant alongside compensation to the tune of Rs.10 lakhs and litigation cost of Rs.1 lakh.

5. In spite of notice published in the newspaper, none appears on behalf of the Opposite Parties. The evidence was adduced by the complainants.

6. Heard the argument exparte.

ARGUMENT

7. Mr. Adnan Ahmed, Ld. Counsel, appearing on behalf of the Complainants, has drawn our attention to all the documents including cancellation of agreement for sale dated 25.09.2010 which was executed on 4th February, 2019 showing the end of relationship between the developer and earlier purchaser as well as the agreement for sale dated 4th day of February, 2019 between the parties of this Consumer Complaint.

8. Ld. Counsel appearing on behalf of the complainant, to fortify his argument with respect to subsequent purchaser, has relied on a case of M/s. Laureate Buildwell Private Limited vs. Charanjeet Singh reported in (2021) AIR (SC) 4229 wherein Hon'ble Apex Court handed down the following principles :

"...31. In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser can be entitled, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any – even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number – possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he

has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it. ..."

DECISION

9. Guided by the unwavering jurisprudential principles established by the Hon'ble Apex Court in M/s. Laureate Buildwell Private Limited (supra), this Forum finds itself duty bound, with no alternative path available, but to solemnly declare the complainant a "consumer" within the ambit of Section 2(7) of the Consumer Protection Act, 2019.

10. We have meticulously examined the cancellation agreement for sale dated 25.09.2010 as well as agreement for sale between the parties to this complaint case executed on the same date i.e., 4th February, 2019. It appears from the cancellation agreement dated 4th February, 2019 that the complainant of this case has agreed to purchase the said flat and garage and as a result, the complainant issued a Cheque No.573790 dt.04.02.2019 drawn on State Bank of India, Hatibagan Branch to the tune of Rs.62 lakhs in the name of earlier purchaser who inclined to relinquish the same and the rest amount was paid to the developers to satisfy the entire consideration amount of Rs.67 lakhs.

11. It is not in dispute that the complainant is in possession of the subject flat but in spite of communication through an Advocate's letter, opposite parties did not pay any heed by way of executing and registering the deed of conveyance in favour of the complainant till date.

12. The instant Consumer Complaint has been filed with the prayer seeking direction to the opposite party to execute and register deed of conveyance alongside compensation and litigation cost.

13. On careful scrutiny of the agreement for sale executed between the parties particularly Paragraph 9 manifests that draft deed of conveyance in respect of the subject flat will be prepared by the purchaser/complainant herein and send it to the owners and developers within one month from the date of execution of the agreement i.e., 04.02.2019.

14. On careful perusal of the Advocate's letter and other documents relied on behalf of the complainant, it appears that in spite of best efforts and on account of death of the original

developer, deed of conveyance could not be executed in favour of the complainant.

15. After considering the entire gamut of this case, we find that the complainant has entered into an agreement for sale with all the necessary parties in respect of a flat mentioned in the schedule to the Consumer Complaint and paid all consideration money of Rs.67 lakhs and he is also in possession of the property but deed of conveyance has not been executed and registered at the instance of the opposite parties.

16. In the aforesaid view of the matter, complainant is entitled to decree for necessary directions upon the opposite parties.

17. Accordingly,

it is

Ordered,

that

i) The Consumer complaint is allowed exparte.

ii) All the Opposite Parties being jointly and severally liable, are directed to execute and register the Deed of Conveyance in respect of the subject flat in favour of the Complainant alongside supply the copy of completion certificate to the Complainant.

iii) Opposite Parties are also directed to pay compensation to the tune of Rs.1 lakh and Rs.25,000/- towards litigation cost.

iv) All the directions shall be complied within Eight (08) weeks from the date of this order.

v) All connected applications, if there be any, stand disposed of being infructuous.

vi) Office to supply free copy of the Order to the parties.

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BIBHAS RANJAN DE
PRESIDENT

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MRIDULA ROY
MEMBER