STATE CONSUMER DISPUTES REDRESSAL COMMISSION

WEST BENGAL

CONSUMER COMPLAINT NO. SC/19/CC/354/2018

WITH

SC/19/IA/431/2024 (APPOINTMENT OF LOCAL COMMISSIONER)

Sri Dhruba Sen .....Complainant(s)
PRESENT ADDRESS - 57, S.N. Banerjee Road, Kolkata - 700 014.,WEST BENGAL.

Versus

M/s. Limra Construction .....Opposite Party(s)
PRESENT ADDRESS - Regd. office at 36B, Hara Krishna Konar Road, P.S. - Beniapukur, Kolkata - 700 014.,WEST BENGAL.
Fayaz Zia, partner, M/s. Limra Construction
PRESENT ADDRESS - 36B, Hare Krishna Konar Road, P.S. Beniapukur, Kolkata - 700 014.,WEST BENGAL.
Dilip Kr. Ghosh
PRESENT ADDRESS - 37C, Mott Lane, P.S. - New Market, Kolkata - 700 013.,WEST BENGAL.
Dibyendu Ghosh
PRESENT ADDRESS - 37C, Mott Lane, P.S. - New Market, Kolkata - 700 013.,WEST BENGAL.
Latika Ghosh
PRESENT ADDRESS - 37C, Mott Lane, P.S. - New Market, Kolkata - 700 013.,WEST BENGAL.
Reba Banerjee
PRESENT ADDRESS - 37C, Mott Lane, P.S. - New Market, Kolkata - 700 013.,WEST BENGAL.
Bela Ghosh
PRESENT ADDRESS - 37C, Mott Lane, P.S. - New Market, Kolkata - 700 013.,WEST BENGAL.
Chandan Ghosh
PRESENT ADDRESS - 37C, Mott Lane, P.S. - New Market, Kolkata - 700 013.,WEST BENGAL.
Smt. Chitra Sarkar
PRESENT ADDRESS - 37C, Mott Lane, P.S. - New Market, Kolkata - 700 013.,WEST BENGAL.

BEFORE:

HON'BLE MR. RAJES GUHA RAY , JUDICIAL MEMBER

HON'BLE MR. SANTANU SAHA , MEMBER

FOR THE COMPLAINANT: Mr.Janapriya Banerjee. (Advocate)

FOR THE OPPOSITE PARTY: Mr. M.M. Mohiuddin. (Advocate)

DATED: 29/10/2026

ORDER

Hon'ble Mr. Santanu Saha, Member

1. The present complaint was instituted on 18th May 2018 under Section 17 of the Consumer Protection Act, 1986, alleging deficiency in housing construction services. The complainant's grievance is that, despite payment of the entire agreed consideration of Rs.53,43,000/- the developer failed to construct and deliver the south-facing flat booked by him on the fourth or fifth floor of the proposed building at 57, S.N. Banerjee Road. The principal defence is that the complainant accepted a larger third-floor flat in substitution of the originally booked accommodation.

2. Opposite Party No. 1 is the developer firm. Opposite Party No. 2 is its partner and also the constituted attorney of Opposite Party Nos. 3 to 9, the landowners. The controversy principally turns upon the booking agreement dated 23rd May 2014, the developer's subsequent letter dated 22nd May 2016 and the complainant's handwritten endorsement upon that letter.

3. By the agreement dated 23rd May 2014, the complainant booked a south-facing flat on the fourth or fifth floor for Rs.53,43,000/-. The agreed accommodation was described as measuring approximately 780 square feet, comprising 600 square feet with an additional loading of 30% as super built-up area. The essential controversy concerns non-construction of the promised floors and the proposed substitution of a north-facing flat on another floor.

4. The consideration was paid in instalments between 23rd May 2014 and 22nd May 2016. Payment of the entire Rs.53,43,000/- is not disputed. The final instalment of Rs.3,43,000/- was paid on 22 May 2016. An instalment-wise payment schedule has not been produced. For the purpose of this adjudication, the interest claim is considered from 22nd May 2016, by which date the entire consideration admittedly stood paid.

5. The fourth and fifth floors were never constructed. The developer explains that the necessary sanction could not be obtained. By letter dated 22nd May 2016, it offered the complainant temporary accommodation in a third-floor flat, described as having approximately 640 square feet of carpet area and 832 square feet of super built-up area.

6. The letter assured the complainant that, after completion of the fourth and fifth floors, a south-facing flat conforming to the original agreement would be handed over. It also proposed that, if those floors were not constructed, the third-floor flat would be transferred to him upon payment of an additional Rs.3,56,200/- towards the additional area. Payment of the outstanding instalment of Rs.3,43,000/- was pleaded as an indication of willingness to accept the temporary accommodation.

7. The complainant endorsed his response upon that letter in his own handwriting. He accepted the accommodation temporarily, while expressly objecting that it faced north instead of south. He further stated that he did not agree to accept that flat permanently in ownership because it did not conform to the agreement dated 23rd May 2014.

8. Following payment of the final instalment, the complainant entered occupation of the third-floor flat. According to him, possession was delivered on 10th July 2016. The developer generally places occupation in May 2016. Both sides nevertheless agree that the complainant occupied the third-floor flat and that the originally promised accommodation remained unconstructed.

9. After waiting approximately twenty-one months, the complainant sent an objection dated 20th February 2018 by registered post. A further communication dated 2nd April 2018 requested delivery of the booked flat. According to the complainant, those communications were respectively not received and returned unclaimed. The complaint was thereafter instituted on 18th May 2018.

10. The complainant seeks delivery of the contracted accommodation or, alternatively, refund of Rs.53,43,000/- with interest at 18% per annum. He also claims Rs.20,00,000/- as compensation for harassment and mental anxiety and Rs.1,00,000/- towards litigation expenses. His contention is that temporary occupation never amounted to acceptance of permanent substitution.

11. Opposite Party Nos. 1 and 2 contend that the complaint is vexatious, discloses no cause of action, suppresses material facts and is outside this Commission's jurisdiction. They rely upon the complainant's use of the word "willingly" in his endorsement and submit that payment of the final instalment, followed by occupation of a larger flat, establishes acceptance of their proposal.

12. They further state that the complainant declined an earlier offer of refund and an alternative flat at another construction site. In the reply to the complainant's questionnaire, the developer expressed willingness to refund the consideration by selling the third-floor flat under the complainant's occupation. It also alleged non-cooperation concerning an offer to clean that flat at the developer's expense.

13. By order dated 12th October 2018, the proceeding was directed to continue ex parte against Opposite Party Nos. 3 to 9. Subsequently, the

complainant filed IA/431/2024 seeking protection against transfer or creation of third-party interests in the occupied flat. By order dated 9th July 2024, Opposite Party Nos. 1 and 2 were restrained from creating such interests until 27th August 2024, subject to the procedural compliance directed therein. The complainant filed an affidavit asserting compliance.

14. At the final hearing on 10th September 2026, Opposite Party Nos. 1 and 2 were absent. Having regard to their absence on several preceding occasions, the complaint was heard upon the complainant's submissions and the materials already on record including the pleadings, affidavit evidence, questionnaire, replies and written notes of argument. The defence already filed has been considered notwithstanding their absence. Equally, the ex parte status of the landowners does not dispense with proof of liability against them.

15. The prolonged pendency is attributable to disruptions during the COVID pandemic, changes in the Bench, workload and adjournments reflected in the proceeding. Those circumstances explain the delay in disposal but do not alter the parties' substantive rights.

16. The points arising for determination are whether this Commission has jurisdiction and the complaint is within limitation, whether the complainant accepted permanent substitution of the third-floor flat, whether failure to deliver the contracted accommodation constitutes deficiency in service, whether possession or refund is the appropriate remedy and what interest, compensation, costs and consequential directions should follow against the respective opposite parties.

17. The complaint was instituted under the Consumer Protection Act, 1986. Under Section 17(1)(a)(i), this Commission's original pecuniary jurisdiction extended to complaints where the value of the goods or services and compensation claimed exceeded Rs.20 lakh but did not exceed Rs.1 crore. The subsequent commencement of the 2019 Act does not displace the forum of a complaint properly instituted under the earlier enactment, as explained in Neena Aneja v. Jai Prakash Associates Ltd., Civil Appeal Nos. 3766–3767 of 2020, decided on 16 March 2021.

18. For valuation, the interest claimed as compensation must also be considered. That approach follows the larger Bench decision in Ambrish Kumar Shukla v. Ferrous Infrastructure Pvt. Ltd., Consumer Case No. 97 of 2016, decided on 7 October 2016, as applied in DLF Universal Ltd. v. Tarun Aggarwal, decided on 19 March 2018. The relevant valuation is that at institution, rather than an amount enlarged by subsequent accrual during pendency.

19. Taking the interest claim from the last payment date, 22nd May 2016, until institution on 18th May 2018, the interval is 726 days. At 18% simple interest per annum, calculated on a 365-day basis, interest upon Rs.53,43,000/- amounts to approximately Rs.19,12,940/-. The consideration and claimed interest, together with compensation of Rs.20,00,000/- aggregate approximately Rs.92,55,940/-. Even upon

including the claimed litigation expenses of Rs.1,00,000/- the total is approximately Rs.93,55,940/-. The valuation therefore exceeds Rs.20 lakh and remains below Rs.1 crore. The objection to pecuniary jurisdiction is, therefore, rejected.

20. The transaction concerns housing construction services hired for consideration and the property and the material construction obligations are situated within West Bengal. The dispute is accordingly within this Commission's subject-matter and territorial jurisdiction. Its contractual foundation does not exclude the statutory remedy for deficiency in service.

21. The complaint is also within limitation. The developer's letter dated 22nd May 2016 acknowledged that the booked accommodation remained undelivered and proposed temporary occupation pending performance. The complaint was instituted on 18th May 2018, within two years of that acknowledgment and arrangement. It is therefore unnecessary to treat the subsequent notices as restarting an otherwise expired limitation period. The first point is answered in favour of the complainant.

22. The question of substitution must be decided by reading the developer's letter and the complainant's endorsement together. The word "willingly" cannot be isolated from the express qualifications accompanying it. The complainant accepted temporary occupation while specifically declining permanent ownership of the offered flat. His objection concerned both its orientation and its departure from the original agreement.

23. Section 7 of the Indian Contract Act, 1872 requires acceptance to be absolute and unqualified, while Section 62 contemplates an agreed substitution or alteration of the original contract. Here, the written response establishes agreement to temporary occupation, but not permanent substitution. Conduct must be understood in that express contractual context.

24. Payment of the final instalment does not establish a different agreement. The developer itself sought Rs.3,43,000/- as the outstanding instalment towards the originally booked accommodation while offering temporary possession. Payment discharged the complainant's obligation under the original bargain and satisfied the condition for temporary occupation. It cannot reasonably be converted into acceptance of a permanent arrangement which he expressly rejected in writing.

25. Continued occupation likewise does not establish waiver in the circumstances. The developer retained the entire consideration, and the complainant remained without the contracted accommodation. No subsequent agreement accepting permanent substitution, payment of the additional Rs.3,56,200/- or other unequivocal abandonment of his original entitlement has been established.

26. The developer's emphasis upon the larger area of the third-floor flat does not answer the objection. Floor and orientation may materially influence a purchaser's choice. The developer was entitled to propose

alternative accommodation, but its assessment that the alternative was larger did not empower it to impose that accommodation as final satisfaction. The second point is answered against Opposite Party Nos. 1 and 2.

27. As regards deficiency, receipt of the entire consideration and non-construction of the promised floors are admitted. The developer attributes non-performance to inability to secure sanction. No material establishes an agreement permitting indefinite retention of the complainant's money upon that contingency or requiring him to accept a different flat permanently.

28. This Commission cannot direct construction contrary to municipal law or compel the competent authority to grant sanction. Nevertheless, the inability to secure sanction does not permit the developer to retain the full consideration indefinitely without delivering the contracted accommodation or making an effective refund. Temporary accommodation mitigated an immediate residential difficulty, it did not discharge the original obligation.

29. The allegations of suppression and vexatious litigation remain unsubstantiated. The complainant himself produced the letter and endorsement upon which the developer relies. The essential transaction, payment, occupation and continuing non-construction have been disclosed. The precise postal status of the notices is not decisive because the breach is independently established.

30. The alleged earlier offers of refund or accommodation elsewhere do not establish discharge. No completed refund, concluded settlement or effective tender restoring the complainant's money has been proved. Refusal to purchase accommodation at another site does not amount to refusal of performance of the original agreement.

31. The developer's willingness to refund only after selling the occupied flat is also insufficient. Repayment cannot depend upon its ability to identify another purchaser and conclude a future sale. The allegation concerning cleaning of the flat has no material bearing upon the failure to deliver the booked accommodation or refund the consideration. Deficiency in service is established against Opposite Party Nos. 1 and 2.

32. Delivery of the fourth- or fifth-floor flat is not an appropriate executable remedy when the necessary sanction was not obtained and those floors remain unconstructed. A further direction dependent upon uncertain approval would expose the complainant to indefinite waiting. The alternative prayer for refund must therefore be granted.

33. In Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor, Civil Appeal Nos. 6044 and 7149 of 2019, decided on 7 April 2022, the Supreme Court recognised the consumer forum's power to grant refund with appropriate compensation for failure to deliver agreed accommodation, including where possession and refund are claimed alternatively. That principle supports refund here, while the rate of interest must reflect this case's particular circumstances.

34. Refund must be accompanied by restoration of the temporary flat. The complainant cannot recover the entire purchase consideration and retain occupation indefinitely. Conversely, requiring him to vacate before repayment is secured would expose him to further prejudice. Payment and surrender must therefore be coordinated.

35. The refundable principal is Rs.53,43,000/-. No forfeiture or cancellation deduction is justified because the transaction failed through the developer's non-performance. The proposed additional price of Rs.3,56,200/- related to permanent transfer of the third-floor flat, which was never agreed. It is neither recoverable from the complainant nor deductible from the refund.

36. The absence of an instalment-wise schedule does not prevent an award of interest. The entire consideration admittedly stood paid by 22nd May 2016. Consistently with the basis upon which the interest claim is considered, that date shall be adopted as the commencement date for compensatory interest on the entire principal. No interest is awarded for the earlier instalment periods.

37. Interest at 18% throughout would be excessive in view of the complainant's enjoyment of temporary accommodation. A fair award is simple interest at 9% per annum from 22nd May 2016 until commencement of occupation, and at 7% per annum during occupation. This recognises both deprivation of the purchase money and the residential benefit actually received.

38. For that calculation, 10th July 2016 is accepted as the commencement of occupation. The developer's general assertion of occupation in May 2016 is not supported by a specific possession acknowledgment displacing the complainant's stated date. The letter dated 22nd May 2016 establishes the offer and payment arrangement, it does not by itself establish physical delivery on that date.

39. Accordingly, interest shall run at 9% per annum on Rs.53,43,000/- from 22nd May 2016 to 9th July 2016 and at 7% per annum from 10th July 2016 during continued temporary occupation until payment or a valid deposit under the directions below. If vacant possession is voluntarily surrendered earlier, interest shall thereafter run at 9% per annum on the unpaid principal until payment or valid deposit. The periods shall not overlap and interest shall remain simple.

40. The reduced rate during occupation accounts for the benefit of accommodation. No additional deduction for notional rent or occupation charges is therefore warranted for that same period. Actual utility consumption charges and ordinary maintenance lawfully attributable to the complainant's occupation remain distinguishable and payable to the extent established.

41. The compensatory interest addresses the established deprivation and inconvenience, with an adjustment for accommodation received. The evidence does not justify the further claim of Rs.20,00,000/-. No separate lump-sum compensation is awarded for the same injury.

Litigation costs of Rs.100,000/- are, however, reasonable in the circumstances.

42. Opposite Party No. 1 is liable as the developer firm which received the consideration and undertook performance. Opposite Party No. 2 is its partner and participated in the transaction. His monetary liability arises in that capacity, rather than merely as attorney of the landowners. Under Section 25 of the Indian Partnership Act, 1932, he is jointly and severally liable for the relevant acts of the firm done while he was a partner.

43. The ex parte status of Opposite Party Nos. 3 to 9 does not establish an independent monetary obligation. The materials identified do not prove receipt by them of the consideration or an undertaking rendering them jointly liable for the refund. The substantive monetary prayers are directed against Opposite Party Nos. 1 and 2. No personal monetary liability is therefore imposed upon the landowners. Any independent accounting or indemnity dispute between them and the developer remains outside this adjudication.

44. The interim restraint dated 9th July 2024 was expressly limited until 27th August 2024. In the absence of an identified extension, its indefinite continuation cannot be presumed. The protective directions now made arise independently from this final adjudication and are intended to preserve the effectiveness of the refund and surrender arrangement.

45. For the foregoing reasons, the complaint is allowed in part against Opposite Party Nos. 1 and 2 on contest and disposed of against Opposite Party Nos. 3 to 9 without imposition of personal monetary liability upon them.

46. Opposite Party Nos. 1 and 2 shall, jointly and severally, refund Rs.53,43,000/- together with simple interest at 9% per annum from 22nd May 2016 to 9th July 2016 and thereafter at 7% per annum from 10th July 2016 until payment subject to the adjustment directed in paragraph 39 if possession is surrendered earlier. They shall additionally pay Rs.100,000/- towards litigation costs.

47. The monetary directions shall be complied with within ninety days from the date of this judgment. The developer's obligation shall not be conditional upon sale of the third-floor flat or any other property.

48. Within that period, the parties shall complete payment and simultaneous surrender of vacant possession through a written exchange acknowledgment recording the sum paid and delivery of possession and keys. The complainant shall not be required to surrender possession before payment is secured.

49. The complainant shall not prolong occupation of the third floor flat beyond the period allowed following a valid deposit. Any failure to surrender, or failure by Opposite Party Nos. 1 and 2 to comply with their corresponding obligations, may be addressed in execution in accordance with law.

50. Until completion of refund and surrender, Opposite Party Nos. 1 and 2 shall not create any third-party interest in the third-floor flat temporarily occupied by the complainant or disturb his possession otherwise than through lawful process. The complainant shall likewise not transfer, sublet or part with possession to a third party. This direction does not confer ownership upon him or declare a charge upon the property and shall cease upon completion of the exchange.

51. Upon completion of refund and surrender, the booking transaction and the temporary accommodation arrangement shall stand discharged, save for obligations expressly preserved by this judgment. No conveyance of the third-floor flat in favour of the complainant is directed.

52. The prayer for delivery of the unconstructed fourth- or fifth-floor accommodation and the remaining monetary prayers are refused to the extent indicated above. IA/431/2024 and other pending applications, if any, stand disposed of in terms of these final directions. Non-compliance may be addressed in execution under the applicable provisions of law.

53. Let a copy of this judgment be supplied to the parties free of cost in accordance with law.

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RAJES GUHA RAY

JUDICIAL MEMBER

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SANTANU SAHA

MEMBER