

HARYANA STATE AGRICULTURAL MARKETING BOARD & ANR. V. M/S. KASTURI LAL VAJINDER KUMR & KANTA RANI

**Haryana State Agricultural Marketing Board & Anr. Vs. M/S
Kasturi Lal Vajinder Kumar & Kanta Rani**

1. HARYANA STATE AGRICULTURAL MARKETING
BOARD & ANR.

THROUGH ITS CHIEF ADMINISTRATOR. MANDI'
BHAWAN, C-6, SECTOR-6.

PANCHKULA.

2. MARKET COMMITTEE.

THROUGH SECTRATARY-CUM-EO. SECTOR-20.

PANCHKULA

.....Appellant(s)

Versus

1. M/S. KASTURI LAL VAJINDER KUMR & KANTA RANI

THROUGH ITS AUTHORIZED PERSON, RAJAN GOYAL

AUTHORIZED VIDE SPECIAL POWER OF ATTORNEY

DATED 14/6/2017 & 21/6/2017. W/O. SH. SH. VAJINDER

KUMAR. R/O. GH-4A, FLAT NO.4604, SECTOR-20.

PANCHKULA.

.....Respondent(s)

Case No. : FIRST APPEAL NO. 1109 OF 2019

Date of Judgement: 05 December 2023

Judges : DR. INDER JIT SINGH

**For Appellant : MR. NEELAABH BIST, PROXY COUNSEL FOR
MR. AABHAS KSHETARPAL, ADVOCATE**

For Respondent : MR. MUKUND GUPTA, ADVOCATE

Facts:

- *Complainant applied for a shop by depositing Rs. 3,75,400 with the OPs (Appellants) for livelihood purposes*
- *OPs confirmed allotment and asked to deposit 15% more amount, which complainant paid*
- *Total amount deposited by complainant over time was Rs. 16,40,400*
- *Area of shop reduced from 537 sq ft to 480.833 sq ft*
- *Location of shop changed to last row at the back of the mall in the revised site plan*
- *Construction not completed even after 8 years from site plan approval*

Arguments by Appellants:

- *Respondent has no locus standi to file complaint*
- *No irregularity in actions of Appellants*
- *Balance payment not made by Respondent*
- *Delay in payments by Respondent*
- *Failure to surrender plot as per rules to claim refund*
- *Shop sold on 'as is where basis', no assurance given*

Arguments by Respondent:

- *Delay of over 8 years in delivery of possession*
- *Changes made unilaterally in area and location of shop*
- *Refund should be allowed of deposit amount*

Court's Opinions:

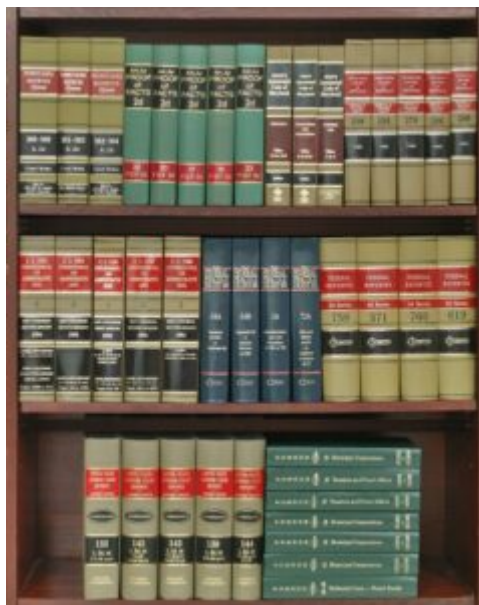
- *Delay in filing appeal condoned*

- *Relying on SC judgments, interest rate modified to simple interest @9% p.a.*
- *Directions issued to refund amount with interest and pay litigation costs*

Referred Laws and Sections:

- *Section 19, Consumer Protection Act 1986*
- *Rule 5A, Haryana State Agricultural Marketing Board (Sale of Immovable) Rules 2000*
- *Referenced SC Judgments:*
 - *M/s Fortune Infrastructure v Trevor D'Lima*
 - *Experion Developers v Sushma Ashok Shiroom*

So in summary, court upheld contentions of the Respondent regarding refund, while modifying interest rate and costs based on precedents. Appellants directed to refund deposit amount with interest and pay litigation costs.



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Full text of Judgement :

1. The present First Appeal (FA) has been filed by the Appellants against Respondent as detailed above, under section

19 of Consumer Protection Act 1986, against the order dated 31.01.2019 of the State Consumer Disputes Redressal Commission Haryana (hereinafter referred to as the 'State Commission'), in Complaint No. 395 of 2017, inter alia praying for setting aside the order dated 31.01.2019 of the State Commission.

2. The Appellants were OPs and the Respondents were Complainants in the said Complaint No. 395 of 2017 before the State Commission. Notice was issued to the Respondent on 18.07.2019. Parties filed Written Arguments/Synopsis on 16.08.2022 and 31.08.2022 respectively. The FA has been filed with a delay of 107 days as per calculations made by the Registry, although in the condonation of delay application, period of delay mentioned is 105 days. Delay in filing the FA is condoned after considering the reasons stated in the condonation of delay application.

3. Brief facts of the case, as emerged from the FA, Order of the State Commission, and other case records are that Complainant applied for shop with OPs by depositing Rs.3,75,400/- for the purpose of earning their livelihood. Vide letter dated 19.11.2008, the OPs confirmed allotment on the application and asked the complainant to deposit 15% more amount i.e. Rs.5,65,000/- which was deposited by the complainant. The tentative sale price of the shop was Rs.37,62,600/-. The offer of possession was given to the complainant after completion of payment i.e.25%. There was no sign of construction on the site. The complainant met official of OPs who told him that approval would soon be taken and construction will start soon. The site plan has been approved on 30.09.2011. After passing of more than 8 years, OP issued letter of possession. The area of shop was reduced from 537 sq. ft to 480.833 sq. ft. In total, the complainant deposited an amount of Rs.16,40,400/-. The OPs intimated the complainant that location of the numbers of the shops of Agro Mall has been changed as the site plan has been revised and as per the new site plan, the shop in question was placed / earmarked in

the last row of the back of said Agro Mall. The scheduled time for completion of work was upto 28.03.2013 i.e. within 18 months of the approval but till date the OPs have not delivered the possession. Being aggrieved, the Complainant filed complaint before the State Commission and State Commission vide order

dated allowed the complaint with certain directions. Hence, the OPs are before this Commission now in the present FA.

4. Appellants have challenged the said Order dated 31.01.2019 of the State Commission mainly on following grounds:

i. Respondents did not have the locus standi to maintain the complaint and respondent is a commercial entity and not a consumer under the Consumer Protection Act, 1986. Complaint is also not maintainable.

ii. No irregularity was brought on record by the Respondent to show any irregularity on the part of the Appellants.

iii. The balance amount i.e. 75% was to be paid within 60 days from the date of issue of allotment letter or in six half yearly instalments with interest @ 15% p.a., which was not done.

iv. Due date for payment of instalment was upto 15.05.2022 and this was not followed.

v. Condition no.5 of the allotment letter was not looked into by the State Commission, wherein it was made clear that in case of failure to deposit the instalments in time, penal interest @ 4% p.a. to be compounded half yearly shall be charged in addition to the normal interest and further it is mentioned that in case of default of two successive instalments, the shop / office space, constructed, shall be resumed by the Market Committee after giving the applicant an opportunity of being heard.

vi. State Commission failed to observe that Note No.1 in the

brochure expressly stated that number of shops / cabin and size of shops / cabins/floors is tentative and can be changed as per requirement.

vii. Even State Commission failed to appreciate that Note No.3 in brochure expressly stated that possession of shops /cabin / floors to successful applicant shall be given on the completion of construction activities.

viii. Condition no.3 of the allotment letter stated that the area and No. shown above are given in respective plan area are subject to variation at the time of actual possession.

ix. State Commission failed to appreciate that in terms of condition no.4 of the allotment letter that as a part from resumption referred to in Condition no.5 of the Allotment letter, an amount of 10% of the total cost of the shop shall be forfeited alongwith interest and other dues, if any, payable by the allottee, from the amount already deposited by him.

x. It has been admitted that allotment was issued to the respondents on 16.05.2009 and possession of site was offered to the respondents on 02.04.2016.

xi. State Commission failed to appreciate that Rule 5A of the Haryana State Agricultural Marketing Board (Sale of Immovable) Rules, 2000 states that 'if any plot holder wishes to surrender the plot, the Market Committee shall accept the surrender of plot and will refund the deposited amount after deducting ten percent of the cost of the plot and due payable interest. For the purpose of calculation of interest, the date of application of surrender shall be deemed to be the date of surrender" and if respondent wanted to seek a refund, he was required to seek the same in terms of Rule 5A.of the Rule.

xii. Respondent failed to disclose any cause of action for filing the complaint and shop was sold on 'as is where is' basis and no assurance was given by the Appellant.

xiii. Respondent under the garb of present complaint had instituted a suit for recovery beyond period of limitation and that too without appropriate court fee as per law and before the forum which is not a civil court.

5. Heard counsels of both sides. During the hearing on 27.09.2023, respondent brought the notice of the Bench an order dated 18.09.2023 of this Commission passed in FA No. 829 of 2019 and requested that present FA be disposed of in terms of this order. Counsel for the Appellant also fairly agreed to this suggestion.

6. State Commission vide order dated 31.01.2019 had allowed / disposed off the CC with following directions:

"... The O.P.s are directed to refund of the amount of Rs.16,40,400/- alongwith interest @ 12% per annum from the date of respective deposits and till realization. In case, there is a breach in making payment within the stipulated period of three months, in that eventuality, the complainant would further be entitled to get the interest @ 18% per annum, for the defaulting period. The complainant is also entitled of Rs.2,00,000/- for compensation of mental agony and physical harassment. In addition, the complainant is also entitled of Rs.21,000/- as litigation charges. It is also made clear that for non-compliance, the provisions enshrined under section 27 of the C.P.Act would also be attractable."

7. In FA No. 829 of 2019 also the same State Commission in a similar case has passed similar orders, allowing refund @ 12% p.a. along with compensation and litigation costs. This FA was disposed off by a Coordinate Division Bench of this Commission on 18.09.2023. Relying on observations of Hon'ble Supreme Court in M/s Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. Vs. Trevor D'Lima and Ors., Civil Appeal No(s).3533-3534 of 2017 decided on 12.03.2018 and Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor in Civil Appeal No. 6044 of 2019 decided on 07.04.2022, the said FA was allowed by modifying the order of State Commission with

respect to interest, compensation etc. As both the parties are agreeable to dispose off the present FA also, which contain similar facts and same OP in terms of order of this Commission in FA No. 829 of 2019 dated 18.09.2023, this FA is disposed off with following directions.

a. The Appellants shall refund the amount of Rs. 16,40,400/- to the Complainant / Respondent along with simple interest @ 9% per annum from the respective dates of deposit till the date of actual payment, within a period of one month, from the date of this order. In the event of default, the amount payable shall carry interest @ 12% per annum from the date of expiry of one month till the realization of the entire amount.

b. The Appellants shall pay cost of litigation quantified as Rs.21,000/- to the Complainant / Respondent within one month from the date of this order.

8. First Appeal is disposed off accordingly.

9. All the pending IAs in the case, if any, also stand disposed off.

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