

**(2012) 05 NCDRC CK 0008**

**In the National Consumer Disputes Redressal Commission**

Kishori Lal Bablani

APPELLANT

Vs

Aditya Enterprise

RESPONDENT

**Date of Decision :** 29-05-2012

**Acts Referred:**

**Citation :** 2012 0 NCDRC 174 : 2012 2 CPJ 682 : 2012 2 CPR 494

**Hon'ble Judges :** R.C.JAIN , S.K.NAIK J.

**Advocate :** S.K.SHARMA

## **Judgement**

1. THE above-named complainant has filed the present complaint alleging deficiency in service and adoption of unfair trade practice by the opposite party-builder in not handing over the possession of the agreed flat no.705-B, VIIth Floor measuring 1393 sq. ft. at Pranik Chambers, Saki Naka, Saki Vihar Road, Mumbai by the stipulated period of 13.12.2006 or till date despite having received the full consideration of the flat amounting to Rs.40,75,000/-. The complainant has claimed the following reliefs: "i. Deliver the possession of premises at 705-B, 7th Floor, "Pranik Chambers ", Saki Vihar Road, Saki Naka, Andheri ( E), Mumbai to the complainant, forthwith. ii. to charge outgoings for the premises only from the date of delivery of the possession of the said premises. iii. to pay interest @ 24% to the complainant on the instalments paid by the complainant on 25.08.2006 from 31.12.2006 (promised date of delivery of possession as per clause 10 of the agreement for sale) till the date of actual delivery of possession of the premises and to pay interest @ 24% to the complainant on the instalments paid by the complainant on 04.08.2007 and 24.10.2011 from the date of payment till the date of delivery of possession of the premises for the opportunity loss. iv. To pay Rs.15,00,000/- ( Rupees Fifteen Lakhs only) to the complainant for causing mental stress, torture and towards advocate "s fee etc. v. Pass an order directing the opposite parties to complete the construction work of the building immediately and form a Co-operative Society of the purchasers so as to hand over possession of the building to the Society and forthwith transfer the conveyance of the property in the name of the said Co-operative Society. vi. Any other or further relief(s) which this Hon "ble

Forum may be pleased to grant in favour of the complainant in view of the facts of the above case ".

2. WE have heard Mr.S.K.Sharma, learned counsel representing the complainant on the question of maintainability of the present complaint before this Commission particularly on the aspect as to whether this Commission has the pecuniary jurisdiction to entertain and try the present complaint because as per the complainant 's own showing, the total consideration/price of the flat in question is Rs.40,75,000/-. However, in the paragraph 47 of the complaint, it has been averred that this Commission has the jurisdiction to entertain the complaint as the value of the claim in the present complaint is above Rs.1,00,000,00/- as per the property index certificate in the Government Ready Reckoner according to which going by the built up area of the premises i.e. 1393 sq.ft, the present market value for calculating the stamp duty and registration fees payable to the Government of Maharashtra as circulated by the Chief Controlling Revenue Authority of Maharashtra is Rs.1,17,89,511/-. That apart, it is submitted that complainant has suffered mental agony as he has not been able to start his earning through self employment because opposite party has not delivered the possession of the flat in question. Taking the averments and allegations made by the complainant in regard to the deficiency in service allegedly committed by the opposite party-builder on their face value and assuming that complainant may be able to establish the same one day, still the question is as to whether the present Commission is the proper consumer fora for adjudicating consumer dispute raised by the complainant in the present complaint. Our answer is big "No " because as per the complainant 's own showing, the price of the flat in question, possession of which was not delivered to the complainant within the stipulated period or even thereafter is Rs.40,75,000/-. The complainant in the present case is seeking possession of the said flat and, therefore, for all intent and purposes, value of the flat in question should be considered as the same on which the complainant had agreed to purchase the flat . However, Mr. Sharma on the strength of ready reckoner laying down the computation of market value for the purpose of calculating the stamp duty and registration fee issued by the Chief Controlling Revenue Authority of Maharashtra strongly contends that present value of the flat is more than Rs.1,00,000,00/- and, therefore, it is this value which should be taken into account while deciding the issue of pecuniary jurisdiction. We are unable to accept this contention because various authorities may adopt different criteria for different purposes for the purpose relatable to the said authority. The circular issued by the Chief Controlling Revenue Authority of Maharashtra may, therefore, be relevant for the purpose of computing the stamp duty and registration fee payable on the sale / conveyance deed of the property situated in different areas of Mumbai and other places but it cannot supercede the value at which the complainant has purchased flat in question. As noted above, the complainant mainly seeks the possession of the flat in question which he purchased at a price of Rs.40,70,000/- besides some interest and compensation. We are, therefore, of the considered opinion that valuation of the

claim made by the complainant cannot in any case exceed Rupees One crore. As per the provisions of Consumer Protection Act, 1986, a complaint where claim is upto Rupees One crore, is to be filed before the State Commission having jurisdiction in the matter. We, therefore, hold that this Commission has no pecuniary jurisdiction to entertain and try the present complaint.

3. IN the result, complaint is ordered to be returned to the complainant for presentation before the appropriate State Consumer Forum, if so advised. If the complaint is filed the period taken in these proceeding before this Commission from the date of filing of the complaint till the date of communication of this order shall be excluded for the purpose of computation of limitation in filing the complaint. Ordered accordingly.