

---

**(2017) 05 NCDRC CK 0029**

**In the National Consumer Disputes Redressal Commission**

**Case No : 476 of 2017**

M/S. CITI GREEN FARMS (P) LTD.

APPELLANT

Vs

RISHIKESH BORKOTOKY S/O. D.C. BORKOTOKY

RESPONDENT

---

**Date of Decision : 16-05-2017**

**Acts Referred:**

<a href=3999>Consumer Protection Act, 1986</a>, <a href=3999-19>Section 19</a> - Appeals

**Citation : (2017) 05 NCDRC CK 0029**

**Hon'ble Judges : D.K. Jain, M. Shreesha**

**Advocate : Charudatta Mahindra Kar**

**Final Decision : Appeal Dismissed**

---

## **Judgement**

1. This First Appeal, under Section 19 of the Consumer Protection Act, 1986 (for short "the Act"), by a Real Estate Developer, namely, M/s Citi Green Farms (P) Ltd., is directed against the order dated 07.11.2016, passed by the Karnataka State Consumer Disputes Redressal Commission at Bengaluru (for short "the State Commission") in Complaint Case No. 131 of 2013. By the impugned order, the State Commission has partly allowed the Complaint, preferred by the Respondent/Complainant, directing the Appellant herein to refund to the Complainant a sum of 75.00 Lakhs, deposited by him, with interest @ 12% p.a. from the date of receipt of the said amount till payment, besides 1,00,000/- as compensation and 25,000/- as litigation costs, within eight weeks from the date of receipt of a copy of the said order.

2. The circumstances, necessitating filing of the Complaint are as follows: 2.1 Pursuant to the launch of a project, christened as "CG Garden Villas" by the Appellant, offering Villas in Ramadevavara Village, Chikkaballapur District, on 16.09.2010 an agreement to sell was entered into between the Complainant and the Appellant in respect of Villa No. 180, admeasuring 4400 sq. ft. As against the sale consideration of 2.00 Crores of the said Villa, the Complainant had paid a sum of 75.00 Lakhs to the Appellant at the time of entering into the said

agreement. Though the Complainant was willing to pay the balance sale consideration but till the date of filing of the Complaint the construction work was not started by the Appellant. When the Complainant approached the Appellant for delivery of physical possession of the Villa, he was told that the construction work would start shortly. In this way, though the Complainant had paid almost 40% of the total sale consideration to the Appellant but possession of the Villa in question was not delivered to him. The Complainant issued a legal notice to the Appellant, requesting either for delivery of possession or refund of the amount deposited by him, with damages etc. However, the said notice did not evoke any response from the Appellant.

2.2 In the said background, alleging deficiency in service on the part of the Appellant on the aforesaid counts, the afore-noted Complaint came to be filed before the State Commission, praying for a direction to the Appellant to pay to him a total sum of 98.00 Lakhs with interest @ 12% p.a.

3. Upon notice, the Appellant contested the Complaint by filing its Written Version.

4. On appreciation of the material available before it, the State Commission, as noted above, partly allowed the Complaint and issued the afore-noted directions to the Appellant, observing thus:

"18. On perusal of the photograph Ex-C12 filed by the complainant it is seen that not only site No. 180 is a barren land, but, the entire area looks like a barren land, except the model house constructed at the time of launching the project, there is no construction activities seen in the area. In the circumstances, the contention of the complainant that the VILLA is not constructed and as such there is deficiency in service on the part of OP will have to be accepted and the complainant is entitled for refund of the amount paid by him with interest. As already stated supra, though it is pleaded by the OP that almost 80% of the construction work is completed, except producing the brochure of the project, OP has not produced any documents in proof of carrying out the construction work. In the circumstances, the evidence adduced by the complainant stating that OP did not start any construction work activities of any VILLA in the said area will have to be accepted. Thus considering the documents filed by the complainant including the photographs and also payments made by the complainant amounting to Rs.75,00,000/-, it is held that OP committed deficiency in service in not commencing the construction work of VILLA as promised in the agreement."

5. Hence, the present Appeal.

6. It is pointed out by the office that the Appeal is barred by limitation, inasmuch as there is a delay of 85 days in filing the same. An Application, praying for condonation of the said delay, has been filed along with the Appeal. In paragraphs 4 & 6 of the said Application, the Appellant has furnished the following explanation:

"4. The Appellant's CMD was not well due to his old age and health problems, due to which he was unable to travel to Delhi and engage a counsel for the purpose of filing the instant Appeal. That the Counsel engaged by the Appellant also couldn't file the same at the earliest due to his marriage and as he had to travel from Bengaluru to Delhi after his marriage on 06.02.2017.

6. The Appellant came to know about the order sheet only by first week of December 2016 hence could not contact the Counsel for filing of the Appeal in Delhi and had to make travels to Delhi from Bengaluru. The Appellant contacted a Counsel for filing of the Appeal, he was informed that the documents are in vernacular language and to assist the Hon"ble Court the same had to be translated and typed and hence there is a delay."

7. In our opinion, the explanation furnished by the Appellant is absolutely unsatisfactory.

8. The Appellant was duly represented by his Counsel before the State Commission. On pronouncement of the final order in the Appeal on 07.11.2016, free certified copy of the impugned order was issued to the Appellant on 21.11.2016. For the sake of argument even if it is assumed that the Appellant had learnt about the impugned order in the first week of December, 2016, bearing in mind the fact that a limited statutory period of 30 days, as provided under Section 19 of the Act, was available to it for challenging the said order and heavy monetary liability had been fastened upon it by the State Commission, the Appellant was required to file the Appeal before this Commission promptly, but it took more than 100 days in filing the same. If the CMD of the Appellant Company was not able to travel to Delhi and engage a Counsel for filing the Appeal, as pleaded in the Application, he could have filed the same by authorizing somebody on behalf of the Company, an independent juristic person. The plea relating to the health of the CMD of the Appellant Company also does not inspire any confidence as no documentary evidence in this behalf has been filed. It seems that the Appellant has nothing to say as regards delay and is only interested in protracting the matter on one pretext or the other in order to delay the refund of the money received from the Complainant as far back as in the year 2010.

9. In view of the above, we have no hesitation in holding that the Appellant has failed to make out any cause, much less a "sufficient cause" for condonation of an inordinate delay of 85 days in filing the present Appeal. We are convinced that in case the said delay in the present case is condoned, the Complainant would be put to untold harassment and mental agony for being deprived of his money as well as the Villa booked by him in the year 2010. Accordingly, we decline to condone the said delay.

10. In coming to the aforesaid conclusion, we have also kept in view the observations of the Hon"ble Supreme Court in Anshul Aggarwal vs. New Okhla Industrial Development Authority [(2011) 14 SCC 578], to the effect that while

deciding an application for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Act for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if belated petitions filed against the orders of the Consumer Foras are entertained.

11. Consequently, the Appeal is dismissed on the short ground of limitation.