

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8191 OF 2019

RAJEEV SAINI & ORS.

APPELLANT(S)

VERSUS

M/S. OMAXE BUILDHOME LIMITED & ORS.

RESPONDENT(S)

O R D E R

This appeal arises from the Judgment and Order dated 17.09.2019 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short 'the Commission') dismissing the complaint filed by the appellants herein. The appellants approached the Commission with a grievance that the respondent no. 1 has failed to execute the conveyance deed of the flats/units allotted to them as it failed to obtain the occupancy certificate. When the matter was heard on 04.01.2022, the following order was passed:-

*"Mr. Sukumar Pattjoshi, learned senior counsel appearing for respondent no. 1- M/s. Omaxe Buildhome Limited, submits that the occupancy certificate, in respect of the flats in question, had been issued but was kept in abeyance on*

account of non payment of Rs. 30,00,00,000/- (Rupees thirty crores), 2 demanded by the respondent No.3 - Greater Noida Industrial Development Authority, towards extension charges, from respondent no.1.

Mr. Sukumar Pattjoshi, learned senior counsel further submits that respondent no. 1 has challenged the said demand of Rs. 30,00,00,000/- (Rupees thirty crores) by the respondent No.3 - Greater Noida Industrial Development Authority towards extension charges before the Allahabad High Court by way of filing Writ Petition No. 33074 of 2019 which is pending.

It is further submitted that pursuant to the Order dated 24.10.2019 passed by the High Court W. P. No. 33074 of 2019, a sum of Rs.5,00,00,000/- (Rupees five crores) has already been deposited by respondent no. 1 as a condition precedent for grant of stay of revenue recovery certificate amounting to Rs. 30,00,00,000/- (Rupees thirty crores).

There is no bar for the respondent no. 1 to deposit the entire amount of Rs.30,00,00,000/- towards extension charges with respondent No.3 subject to the result of the Writ Petition pending before the High Court and execute the conveyance deed in favour of the petitioners, after obtaining occupancy certificate.

Mr. Sukumar Pattjoshi, learned senior counsel appearing for respondent no. 1 seeks time to take instructions 3 in this regard. List after two weeks on a non misc. day In the meantime, parties are at liberty to file additional affidavit/documents."

Today, the respondent no. 1 represented by Ms. Upasana Chandrashekar, when questioned, has made a statement before us that respondent no. 1 is not ready to deposit

the dues towards extension charges with respondent no.3-  
the Authority.

In such view of the statement made on behalf of  
respondent no. 1, we have proceeded to hear the learned  
counsel for the parties on merits.

The complaint was dismissed by the Commission vide  
slip short order on the two grounds, namely, that though  
the appellants (complainants) had taken possession of the  
flat way back in the year 2015 but has not disclosed the  
fact and thus, are guilty of concealment and secondly, on  
the ground of limitation since the complaint has been  
filed after about four years.

Learned counsel for the appellant referring to the  
pleadings of the parties before the Commission has pointed  
out that the fact that possession was only handed over for  
fit out purposes was clearly pleaded in the complaint, and  
the Commission has wrongly stated and the fact has been  
concealed. It was further submitted that the possession  
for fit out purposes without the occupancy certificate  
cannot be treated as possession in the eyes of law. It is  
further submitted that the Commission has also wrongly  
held that the complaint was barred by limitation inasmuch  
as no legal possession has been handed over to the  
appellants and thus, it is a continuing cause of action,

and since, the cause of action is founded on a continuing wrong, the complaint is within the limitation. Reliance in support of the contention has been placed on the judgment of this Court in the case of '*Samruddhi Co-operative Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction Pvt. Ltd., (2022) 4 SCC 103.*

In reply, the learned counsel for the appellant tried to justify the impugned order but could not deny the fact that the respondent no. 1 till date has not obtained the occupancy certificate. He also could not deny the fact that the letter dated 04.12.2015, offering possession of the flat to the appellants clearly mentions that offer of possession is for carrying out fitting and furnishing work.

The letter dated 04.12.2015 also required the appellants to pay the balance payment. It also stipulated conditions that the possession was being offered only for furnishing and fit out purposes and the same shall not create any right, title and interest at any time under any circumstance unless the conveyance deed of the unit is executed/registered.

In the above facts, the moot question which arises for consideration is whether conditional possession for fitting and furnishing purposes without creating any

right, title or interest, in the absence of the occupancy certificate can be treated to be valid possession in the eyes of law.

The Tribunal without entering into the merits of the issue has summarily dismissed the complaint holding that the fact of possession was not disclosed by the appellants, which is factually incorrect.

Insofar as, the question of limitation is concerned, unless it is found that the so called possession for carrying out fitting and furnishing work without occupancy certificate can be said to be a valid possession in law, it will be a continuing cause of action and the complaint cannot be held to be barred by limitation.

The complaint was dismissed summarily. The defence being put up by the respondent before us was not before the Commission and the same was not at all examined and considered by it.

Considering the aforesaid facts and circumstances, we are of the considered view that the matter needs to be examined by the Commission on merits.

Accordingly, we set aside the impugned order dated 17.09.2019 passed by the Commission and allow this appeal. The matter stands remitted back to the Commission to be decided afresh in accordance with law within a period of

six months from today.

The parties shall appear before the Commission on 06.12.2022. We need not emphasize that we have not entered into the merits of the questions raised and all issues and contentions available to the parties are left open to be raised before the Commission.

The parties shall cooperate with the Commission in disposal of the proceedings within the time frame of six months allowed by us and shall not seek any unnecessary adjournments.

Pending application(s), if any, shall stand disposed of.

.....J.  
( KRISHNA MURARI )

.....J.  
( S. RAVINDRA BHAT )

NEW DELHI  
17<sup>th</sup> NOVEMBER, 2022

ITEM NO.1

COURT NO.14

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8191/2019

RAJEEV SAINI &amp; ORS.

Appellant(s)

VERSUS

M/S OMAXE BUILDHOME LIMITED &amp; ORS.

Respondent(s)

( IA No. 162515/2019 - EXEMPTION FROM FILING O.T.  
IA No. 162514/2019 - STAY APPLICATION)

Date : 17-11-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KRISHNA MURARI  
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Appellant(s) Mr. Gaurav Agarwal, Adv.  
Mr. Sandeep Chilana, Adv.  
Ms. Manisha Ambwani, AOR

For Respondent(s)/ Ms. Upasana Chandrashekar, Adv.  
R-1 Mr. Ujjawal Anand Sharma, Adv.  
Mr. Tushar Sangal, Adv.  
Ms. Anjali Upadhyay, Adv.  
Mr. Rohan Mandal, Adv.  
Mr. Sunil Kumar Mund, Adv.  
Mr. Kiran Kumar Patra, AOR

R-3 Mr. Ravindra Kumar, Sr. Adv.  
Mr. Binay Kumar Das, AOR  
Ms. Neha Das, Adv.  
Ms. Priyanka Das, Adv.  
Mr. Ajai Kumar, Adv.

UPON hearing the counsel the court made the following  
O R D E R

The appeal is allowed in terms of the signed  
order. Pending application(s), if any, shall stand  
disposed of.

(Geeta Ahuja)  
Assistant Registrar-cum-PS

(Beena Jolly)  
Court Master

(Signed Order is placed on the file)