

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 1492-1493 of 2020
(Arising out of SLP(C) Nos 34356-34357 of 2016)

M/s Madhu Builders & Developers and Another

Appellant(s)

Versus

Ashok Hind Co-op Housing Society Ltd

Respondent(s)

ORDER

1 Leave granted.

2 These appeals arise from a judgment of the National Consumer Disputes Redressal Commission¹ dated 8 September 2016. The judgment of the NCDRC was rendered in appeals lodged by the appellants and the respondent against the order of the State Consumer Disputes Redressal Commission², Maharashtra. The dispute between the parties arises from a development agreement that was executed between the appellants and the respondent on 29 August 2001. Under the agreement, the appellants were to construct and sell twelve residential flats and the respondent, which is a Co-operative Housing

1“NCDRC”

2“SCDRC”

Society, was duty bound to accept the new purchasers. Between 30 August 2001 and 18 May 2002, the appellants entered into sixteen agreements with the members of the respondent-society. Under the terms of the agreements, an amount of Rs 14.20 lakhs each was to be paid by the appellants to the members of the Society as compensation for inconvenience and hardship caused by the work of construction. The appellants paid an amount of Rs 2,27,20,000 to sixteen members of the Society in aggregate and an amount of Rs 1,76,000 to the Society. Under the terms of the development agreement, the members of the Society were not required to vacate their premises. The agreement provided that the appellants were granted development rights to construct and sell additional flats for which compensation, as we have noted above, was to be paid to the members of the Society. The appellants entered into agreements for sale on various dates with twelve new flat purchasers who purchased the flats on the additional floors constructed on the existing building by utilising the Transfer Development Rights and unutilised FSI. The appellants applied for an occupation certificate on 7 October 2004. The occupation certificate was actually received on 14 November 2006.

3 The respondent initially filed a consumer complaint before the SCDRC which was dismissed on 7 May 2009, with liberty to institute a fresh complaint since there was a technical defect. A fresh complaint was instituted on 24 July 2009. The SCDRC rejected the complaint as barred by limitation on 13 June 2011. The judgment of the SCDRC has been reversed by the NCDRC. The

appellants have been directed to comply with several directions in addition to which, they have been required to deposit an amount of Rs 47,90,000 with the co-operative society for the delay in obtaining the occupation certificate.

4 The narrow issue that has been the subject matter of the debate in the present appeals is whether the appellants are liable to pay compensation to the society in terms as directed.

5 When the appeals came up before this Court on 5 December 2016, the following order was passed:

“Petitioners will deposit the compensation for the period of 200 days within six weeks from today in the Registry of this Court.

The respondent is at liberty to withdraw the said amount.

Issue notice with regard to the balance compensation amount.

Mr. Seshatalpa Sai Bandaru accepts notice on behalf of the respondent and seeks time to file counter affidavit and further says that they will co-operate in the execution of the sale deed. List after pleadings are complete.

There shall be no recovery of compensation amount against the petitioner in excess of 200 days.”

In pursuance of the above direction, the appellants deposited an amount of Rs 10 lakhs towards two hundred days' delay. The above amount has been withdrawn by the respondent.

6 Clause 13 of the Development Agreement is in the following terms:

“It is hereby agreed that the Developers shall obtain the Commencement Certificate within six months from the date of this agreement. The new construction shall be completed by the Developers

within a period of 24 months from obtaining the commencement certificate from the Municipal Corporation of Greater Mumbai, subject to delays on account of Force Majeure or any other reasons beyond the control of the Developers. The construction will be deemed as complete on the Developers forwarding the application for obtaining the Occupation Certificate of the new construction. In the event the construction is not completed as aforesaid, the Developers shall be liable to pay damages to the Society @ Rs.5000/- (Rupees Five Thousand Only) per day.”

7 Clause 13 of the Development Agreement contains the following stipulations:

- (i) The appellant would obtain the commencement certificate within six months from the date of the agreement;
- (ii) The new construction would be completed within a period of twenty-four months from obtaining the commencement certificate; and
- (iii) The construction would be deemed to be completed on the appellants forwarding the application for obtaining occupation certificate for the new construction.

8 Mr. Vinay Navare, learned senior counsel appearing on behalf of the appellants has submitted that on a literal reading of the agreement, the timelines under the above three clauses are as follows:

- (i) The commencement certificate was to be obtained on or before 28 February 2002;
- (ii) The new construction was to be completed by 27 February 2004; and

- (iii) The construction would be deemed to be completed on 7 October 2004 when the application for an occupation certificate was made.

9 The actual dates of compliance are as follows:

- (i) The commencement certificate was obtained on 25 September 2002, since according to the appellant one of the members of the Society had withheld his consent which was finally procured on 18 May 2002; and
- (ii) The application for occupation certificate was filed on 7 October 2004.

10 Mr. Uday B. Wavikar, learned counsel appearing on behalf of the respondent submits that, as a matter of fact, on 7 October 2004, the Municipal Corporation declined to accept the application for an occupation certificate on the ground that several requisitions had not been complied with and it was only on 14 November 2006 that the occupation certificate was issued.

11 The NCDRC computed the total delay at 958 days and on that basis directed the award of compensation of Rs 47,90,000. The submission of the appellants is that there was a delay in obtaining the commencement certificate for the reason that one member of the Society had withheld his consent and granted it on 18 May 2002. On the other hand, it was asserted by the learned

counsel for the respondent that once the Society granted its consent, there was no occasion to ask individual members for the grant of their consent. Though on a strict reading of Clause 13 of the Development Agreement it would appear that the liability of the builder to pay compensation would cease on the forwarding of an application for obtaining the occupation certificate (7 October 2004), learned counsel appearing on behalf of the respondent submitted that the NCDRC has fairly taken a purposive interpretation of the clause. It has been submitted that the application for the grant of an occupation certificate suffered from several deficiencies and hence, the Municipal Corporation declined to accept it on the same day when it was submitted.

12 A significant facet of the dispute between the parties is that the co-operative society has still not admitted all the twelve flat purchasers as its members. On behalf of the respondent, it has been submitted that four of the purchasers have been inducted as members on the payment of certain amount by each of the members. In our view, it would be appropriate having regard to the nature of the grievances, if a balance is drawn between the conflicting claims of the rival parties. An appropriate amount of compensation has to be fixed bearing in mind the purpose and intent of Clause 13 of the Development Agreement. We are of the view that the total period of delay should be quantified at five hundred days. The appellants shall pay to the Society the balance of the compensation payable on the basis that the total quantum of delay is five hundred days. The balance amount of Rs 15 lakhs computed on

that basis shall be paid over to the respondent within a period of two months from the date of receipt of a certified copy of this order. We, however, clarify that the respondent shall induct the remaining eight purchasers as members of the co-operative society without the payment of additional charges or fees.

13 The order passed by the NCDRC is substituted by the above directions. In the event that the appellant fails to effect the deposit within a period of three months from today, the respondent will be entitled to interest at the rate of nine per cent per annum with effect from the date on which interest has been awarded by the NCDRC.

14 Direction (i) of the directions which were issued by the NCDRC is in the following terms:

“The Respondents/Builders are jointly and severally directed to hand-over to the Complainant Society, original Deed of Conveyance & Property Card, Original IOD, Commencement Certificate, Occupancy Certificate, Building Completion Certificate, approved plans along with all other necessary documents and certificate in possession of the respondents relating to the redevelopment work carried out by the respondents of the complainant’s building.”

15 Mr. Vinay Navare, learned senior counsel makes a statement, on the instructions of his client who is present in the Court, that the appellants do not have the original deed of conveyance. Therefore, that part of the directions for handing over of original deed of conveyance to the respondent shall stand deleted from the impugned order.

16 The appeals are accordingly disposed of. No costs.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Ajay Rastogi]

**New Delhi;
February 12, 2020**

ITEM NO.10

COURT NO.8

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.1492-1493/2020

M/S. MADHU BUILDERS AND DEVELOPERS & ANR.

Appellant(s)

VERSUS

ASHOK HIND CO-OP HOUSING SOCIETY LTD.

Respondent(s)

(With appln.(s) for permission to file additional documents/facts/
Annexures)

Date : 12-02-2020 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s) Mr. Vinay Navare, Sr. Adv.
Mr. Sarad Kumar Singhania, AOR
Ms. Rashmi Singhania, Adv.

For Respondent(s) Mr. Uday B. Wavikar, Adv.
Mr. Nitin S. Tambwekar, Adv.
Mr. Seshatalpa Sai Bandaru, AOR

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

Leave granted.

The appeals are disposed of in terms of the signed
order.

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

(Chetan Kumar)
A.R.-cum-P.S.

(Saroj Kumari Gaur)
Court Master

(Signed order is placed on the file)