

**HIGH COURT OF DELHI**

**BENCH : HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**Date of Decision: 8th May 2024**

W.P.(C) 824/2023 & CM APPLs. 3171/2023, 33245/2023 & 38094/2023

CONT.CAS(C) 1294/2023 & CM APPL. 3311/2024

**SANJAY RAGHUNATH PIPLANI AND ANR. ...PETITIONERS**

**VERSUS**

**NATIONAL BUILDINGS CONSTRUCTION CORPORATION DELHI AND  
ANR. ...RESPONDENTS**

**Legislation and Rules:**

Section 79 of the Real Estate (Regulation & Development) Act, 2016

Article 226 of the Constitution of India

**Subject:** Writ petition for direction to either provide an alternate flat or refund the purchase amount with interest and compensation due to non-delivery of possession of a flat by NBCC despite full payment and structural defects in the project.

**Headnotes:**

Non-delivery of Possession – Petitioner not provided possession of flat despite full payment – Respondent offered inadequate temporary solutions and refunds without interest – Court highlighted plight of petitioner who invested life savings and faced severe accommodation issues – Writ petition allowed with direction for full refund with interest and compensation for mental agony [Paras 1-23].

Contempt of Court – Alleged non-compliance with Court's earlier order for monthly compensation to petitioner – Respondent complied with orders by paying monthly sums and attempting to provide suitable alternate accommodations – Contempt petition dismissed due to respondent's compliance and efforts [CONT.CAS(C) 1294/2023 & CM APPL. 3311/2024, Paras 1-6].

Judicial Notice – Court noted exponential rise in property prices, deeming respondent's offer to refund only principal amount as inadequate – Emphasized duty of State-run enterprises to act fairly, granting additional compensation for mental agony [Para 18, 22].

**Referred Cases:**

- Upendra Choudhury v. Bulundshahar Development Authority & Ors. W.P.(C) 150/2021;
- K Jayaram & Ors. v. Bangalore Development Authority, SLP(C) No.26374-26377/2013;
- M/s Radha Krishan Industries v. State of Himachal Pradesh, SLP(C) NO.1688/2021;
- Shubhas Jain (S) v. Rajeshwari Shivam & Ors., SLP(C) 1837/2021;
- M/s Imperia Structures Ltd. v. Anil Patni, AIR 2021 SC 70;
- Noida Entrepreneurs Association v. Noida & Ors., 2011 (6) SCC 508.

Representing Advocates:

For Petitioner: Mr. Raghav Vij, Mr. G.S. Rana, and Mr. Saurabh Kaushal with Petitioner in person.

For Respondents: Mr. Arvind Minocha, Sr. Advocate with Mr. Ray Vikram Nath, Mr. Akshat Chaudhary, and Mr. Harshvardhan Jha, Advocates with Mr. Ravi Kiran Sriramoju and Ms. Neeti Dutt Sharma, DGM, NBCC. Mr. Chiranjiv Kumar, Mr. Mukesh Sachdeva, and Ms. Neelima, Advocates for Union of India.

## **JUDGMENT**

1. The present Writ Petition, being W.P.(C) 824/2023, has been filed by the Petitioner, a flat owner in the project “NBCC Green View Apartments”, launched by Respondent No.1 in the year 2012. The principle grievance of the Petitioner is that despite paying the entire sales cost of the flat, the flat was never handed over to the Petitioner. It is also mentioned that neither an alternate flat has been given to the Petitioner nor a refund, with appropriate interest, was offered by Respondent No.1. The prayers made in the writ petition are as follows:

*“i. Direct the respondents to provide an alternate flat with the aforementioned positioning and in vicinity as that of flat which was booked by the petitioners in their project namely NBCC Green view Apartments bearing Flat No. C2.3, TYPE-D.*

*ii. Or alternatively, direct the respondents to refund the amount paid by the petitioners with reciprocal interest @ 15% per annum and with compensation of Rs.50,00,000/- for mental torture, agony, and harassment; and to pay extra compensation as per Annexure P-18*

*iii. Pass such other and further order as this Hon'ble Court may deem fit and proper in the interest of justice.”*

2. The facts leading up to the present petition are as follows:
  - a. Respondent No.1, in June 2012, launched a group housing residential project under the name of NBCC Green View Apartments that was to be constructed

in Section 37, Gurugram, Haryana. In response to the said project a large number of applicants, including the Petitioner who is a retired government employee, applied for allotment of apartments specially earmarked for government servants. The Petitioner booked an apartment in the aforementioned project on 23.06.2012 by depositing a sum of Rs.2,08,334/- and was consequently issued an allotment letter by Respondent No.1 on 02.11.2012 for flat bearing No. C2.3.

- b. The total consideration for the flat was a sum of Rs.76,85,576/- that was paid in a timely manner by the Petitioner, in various instalments corresponding to the following schedule :

Description	Payment date	Amount paid (INR)
Application money	23-Jun-12	208334
Allotment money	13-Dec-12	834215
1st installment	29-Jan-13	1390066
2nd installment	02-08-2013 (part 1) 24-08-2013 (part 2)	900000 504584
PLC	31-Oct-13	465984
3rd installment	31-Jan-14	1042549
4th installment	28-Aug-15	697798
5th installment	30-May-16	1047960
6th installment	22-Dec-17	594089
<b>Total payment done</b>		<b>7685579</b>

A No Dues Certificate was issued to the Petitioner by the Respondent on 21.10.2020.

- c. On 30.01.2021, Respondent No.1, issued a Possession Certificate to the Petitioner through an email where the Respondent mentioned that Flat bearing No.C2.3, that was to be allotted to the Petitioner, is ready for possession with all the electrical, bathroom fittings and inventories according to the specifications agreed upon. However, physical possession of the flat allotted was never given to the Petitioner on the pretext that flat No. C2.3 was yet not complete. The Petitioner was allotted a temporary accommodation bearing Flat No. B-1202 for a period of 6-8 months until the original flat was ready according to possession conditions.
- d. It is pertinent to mention that other residents who had already been given possession of their flats in the said project, started noticing structural defects in the buildings. Respondent No.1, subsequently, engaged structural experts from IIT Delhi to assess the structural health of the buildings. The experts from IIT Delhi recommended that due to continued deterioration in the structure, at an accelerated pace, it was in the interest of safety the residents

should be evacuated at most within 2 months. Respondent No.1, consequently, issued a notice on 18.11.2021 requesting the residents of the said apartments to vacate the premises by 23.11.2021.

- e. It is apposite to mention that the NBCC was willing to offer the following arrangements, as a stop gap measure to the homebuyers, who were already residing in the complex, for alternate residential arrangements:
  - i. Rent allowance of Rs.12.50/- per sq. ft. to the homebuyers who were residing in the society at that point in time, for a period of 6 months.
  - ii. Assistance in identifying and hiring flats in a nearby area for a period of 6 months to those home buyers who weren't interesting in taking fixed monthly rent and were currently residing in the said apartments.
- f. The Petitioner herein, vide email dated 23.11.2021, gave its consent to vacate the temporary allotted flat on the condition of rent allowance and moved into a rental accommodation in Faridabad, for which NBCC remitted payment for a period of 6 months.
- g. On 29.07.2022 the NBCC shared an offer letter to the Petitioner in which the NBCC offered to refund:
  - i. An amount equal to the consideration that had been paid by the Petitioner.
  - ii. Charges on delayed payment, if any, paid by the Petitioner.

3. Since the flat was not delivered to the Petitioner, even after six years of the final instalment and about 10 years after the first application money was paid and that since the Respondents were not providing any alternate accommodation to the Petitioners, the Petitioners have filed the instant writ petition.

4. Notice was issued in the writ petition. On 31.01.2023, the Petitioner made his claim for an alternate accommodation in the vicinity.

5. The writ petition came up for hearing on 23.01.2023. Learned Counsel for the NBCC was directed to take instructions in respect of alternate accommodation. On 31.01.2023, the learned Counsel for the NBCC made a submission that the Petitioner had approached the RERA in Gurgaon. He submitted that more than 250 flat buyers had already approached the NCDRC and RERA. It was also stated by the learned Counsel for the NBCC that since the Petitioner had already approached the various forums, the writ petition should not be admitted.

6. This Court on 31.01.2023, directed the NBCC to pay a sum of Rs.30,000/- per month after deducting TDS to the Petitioners. Since the Respondent/NBCC was not complying with the directions of this Court and

even alternate accommodation was not being provided, contempt petition being CONT. CAS(C) No. 1294/2023 was filed by the Petitioners.

7. Reply has been filed by the NBCC. It is stated in the reply that the writ petition ought not to have been entertained since the Petitioner has approached various forums for same relief and he cannot be permitted to do forum shopping. Reliance was also placed on Section 79 of the Real Estate (Regulation & Development) Act, 2016 which specifically bars any forum to entertain any suit or proceedings relating to the violations under the Real Estate (Regulation & Development) Act, 2016 (*hereinafter referred to as the 'RERA Act'*). He states that since the Petitioner has availed of his remedies under the RERA Act and in view of the bar under Section 79 of the RERA Act, the writ petition ought not to be entertained.
8. The Petitioner, who appears in person, contends that he has paid the entire amount of money as has been due and a sum of Rs. 76,85,576/- stands paid in the year 2017. He states that he is a retired employee running from pillar to post in search of an accommodation after spending his hard earned money. He states that the Respondents are not prompt in complying with the orders of this Court. It is stated that he is facing difficulties because he has spent his entire money in this house. It is also stated that the Petitioner is unable to find out a suitable accommodation for the sum of Rs.30,000/-. He is being frequently asked to vacate the premises. Resultantly, even his children's education is suffering. He states that after the Petitioner approached this Court, he has withdrawn the complaint from the consumer forum and from the RERA. He states that the Petitioner has become so desperate that he is forced to knock door after door for getting some relief.
9. It is stated that the Petitioner has invested his life savings in the Respondent/NBCC thinking that the NBCC is a government undertaking and that he would not be cheated like other private builders. He, therefore, states that he does not have money to buy a new accommodation. He also states that he does not have money to get a flat on rent and that with the passage of time, the price of a property in the area has risen exponentially. 10. *Per contra*, learned Counsel for the Respondent states that the Petitioner is guilty of forum shopping. He states that after having approached the forums under the RERA Act and under the Consumer Protection Act, the instant writ petition should not be entertained by this Court by exercising its powers under Article 226 of the Constitution of India.
11. It is stated by learned Counsel for the Respondent that the Petitioner is guilty of concealing material facts inasmuch as the Petitioners herein have

impleaded themselves in the NCDRC in a petition titled as Avdesh Chandra Bhatia & Ors. (now Narinder Singh Arneja & Ors.) v. NBCC & Ors. Complaint No. CC/1128/2017. It is stated that the Petitioners have also impleaded themselves in a complaint filed before Haryana RERA. It is stated that the present writ petition has been filed concealing the above said two facts.

12. The Respondent places reliance under Section 79 of the RERA Act. Learned Counsel for the Respondent states that there is a bar under Section 79 of the RERA Act whereby civil courts cannot entertain any suit or proceedings in respect of the matter which falls under the jurisdiction of RERA. Learned Counsel for the Respondent also relies on the following judgments to buttress his contentions:-
  - a) Upendra Choudhury v. Bulundshahar Development Authority & Ors. **W.P.(C) 150/2021**;
  - b) K Jayaram & Ors. v. Bangalore Development Authority, **SLP(C) No.26374-26377/2013**;
  - c) M/s Radha Krishan Industries v. State of Himachal Pradesh, **SLP(C) NO.1688/2021**;
  - d) Shubhas Jain (S) v. Rajeshwari Shivam & Ors., **SLP(C) 1837/2021**;
  - e) M/s Imperia Structures Ltd. v. Anil Patni, **AIR 2021 SC 70**;
13. Heard the parties and perused the material on record.
14. This is a classic case of extreme hardships suffered by a home buyer who has been made to run from pillar to post after having spent his entire life savings. It is unfortunate that a 'State' under Article 12 of the Constitution of India has raised this objection that the Petitioner is guilty of forum shopping. A helpless home buyer who has sunk his life savings has no other option but to knock door after door and hoping against hope that he would be able to get his money back. Such a home buyer like the Petitioner herein fights with his back to the wall as on the one hand he has no accommodation and no life savings as it has all been sunk into a purchasing a house which would be his shelter post retirement and on the other hand he does not have money to pay rent. Such a person faces financial crunch to ensure proper education to his children and such a situation he has no other option but to knock on the doors of various forums hoping to get relief and in such a situation the contention of the State that the person is guilty of forum shopping cannot be accepted at all.

15. Even though it is clear that while seeking legal recourse, the Petitioner did approach various forums, by filing impleadment applications before the NCDRC besides filing a complaint before the Haryana RERA for redressal of his grievances and it is well established, in various judgements of the Apex Court, that the act of forum shopping is condemned, this Court is of the opinion that in the facts of the present case, such an act of approaching various forums stems from desperation rather than a strategic pursuit of a favourable dictat. This behaviour of the Petitioner arises out of a sense of frustration, helplessness and lack of legal knowledge.
16. Purchasing a house is one of the most significant investments an individual or family make in their lifetime. It often involves years of savings, meticulous planning and emotional investment. When builders of such homes fail to deliver what was promised, they shatter the trust and financial security of homebuyers and also put homebuyers in a situation where they may face immense stress, anxiety, uncertainty and ultimately be forced to navigate legal channels for seeking recourse. The emotional toll of living in limbo, uncertain about the future of their investment and the stability of their living arrangements cannot be understated. Compensating wronged homebuyers is not just a matter of rectifying past injustices but also about deterring future misconduct.
17. In the present case, the Petitioner entered into the agreement way back in the year 2012. In five years, the Petitioner has pumped in over Rs.76 lakhs. A 'No Dues Certificate' has been given to the Petitioner. Structural defects have been found out in the construction after certain persons started occupying the flats. Petitioners and several other persons have been left in lurch and have been forced to knock the doors of various forums.
18. The pittance offered by the Respondents to only return the principal amount without any interest cannot be said to be an offer in the eyes of law especially when the Court can take judicial notice of the fact that the price of land are increasing by geometric progression in the NCR. A rent allowance of Rs.12.50/- per sq. ft. to the home buyer for six months and assisting in hiring flats in the nearby area cannot be said to be an adequate compensation. In fact, the Respondent has been exceedingly unfair in treating the home buyers in this manner.
19. NBCC is an instrumentality of the State. It is well settled that the 'State' is duty bound to act reasonably and fairly. In Noida Entrepreneurs Association v. Noida & Ors., **2011 (6) SCC 508**, the Apex Court held that the State or the public authority which holds the property of the public acts as a

trustee, and therefore, has to act fairly and reasonably. The State or the instrumentality of the State is accountable to the people and it is supposed to act in public good promoting public interest. An action of a State or the instrumentality of the State stands vitiated if it lacks bonafides. The Apex Court went on further to hold that power vested by a State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest and public authorities cannot play fast and loose with the power vested in them and a decision taken in arbitrary manner contradicts the principle of legitimate expectation. The authority is expected to exercise powers to effectuate the purpose for which the power stood conferred.

20. Admittedly, the total consideration of the flat has been paid in 2017. Material on record indicates that there are structural defects in the buildings. In view of the fact that the Petitioner has been deprived of his money for the last 10 years, structurally defective houses have been constructed by the NBCC, the Petitioner has been left in complete lurch, the refusal of the Respondent which is a State to pay interest on the amounts which it held in trust of the Petitioners and the reluctance to ensure that the Petitioner is rehabilitated effectively, the Respondent should be dealt with severely.
21. This Court is, therefore, inclined to allow the instant writ petition directing the Respondent/NBCC to return the entire amount of money paid by the Petitioners within a period of six weeks from today along with interest @ 12% from 30.01.2021 till today.
22. In view of the fact that the Petitioner has been forced to shift accommodation and fend for himself in the last seven years and has been put to extreme mental agony, this Court is inclined to direct the NBCC to pay a sum of Rs.5 lakh to the Petitioner.
23. The writ petition is allowed. Pending application(s), if any, stand disposed of.

**CONT.CAS(C) 1294/2023 & CM APPL. 3311/2024**

1. The instant contempt petition has been filed by the Petitioner alleging violation of the Orders dated 31.01.2023 and 23.05.2023 passed by this Court in W.P.(C) 824/2023.
2. This Court *vide* Order dated 31.01.2023 had directed the Respondent to pay a sum of Rs. 30,000/- per month after deducting TDS to the Petitioners.



3. On 23.05.2023, this Court had directed the Respondent/NBCC to comply with the Order dated 31.01.2023 directing the Respondent to pay a sum of Rs.30,000/- per month to the Petitioner.
4. Material on record indicates that the amounts have been paid to the Petitioner. Undoubtedly, this Court had attempted to ensure that the Petitioner gets an alternate accommodation but the Petitioner was not satisfied with the accommodations shown by the officials of the NBCC on the ground that they are not of the same value or in the same vicinity.
5. In view of the fact that pursuant to the Order dated 23.05.2023, the entire amount has been paid regularly and in view of the fact that the Respondent did take efforts that the Petitioner is shown houses which according to the Respondent are commensurate and suitable, this Court is not inclined to proceed any further with the contempt petition.
6. The contempt petition is dismissed along with pending application(s), if any.

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