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SUPREME COURT ON THE POWERS OF CONSUMER DISPUTE REDRESSAL FORUMS

A. Introduction:

Supreme Court (SC) in *Experion Developers Private Ltd.* case¹ held that consumer dispute redressal forums can direct builders to refund and award compensation for failure to deliver apartments.

B. Brief Facts:

1. Experion Developers Private Ltd. Gurugram, Haryana (“**Experion**”) is a promoter of apartments.
2. Sushma Ashok Shiroor (“**Shiroor**”) booked an apartment in 2012 with Experion for a consideration of over Rs. 2 crore and agreed for construction-linked payment plan under an Apartment Buyer’s Agreement (“**Agreement**”).
3. Clause 13 provided for payment of Delay Compensation (“**DC**”) if Experion did not offer possession within the stipulated period @ Rs. 7.50 per sq. ft. per month.
4. Shiroor approached National Consumer Disputes Redressal Commission (“**NCDRC**”) in 2017, alleging that she was not given possession even after payment of the total consideration. She sought full refund along with interest @ 24% p.a.
5. Experion argued that though the time period for handing over possession expired in 2016, Shiroor was entitled to DC of only Rs. 4.5 lacs. It contended that it received the occupation certificate in July 2018 and immediately granted notice of possession to Shiroor. Hence, it submitted that since possession is completed the complaint must be dismissed.
6. NCDRC, in its order of 2019, allowed the complaint and held that the Agreement is one-sided, heavily loaded against the allottee and entirely in favour of Experion.
7. Following the decision of SC in *Pioneer* case,² NCDRC directed Experion to refund the amount with interest @ 9% p.a. from the last date of payment.
8. Both parties appealed. Shiroor³ only challenged NCDRC’s order by seeking 24% interest.

C. Issues:

1. Whether the terms of the Agreement amount to an ‘unfair trade practice’ and whether NCDRC was justified in not giving effect to the terms as laid down in the *Pioneer* case?

¹ *Experion Developers Private Ltd. v. Sushma Ashok Shiroor* (MANU/SC/0433/2022).

² *Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan* (MANU/SC/463/2019: (2019) 5 SCC 725).

³ Civil Appeal Nos. 6044 and 7149 of 2019.

2. Whether NCDRC has the power under the Consumer Protection Act, 1986 (“**CPA 1986**”) to direct refund of the amount deposited by Shiroor with interest?

D. Observations and Judgement:

1. On issue #1, SC relied on the principle laid down in *Pioneer* case, where the terms of the agreement were found to be one-sided and entirely loaded in favour of the developer, and against the allottee at every step. It held: “*In somewhat similar factual as well as legal context, the SC in the Pioneer case held as under: A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder.*”....” The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(r) of the (CPA 1986).”⁴
2. It relied on SC judgment in *IREO Grace Realtech* case,⁵ opining that new Consumer Protection Act, 2019 (“**CPA 2019**”) confers power on the State Consumer Fora and the NCDRC to declare contractual terms which are unfair, as null and void.⁶
3. On Issue #2, SC held that: “*We may hasten to clarify that the power to direct refund of the amount and to compensate a consumer for the deficiency in not delivering the apartment as per the terms of Agreement is within the jurisdiction of the Consumer Courts. Under Section 14 of the (CPA 1986), if the Commission is satisfied ...that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to return to the complainant the price or as the case may be, the charges paid by the complainant...It is clear from the statutory position that the Commission is empowered to direct refund of the price or the charges paid by the consumer.*”⁷
4. It also held that CPA and RERA Act⁸ neither exclude nor contradict each other. They are concurrent remedies operating independently and without primacy. When statutes provide more than one judicial fora for effectuating a right or enforce a duty-obligation, it is a feature of remedial choices offered by the State for effective access to justice. Courts must therefore harmonise the provisions in a constructive manner.⁹
5. SC upheld NCDRC’s order and allowed in part the appeal filed by Shiroor by awarding interest @ 9% p.a. on refund payable from the date of deposit.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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⁴ Para. 6 of the Judgement.

⁵ *IREO Grace Realtech Pvt. Ltd. v. Abhishek Khanna* (MANU/SC/0013/2021): (2021) 3 SCC 241.

⁶ Sec. 59 of the CPA 2019.

⁷ Para. 15 of the Judgement.

⁸ Real Estate (Regulation and Development) Act, 2016.

⁹ Para. 14.2 of the Judgment.