

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2822 OF 2011

E.M. NAJEEB

Appellant(s)

VERSUS

M/S. SOUTHERN INVESTMENTS & ANR.

Respondent(s)

O R D E R

By the impugned order dated 26th March, 2009, of the National Consumer Disputes Redressal Commission, the following has been ordered:

"...We are of the view that in the interest of equity and justice, while the respondent/complainant shall not be entitled to any interest payable by the appellant, the appellant shall also not be entitled to the payment of Rs.4,59,102/- from respondent/complainant as per direction of the State Commission, for the reasons enumerated earlier, i.e., retaining the money paid by the complainant, for at least two years, without any corresponding benefit accruing to the complainant. In the peculiar facts and circumstances, when both the parties could be faulted, thus with a view to give a decent burial to the litigation, equity demands that, while the appellant be not be asked to pay interest for the delay in handing over the possession of about two years, i.e., 1998-2000, and now that the respondent/complainant has been put in peaceful possession, despite the fact that he has not made full and agreed to payment of the flat at any time and the present market value of which will be much higher today. At the same time, we hold that the respondent/complainant shall not be asked to make the payment of outstanding amount as per direction of the State Commission, as, in our view, the genuine demand of both the parties, against each other, i.e., outstanding demand for unpaid principal amount by the complainant to the Appellants and the interest @ 12%

(as per law laid down by the Supreme Court) for delay in handing over the possession for the period of two years (1998-2000) more or less - neutralises / cancels-out each other. The complainant would not be entitled to any relief after the year 2000, for the simple reason that he did not make payments in terms of construction agreement to get the possession of the flat in the year 2000.

In the aforementioned circumstances, the order of the State Commission is set aside and the appeal stands disposed off in above terms."

The appellant in his complaint has alleged that towards the purchase of flat, he paid Rs. 20 lakhs. The complaint before the Consumer Forum was that the respondent did not conform to the schedule as per which the possession of the building was to be handed over. By the impugned order what has been done, apparently, is, taking note of condition 10 of the construction agreement and also the fact of the final sanction by the local body being given by respondent No. 4 on 07.03.1998 and proceeding on the basis, that the respondent was protected by *force majeure* condition and further, it being also found that the payment of the outstanding amount was not made by the appellant, the National Commission took the view that there was genuine demand of both parties against each other i.e., outstanding demand for the unpaid principal amount from the appellant to the respondent and the claim for 12 per cent interest for the delay in handing over the possession for a period of two years (1998-2000) by the appellant, it was balanced by cancelling out each other.

Learned counsel for the appellant drew our attention to the decision of this Court reported in *DLF Home Developers Limited (Earlier known as DLF Universal Limited) & Anr. v. Capital Greens Flat Buyers Association & Ors.* (2021) 5 SCC 537, wherein the Court, undoubtedly, has taken the view that the developer will be conscious of these delays and cannot set up the same as a defence in a claim for compensation.

It is true that the principle is laid down in the aforesaid manner by this Court. In the facts of this case, however, we do not think the appellant should be granted any other relief than that has been granted by the National Commission.

Accordingly, the appeal is dismissed.

No orders as to costs.

....., J.
[K.M. JOSEPH]

....., J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi;
September 08, 2021.

ITEM NO.102

COURT NO.10

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. 2822/2011

E. M. NAJEEB

Appellant(s)

VERSUS

M/s. SOUTHERN INVESTMENTS & ANR.

Respondent(s)

Date : 08-09-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Mr. Haris Beeran, Adv.
Mr. Mushtaq Salim, Adv.
Mr. Usman Gani Khan, Adv.
Mr. Azhar Assees, Adv.
Mr. Anand B. Menon, Adv.
Mr. Radha Shyam Jena, AOR

For Respondent(s)

Ms. N. Annapoorani, AOR

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

The appeal is dismissed in terms of the signed order.

(NIDHI AHUJA)
AR-cum-PS

(RAM SUBHAG SINGH)
BRANCH OFFICER

[Signed order is placed on the file.]