IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5423 of 2024

CNR No. BRHC010317952024

==========

1. Dr. Abhay Kumar S/o Late Raman Bihari Prasad Sinha, R/o Radhika Nursing Home, Behind Commerce College, Munnachak, P.S.-Patrakar Nagar, Kankarbagh, Patna-800020, Bihar.
2. Dr. Amrita Pravi, W/o Dr. Abhay Kumar, R/o Radhika Nursing Home, Behind Commerce College, Munnachak, P.S.-Patrakar Nagar, Kankarbagh, Patna-800020, Bihar.

... ... Petitioner/s

Versus

1. Blue Heavens Agro Industries Ltd. having its office at 93/A, R.K. Avenue, Rajendra Nagar, PS-Kadamkuan, Patna, Bihar.
2. Sunil Kumar Chalana, Director, Blue Heavens Agro Industries Ltd. Union of India having its office at 93/A, R.K. Avenue, Rajendra Nagar, P.S. Kadamkuan, Patna, Bihar.
3. Birendra Kumar Singh, Director, Blue Heavens Agro Industries Ltd. Union of India having its office at 93/A, R.K. Avenue, Rajendra Nagar, P.S. Kadamkuan, Patna, Bihar.
4. Neelam Agrawal, Director, Blue Heavens Agro Industries Ltd. Union of India having its office at 93/A, R.K. Avenue, Rajendra Nagar, P.S. Kadamkuan, Patna, Bihar.
5. Ajit Kumar Bajaj, Director, Blue Heavens Agro Industries Ltd. Union of India having its office at 93/A, R.K. Avenue, Rajendra Nagar, P.S. Kadamkuan, Patna, Bihar.
6. Punit Jain, Director, Blue Heavens Agro Industries Ltd. Union of India having its office at 93/A, R.K. Avenue, Rajendra Nagar, P.S. Kadamkuan, Patna, Bihar.
7. Ajay Kumar Singh, Director, Blue Heavens Agro Industries Ltd. Union of India having its office at 93/A, R.K. Avenue, Rajendra Nagar, P.S. Kadamkuan, Patna, Bihar.

... ... Respondent/s

==========

Appearance :
For the Petitioner/s : Mr. Dhananjay Kashyap, Adv.
Mr. Nagdeo Choubey, Adv.
For the Respondent/s : Mr. Pritam Kumar, Adv.

==========

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR
ORAL JUDGMENT
Date : 26-11-2026

Heard Learned Counsel for the petitioner and the learned counsel for the respondent nos. 1,4,5 and 6.

2. The present writ petition has been filed with the

WEB COPY

following reliefs:

I. For issuance of appropriate writ / orders / direction to set aside / quashing the order dated 31.01.2024 (Annexure 8) passed by Hon'ble National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'NCDRC / National Commission') whereby and whereunder Hon'ble NCDRC has been dismissed FA/771/2016 filed by the Petitioners without appreciating the fact that Petitioners being the consumers of the Respondents are entitled to compensation on account of delay in handing over the peaceful and undisputed possession of the flat, i.e., Flat No. 501-A, Block – A, Vrindavan Apartment, Phase – II, measuring super built up area – 1750 Sq Ft with covered car parking situated at Mauza- Pakri Shahabuddin, now known as MalahiPakri, Kankarbagh, Patna, Thana- Phulwari, Present P.S.- Kankarbagh, Thana No. 25, Khata No. 83, Survey Plot No. 225, Tauzi No174C, Ward No. 23, Sub- Registry- Patna, purchased by the Petitioners vide sale deed no. 26306 dated 03.10.2012.

II. For issuance of appropriate writ / orders / direction to the Respondents thereby directing the Respondents to refund of Rs. 42,71,454 along with

WEB COPY

interest @ 18% since the date of execution of sale deed, i.e. 03.10.2012 as the Respondents have not handed over the flat purchased by the Petitioners even after the lapse of more than 10 years.

III. For issuance of appropriate writ / orders / direction to the Respondents thereby directing the Respondents to pay a sum of Rs. 15 lacs for prolonged mental agony and Rs. 2,00,000 towards litigation cost to the Petitioners.

IV. For issuance of appropriate writ / orders / direction thereby staying the operation of order dated 31.01.2024 passed by Hon'ble National Consumer Disputes Redressal Commission, New Delhi in FA/771/2016 during the pendency and till disposal of instant petition.

V. Any other appropriate writ or direction which may deem fit and proper including the cost.

3. The brief case of the petitioners is that they purchased Flat No. 501A, Block-A, Vrindavan Apartment, Kankarbagh, Patna vide Sale Deed dated 03.10.2012 after availing a bank loan of Rs. 28.40 Lakhs disbursed to the respondents, but were not given possession as the flat was already occupied by one Anjani Kumar Sinha under a prior concealed Agreement of Sale dated 05.03.2011. Aggrieved by this deficiency of service, the petitioners filed CC/6/2013 before

WEB COPY

the State Consumer Disputes Redressal Commission, Patna seeking possession or an alternative refund of Rs. 42,71,454 with 18% interest, compensation, and litigation costs, wherein the respondents contended that the flat sold to Anjani Kumar Sinha was Flat No. A and differed from Flat No. 501A. Vide order dated 24.05.2016, the State Consumer Disputes Redressal Commission, Patna observed that the consumer-service provider relationship ended with the execution of the sale deed, yet directed the respondents to deliver physical possession within three months. Seeking the unconsidered alternative relief of refund and compensation, the petitioners preferred FA/771/2016 before the National Consumer Disputes Redressal Commission , New Delhi, which, vide order dated 31.01.2024, dismissed the appeal and the consumer complaint as not maintainable.

4. The main contention of the respondents is that since the order under challenge has been passed by the Hon'ble NCDRC, New Delhi, therefore the Hon'ble High Court of Delhi has the jurisdiction to entertain the writ petition.

5. The learned counsel for the petitioners submitted that the instant writ petition filed against the order dated 31.01.2024 passed by the Hon'ble NCDRC, New Delhi is maintainable before the Hon'ble Patna High Court. In this regard, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Universal Sompo General Insurance Co. Ltd. vs. Suresh Chand Jain and Ors.*****, (2024) 9 SCC 148**, which reiterated the principle held in the landmark judgment of ***L. Chandra Kumar v. Union of India*****, (1997) 3 SCC 261**, holding that parties should approach the jurisdictional High Court under Article 226 or 227 of the Constitution of India against an order

WEB COPY

passed by the NCDRC, New Delhi. Reliance was also placed on ***Siddhartha S Mookerjee & Anr. Vs. Madhab Chand Mitter & Anr.*****, MANU/SCOR/34281/2024**, wherein the Hon'ble Supreme Court held that merely because the NCDRC is situated in New Delhi, jurisdiction is not automatically conferred on the Delhi High Court solely on the basis of *situs*, and the jurisdictional High Court would be the court where the cause of action arose. Furthermore, reliance was placed on the three-Judge Bench judgment of the Hon'ble Supreme Court in ***Kusum Ingots and Alloys Ltd. vs. Union of India (UOI) and Ors.*****, (2004) 6 SCC 254**, which rejected the doctrine of *situs* and held that the High Court where the cause of action arose has the jurisdiction to entertain the writ petition under Article 226(2) of the Constitution of India. It was also pointed out that the reliance placed by the respondents on ***Union of India vs Alapan Bandopadhyay*****, (2022) 3 SCC 133** is misplaced as the Hon'ble Supreme Court has referred the said judgment to a larger Bench in ***Union of India vs Sanjiv Chaturvedi*****, (2023) 5 SCC 706**, whereas ***Kusum Ingots and Alloys Ltd. (Supra)*** is a three-Judge Bench judgment and therefore binding on this Hon'ble Court.

6. The learned counsel for the petitioners further submitted that the Hon'ble NCDRC travelled beyond its jurisdiction in dismissing the appeal as well as the original complaint of the petitioners while deciding the appeal filed by the petitioners for refund and enhancement of monetary compensation, thereby taking away the relief of possession granted to the petitioners by the Hon'ble SCDRC, Patna, whose order was never challenged by the respondents on any occasion. In support of this contention, reliance was placed on the decisions of the Hon'ble Supreme Court in ***Kusum Agarwal and***

WEB COPY

Ors. vs. Harsha Associates Pvt. Ltd.**, (2017) 9 SCC 806**, wherein it was held that the NCDRC, while deciding a revision petition filed by the complainant for increase of compensation and payment of interest, could not have dismissed the petition itself where the respondent had not challenged the order of the State Commission, and in ***Ranjana Prakash and Ors vs Divisional Manager and Ors.*****, (2011) 14 SCC 639**, which laid down that in an appeal filed by claimants seeking enhancement of compensation, the appellate court can dismiss the appeal if it thinks compensation cannot be enhanced, but it cannot reduce the compensation.

7. The learned counsel for the petitioners also submitted that the petitioners purchased the flat from the respondents vide sale deed dated 03.10.2012 and fall within the definition of 'consumer' under Section 2(7) of the Consumer Protection Act, 2019, which defines a consumer as anyone who buys anything for a consideration and only excludes a person who purchases for commercial purposes, without excluding any person who has executed a sale deed. The execution of the sale deed is conclusive proof of purchase by the petitioners and is the commencement, rather than the conclusion, of the consumer-service provider relationship between the petitioners and the respondents. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Arifur Rahman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. and Ors.*****, (2020) 16 SCC 512**, wherein it was held that a person does not forsake their remedies before the consumer forum for delayed possession after executing the deed of conveyance, and therefore mere execution of the sale deed does not oust the petitioners from the definition of consumer, rendering the rationale of the Hon'ble

WEB COPY

NCDRC erroneous.

8. The learned counsel for the petitioners lastly submitted that the petitioners have not been handed over peaceful and undisputed possession of the flat even after a lapse of 14 years, a fact not disputed by the respondents and thus deemed to be admitted and that the respondents also deliberately withheld relevant information regarding the execution of the agreement of sale with Anjani Kumar Sinha, which amounts to gross 'deficiency' under Section 2(11) of the Consumer Protection Act, 2019, as the petitioners would never have purchased the flat had they known about the dispute and agreement. Placing reliance on the judgments of the Hon'ble Supreme Court in ***Fortune Infrastructure and Ors vs Trevor D'Lima and Ors*****, (2018) 5 SCC 442**, ***Pioneer Urban Land and Infrastructure Ltd. vs Govindan Raghavan and Ors*****, (2019) 5 SCC 725**, ***Arifur Rahman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. and Ors.*****, (2020) 16 SCC 512**, ***Kolkata West International City Pvt Ltd. vs Devasis Rudra*****, (2020) 18 SCC 613**, ***Imperia Structures Ltd. v Anil Patni*****, (2020) 10 SCC 783**, and ***Experion Developers Pvt. Ltd. vs Sushma Ashok Shiroor*****, (2022) 1 SCC 286**, it was submitted that failure to provide the flat within the stipulated period amounts to deficiency, and a person cannot be made to wait indefinitely for possession and is entitled to seek a refund of the amount paid along with interest and compensation. As the loan amount of Rs. 28.40 Lakhs disbursed to and enjoyed by the respondents has saddled the petitioners with onerous loan conditions and a series of litigation due to the dispute created and concealed by the respondents, it is prayed that the respondents be directed to refund the entire sale consideration paid by the petitioners along

WEB COPY

with interest, adequate compensation for severe mental agony and physical harassment, and litigation cost.

9. The learned counsel for the respondents submitted that the respondents specifically deny each and every allegation and averment made by the petitioners, stating that there is neither any deficiency in service nor any negligence attributable to the respondents, and therefore no responsibility or liability can be fastened upon them. It was contended that the present writ petition is not maintainable as the learned NCDRC, New Delhi has rightly observed that it involves several complicated and seriously disputed questions of fact regarding title, possession, mortgage, and contractual obligations requiring detailed examination and appreciation of oral and documentary evidence, which can only be adjudicated through a full-fledged trial before a competent civil court and cannot be fairly and effectively decided in summary proceedings under the writ jurisdiction of this Hon'ble Court or under the Consumer Protection Act, 2019. In support of this contention, reliance was placed on **(BLJ 2025 V-1 Page 225)** and the judgment of the Hon'ble Supreme Court in ***Oriental Insurance Co. Ltd. v. Munimahesh Patel*****, reported in (2006) 7 SCC 655 and 2006 CPJ 1 (SC)**, wherein it was held that where the dispute involves complex factual issues, the matter should be decided by a competent civil court after a full-fledged trial and not by the Consumer Commission in its summary jurisdiction.

10. The learned counsel for the respondents further submitted that a Title Suit No. 826 of 2012 is still pending before the competent Civil Court, wherein the petitioners appeared and filed a written statement categorically admitting in Para 13 thereof that in execution of the registered Sale Deed No.

WEB COPY

26306 dated 04.10.2012, they acquired absolute right, title, and exclusive possession over the flat in question. It is a well-settled principle of law that admitted facts require no further proof, and having made such an unequivocal admission on affidavit that the flat in question is in his possession, the petitioner is estopped from taking a contrary stand in the present writ proceedings. Furthermore, from a perusal of Consumer Complaint Case No. 6/2013, it is evident that the petitioners have intentionally suppressed material facts and not disclosed the true facts before the Consumer Commission, and on this ground alone the present writ is fit to be rejected.

11. The learned counsel for the respondents also submitted that the petitioners have intentionally not disclosed in the present writ application that one CWJC No. 17998 of 2023 concerning the flat in question is also pending before the Hon'ble High Court of Judicature at Patna, wherein the petitioners are party to the case and an interim order is operating in favour of the petitioner. Moreover, the flat in question already stands registered in the petitioners' favour and is mortgaged with the Bank/Financier, which has already initiated loan recovery proceedings due to the petitioners' default in repayment. In CWJC No. 17998 of 2023, on 09.05.2025, the petitioner, Mr. Anjani Kumar Sinha, expressed his willingness before the Hon'ble Court to clear the outstanding loan dues, whereupon the Hon'ble Court directed the Bank/Financier to place on record the outstanding loan amount and directed the petitioner therein to clear the outstanding dues, which itself recognizes that the liability to repay the loan rests upon the defaulting borrower/petitioner and that Mr. Anjani Kumar Sinha is not the registered owner of the flat in question, there being neither any

WEB COPY

legal nor contractual basis requiring him to discharge the loan liability of the defaulting borrower.

12. The learned counsel for the respondents lastly submitted that under a hire-purchase or hypothecation/loan transaction, the financier continues to have a superior legal and secured interest in the financed asset until the entire loan amount is repaid and the security is discharged, and so long as the loan remains unpaid and recovery proceedings are pending, the borrower cannot assert an unfettered right over the secured asset or seek relief that would prejudice the financier's rights. Having acknowledged his liability to repay the loan, the petitioners cannot be permitted to claim double benefits by retaining the registered flat and simultaneously seeking a refund of its sale consideration while continuing to remain in default, as double payments or double registration for one goods is not acceptable. In view of the pending Title Suit No. 826 of 2012, the recovery proceedings, and CWJC No. 17998 of 2023, any order concerning the flat or directing a refund would prejudice the rights of the Bank/Financier and the respondents, conflict with the pending proceedings, and result in unjust enrichment of the petitioners; therefore, the impugned judgment passed by the Hon'ble NCDRC warrants no interference and deserves to be affirmed in toto.

13. Having heard the parties and perused the record, before delving into the merits of the order passed by the National Consumer Disputes Redressal Commission, Delhi, it is relevant to address the preliminary objection raised by the respondents regarding the maintainability of the present writ petition before the Patna High Court against the said order.

On the issue of maintainability of the present writ petition, the

WEB COPY

Judgment of the Hon'ble Supreme Court in the case of ***Universal Sompo General Insurance Co. Ltd. Vs. Suresh Chandra Jain and Ors.,*** reported in ***(2024) 9 SCC 148***, is relevant, wherein it was held that an aggrieved party must first approach the jurisdictional High Court either by way of a writ petition under article 226 or by invoking its supervisory jurisdiction under article 227 of the Constitution. The Apex Court under paragraph 39 observed that,

> *"In the aforesaid view of the matter, we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution."*

(Emphasis Supplied)

It is further relevant to discuss the judgment of ***L. Chandra Kumar v. Union of India*** reported in ***(1997) 3 SCC 261***, where a seven-judges constitutional bench of the Hon'ble Supreme Court of India held that the power of Judicial review vested in the High Courts and the Supreme Court is an inviolable part of the basic structure of the Constitution. The Court ruled that the

WEB COPY

parliament cannot exclude the jurisdiction of the Constitutional Courts even by amending the Constitution or creating specialized tribunals.

14. Regarding the territorial jurisdiction of the Hon'ble Patna High Court over an order passed by the NCDRC in New Delhi, it is pertinent to examine the Hon'ble Supreme Court's judgment in ***Siddharth S Mookerjee & Anr. v. Madhab Chand Mitter & Anr. (2024 SCC OnLine SC 4285***). In this ruling, the Court held that merely because the NCDRC is located in New Delhi, jurisdiction is not automatically conferred upon the Delhi High Court based solely on its situs, rather, the competent jurisdictional High Court is the one within whose territorial limits the cause of action arose. The relevant paragraph nos. 8 & 9 of ***Siddharth S Mookerjee & Anr. v. Madhab Chand Mitter & Anr (***supra) is produced below;

> *"8. Learned counsel for the respondent no.1 contends that the jurisdictional High Court in the instant case ought to be treated as the High Court of Delhi, inasmuch as the judgment impugned before the High Court was passed by the NCDRC at Delhi.*
>
> *9. In our opinion, that can hardly be treated as a ground to invoke the jurisdiction of the High Court of Delhi. The respondent No.1 ought to have approached the High Court of Calcutta being aggrieved by the impugned judgment as the entire cause of action in the present case has arisen in Kolkata,*

WEB COPY

where the patient was operated for ovarian cancer on 24 th February, 2012, and expired on 30 th July, 2014. The complaint case was filed at Kolkata based on the aforesaid cause of action. Merely, because the NCDRC has allowed the revision petitions filed by the appellants and the respondent no.2 would not be a ground to vest jurisdiction in the High Court of Delhi."

(Emphasis Supplied)

15. In light of the settled legal position enunciated in Universal Sompo General Insurance Co. Ltd. (supra), L. Chandra Kumar (supra), and Siddharth S Mookerjee (supra), it is clear that an order passed by the National Consumer Disputes Redressal Commission is amenable to the writ and supervisory jurisdiction of the jurisdictional High Court under Articles 226 and 227 of the Constitution of India. Furthermore, the mere situs of the NCDRC in New Delhi does not divest this Court of its territorial jurisdiction, as the cause of action in the present matter including the institution of the original consumer complaint arose wholly within the territorial limits of the State of Bihar.

16. Consequent to the issue of jurisdiction, the next question that arises for consideration is whether the relationship between a consumer and a service provider terminates upon the execution of a sale deed as held by the State Consumer Disputes Redressal Commission, Bihar and subsequently affirmed by the National Consumer Dispute Redressal Commission, New Delhi. The question is no longer res integra as in the case of ***Wg. Cdr.***

WEB COPY

Arifur Rahman Khan and Aleya Sultana and Ors. v. DLF Southern Homes Pvt. Ltd. and Ors., reported in ***(2020) 16 SCC 512***, the NCDRC had held that buyers who had taken possession and executed deeds of conveyance could not pursue their claims. It reasoned that a conveyance is a transfer of a right in property and that, by it, the buyers had accorded satisfaction to the services provided and discharged the developer of its liabilities. The Hon'ble Supreme Court did not accept this view and held under paragraph 39 that;

> *"*39. *The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they, are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the*

WEB COPY

> *claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.*

(Emphasis Supplied)

The Supreme Court also rejected the contention that execution of the Deed of Conveyance turns the transaction into a mere sale of immovable property outside the consumer fora. Relying on ***Narne Construction (P) Ltd. v. Union of India, (2012) 5 SCC 359***, which distinguishes a simple transfer of immovable property from housing construction or building activity that falls within "service" under Section 2(1)(o) of the Consumer Protection Act, 1986, it concluded under paragraph 41 that;

WEB COPY

"41. *It has been urged by the learned counsel of the developer that a consequence of the execution of the Deed of Conveyance in the present case is that the same ceases to be a transaction in the nature of "supply of services" covered under the CP Act 1986 and becomes a mere sale of immovable property which is not amenable to the jurisdiction of Consumer Fora. In Narne Construction (P) Ltd. v. Union of India, this Court distinguished between a simple transfer of a piece of immovable property and housing construction or building activity carried out by a private or statutory body falling in the category of "service" within the meaning of Section 2 (1) (o) of the CP Act 1986. This Court held that:*

"8. Having regard to the nature of transaction between the appellant Company and its customers involved much more than a simple transfer of a piece of immovable property it is clear the same constitutes "service" within the meaning of the Act. It was not the case that the appellant Company was selling the given property with all its advantages and/or disadvantages on "as is where is" basis, as was the position in UT Chandigarh Admn v. Amarjeet Singh. It is

WEB COPY

a case where a clear-cut assurance was made to the purchasers as to the nature and extent of development that would be carried out by the appellant Company as a part of package under which a sale of fully developed plots with assured facilities was made in favour of the purchasers for valuable consideration. To the extent the transfer of site with developments in the manner and to the extent indicated earlier was a part of the transaction, the appellant Company has indeed undertaken to provide a service. Any deficiency or defect in such service would make it accountable before the competent Consumer Forum at the instance of consumers like the respondents."

The developer in the present case has undertaken to provide a service in the nature of developing residential flats with certain amenities and remains amenable to the jurisdiction of the Consumer Fora. Consequently, we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed Deeds of Conveyance have lost their right to make a claim for compensation for the delayed handing over of the flats."

(Emphasis Supplied)

WEB COPY

17. The same principle was applied recently in ***T.K.A. Padmanabhan v. Abhiyan Cooperative Group Housing Society Ltd., Civil Appeal No. 10724 of 2016, decided on 04.06.2026***. There the NCDRC had dismissed the revision petition on the ground that the appellant was not a consumer, having taken possession of the flat without protest. The Supreme Court held that this reasoning could not be sustained. The relevant paragraph no. 25 of the ***T.K.A. Padmanabhan v. Abhiyan Cooperative Group Housing Society Ltd.*** judgment is produced herein below;

> *"The reasoning adopted by the National Commission cannot be sustained. The appellant's complaint was not for delivery of possession simpliciter. His grievance was that there had been delay in handing over possession of the flat and that he was entitled to compensation for such delay. A claim for compensation for delayed possession necessarily arises from the period prior to the actual delivery of possession. The subsequent receipt of possession cannot, by itself, extinguish the right of the allottee to seek adjudication of a claim for compensation for the alleged delay."*
>
> (Emphasis Supplied)

The Court further held that whether there was delay, whether it was attributable to the respondent, whether possession was accepted unconditionally, and whether compensation is payable are matters for adjudication on merits. These could not be

WEB COPY

concluded at the threshold by holding that the complainant ceased to be a consumer.

18. In the present case, the NCDRC's reasoning rests on the same premise that was rejected in both the above decisions, namely that the consumer-service provider relationship comes to an end with the execution of the deed. If receipt of possession or execution of a Deed of Conveyance does not extinguish a buyer's claim before the consumer fora, execution of the sale deed cannot do so either. The reasoning of the State Commission which was subsequently affirmed by the NCDRC is arbitrary, unreasonable and contrary and therefore cannot be sustained in view of the law laid down in Arifur Rahman Khan (supra) and T.K.A. Padmanabhan (supra).

19. At this juncture, to appreciate the legal significance of peaceful possession as an essential attribute of title, it is pertinent to advert to the classic exposition of the concept of ownership in Salmond on Jurisprudence (12th Edition), wherein the learned author elucidates the constituent ingredients of ownership from pages 246 to 264, where Salmond defines ownership as the relation between a person and an object forming the subject-matter of his ownership. It consists of an complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons. While explaining the ingredients, Salmond firstly says, the owner will have a right to possess the thing which he owns. He may not necessarily have possession, for he may have been wrongfully deprived of it or may have voluntarily divested himself of it. Secondly, the owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e., the right to decide how it shall be used; and the right to income from it.

WEB COPY

Thirdly, the owner has the right to consume, destroy or alienate the thing. Fourth, ownership has the characteristics of being indeterminate in duration. The position of an owner differs from that of a non-owner in possession in that the latter's interest is subject to be determined at some future time. Fifthly, ownership has a residuary character.

20. In view of the foregoing, it is evident that ownership devoid of undisputed possession strikes at the very root of proprietary rights and frustrates the title conveyed by a sale deed. The right to peaceful enjoyment is a fundamental incident of ownership; therefore, if such enjoyment is encumbered by litigation or remains under the control of a third party, the sale deed fails to confer an absolute right in the property.

21. It is a settled principle of jurisprudence that settled, peaceful possession constitutes a substantive legal shield that courts are bound to protect, independent of the ultimate adjudication of title. As the celebrated German jurist Rudolf von Jhering famously propounded in Über den Grund des Besitzesschutzes (1869), "possession is the objective realization of ownership", a principle later crystallized in common law jurisprudence by Sir John Salmond in the axiom that possession is in fact what ownership is in right. While ownership represents an abstract de jure entitlement conferred by law, possession constitutes its tangible, de facto exercise and visible manifestation in the physical world. Because an owner ordinarily asserts dominion over property through actual custody and control, the law treats settled possession as the external outwork of title, characterizing it as "ownership on the defensive."

WEB COPY

22. This enduring legal doctrine finds an apt literary resonance in William Shakespeare's Edward III (Act III, Scene 1), wherein Prince Philip addresses King John of France regarding King Edward III's competing claim to the French throne:

"I say, my lord, claim Edward what he can,
And bring he ne'er so plain a pedigree,
'Tis you are in possession of the crown,
And that's the surest point of all the law."

Which means that irrespective of how clear, compelling, or well-founded a rival claimant's assertion of right or lineage ("pedigree") may appear on paper, the party holding actual, physical, and settled possession stands on the strongest footing by law. The verse captures the essence of the time-honored maxim that possession is nine points of the law and embodies the foundational rule of possessio contra omnes valet praeter eum cui ius sit possessionis—that peaceful possession is valid against the entire world, save against the true owner establishing a superior de jure right through due process of law. Irrespective of how compelling or well-founded a rival claimant's assertion of title or "pedigree" may appear on paper, an unestablished claim of right requires strict proof, whereas actual and settled possession carries overwhelming presumptive weight. Until lawful adjudication and dispossession take place in accordance with procedure established by law, the party in settled possession stands on the strongest footing recognized by courts and cannot be ousted except in due course of law.

23. Based on the above discussion we can now move on to the next issue of whether the Respondent's failure to deliver undisputed and peaceful possession of the subject flat

WEB COPY

constitutes a 'deficiency in service,' under **The Consumer Protection Act, 1986/ The Consumer Protection Act, 2019,** as in the present case the respondents(builder) agreed to sell the flat to one Anjani Kumar Sinha by an Agreement of Sale dated 05.03.2011. Without disclosing that agreement, the respondents then sold the same flat to the petitioners by Sale Deed dated 03.10.2012, more than a year later, and received the consideration, including the bank loan of Rs. 28.40 lakhs disbursed to them. The same flat was thus committed to two persons, and the petitioners did not get peaceful and undisputed possession because it was occupied by Anjani Kumar Sinha under the earlier agreement. This amounts to double allotment of the flat, here it becomes important to reiterate that the act of creating a prior document in favour of one party, subsequently executing a sale deed in favour of another, and failing to deliver peaceful possession to the subsequent purchaser constitute both a deficiency in services and unfair trade practice under **The Consumer Protection Act, 1986/ The Consumer Protection Act, 2019**. This legal position stands fortified by the authoritative pronouncement of the Hon'ble Supreme Court in ***Omkar Realtors and Developers Pvt. Ltd. v. Kushalraj Land Developers Pvt. Ltd., (2024 INSC 629)*** wherein it was categorically held under paragraph nos. 18 and 19 that,

> *18. The second issue is regarding deficiency in service or unfair trade practice on part of the appellant in the matter of allotment of the flat in question in favour of the respondent and in its cancellation resulting in the forfeiture of the amount deposited.*

WEB COPY

19. Undisputedly, the flat in question was allotted in favour of the respondent vide letter dated 29.06.2016 with an addendum dated 30.06.2016. The delivery of possession was notified by the appellant as latest by 31.12.2018 but was advanced to the first quarter of 2017. Thus, in order to make finance arrangements, respondent entered into negotiation with the finance company whereupon it was revealed that the said flat stood already reserved/allotted in favour of one Mr. Nakul Arya. The aforesaid fact of reservation/allotment of the flat in favour of Mr. Nakul Arya is not in dispute. The explanation is that the flat allotted to the respondent and Mr. Nakul Arya were different but there was confusion with regard to the number of the flat allotted to each one of them. This confusion with regard to double allotment of the flat persisted till it was resolved by the appellant as per the deed of rectification dated 17.03.2018. It means that the confusion of double allotment of the flat notwithstanding some litigation in court prevailed and was finally resolved on 17.03.2018. In this view of the matter, the appellant could not have insisted for transferring possession of the flat and could not have terminated the allotment of the

WEB COPY

respondents vide its letter dated 31.08.2017 i.e. prior to the resolution dated 17.03.2018. At the same time, the appellant instead of refunding the amount deposited by the respondents, forfeited the same vide letter dated 18.11.2017. Since the very cancellation/ termination of the allotment of the respondents in the facts and circumstances of the case is not justified, consequently the forfeiture is also bad in law. The NCDRC upon consideration of the above facts and circumstances, irrespective of the fact that the appellant may have the power to advance the date of delivery of possession of the flat allotted or offer possession on the basis of part occupancy certificate, rightly held that the appellant was guilty of adopting unfair trade practice and since there was double allotment of the flat, there was deficiency in service.

(Emphasis Supplied)

24. By selling the flat to the petitioners while it was already the subject of an earlier agreement of sale in favour of another, and by concealing that agreement, the respondents failed to give the petitioners what they had paid for. This is a clear deficiency in service and unfair trade practice under **The Consumer Protection Act, 1986/ The Consumer Protection Act, 2019,** on the part of the respondents.

WEB COPY

25. In view of above and in the interest of justice, the impugned order dated 31.01.2024 of the passed by the National Consumer Disputes Redressal Commission, New Delhi in FA/771/2016 is hereby quashed and set aside. The respondent builder is hereby directed to refund the entire sale consideration to the petitioner, along with interest at the rate of 9% per annum from the date of execution of the sale deed until the date of actual realization, within a period of 3 months from the date of this order. The petitioner undertakes to clear all outstanding dues and loans owed to the concerned financial institution(s) in respect to the flat in question out of the refunded amount. Needless to state, upon receipt of the aforesaid sale consideration along with accrued interest, the petitioner shall cease to have right, title or interest in respect of the flat in question, and the respondent-builder shall be at liberty to approach the competent Court for cancellation of the sale deed in accordance with law.

26. With the aforesaid directions the present writ petition stands allowed.

27. Pending IA(s) if any stands disposed of.

28. The Court acknowledges and records the valuable assistance provided by Law Assistants Ms. Samridhi Suman and Mr. Swarnim Sharan, who are attached to this Court.

(Alok Kumar, J)

Anand/-

AFR/NAFR	AFR
CAV DATE	01.09.2026
Date of Pronouncement	26.11.2026
Uploading Date	26.11.2026
Transmission Date	NA

WEB COPY