

Date of Filing: 19.10.2020  
Date of Order: 12.07.2022

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION – I, HYDERABAD

P r e s e n t

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT  
HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER

On this the Tuesday the 12<sup>th</sup> day of July, 2022

C.C.No. 363/2020

Between:-

The Consumer Rights Organization (CRO) / Uphokta  
Adhikar Sangthan, rep. by Vikas Pandey, President of  
Andhra Pradesh State and Incharge , President for Telangana State.

....Complainant

And

Incredible India Projects Private Limited,  
Rep. by its authorized signatory,  
# 3-6-98, 1<sup>st</sup> , 2<sup>nd</sup> , 3<sup>rd</sup> and 4<sup>th</sup> Floor,  
Vasavi Towers, west Marredpally,  
Secunderabad – 500 026.  
Phone Nos. 040 6633 1144, 6633 1155,  
Website : [www.incredibleindiaprojects.in](http://www.incredibleindiaprojects.in)  
Email. [info@incredibileindiaprojects.in](mailto:info@incredibileindiaprojects.in)

....Opposite Party

Counsel for the Complainant  
Counsel for the Opposite party

: Mrs.P. Padmavathi  
: Mr.A.M.Rao

O R D E R

(By HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT on  
behalf of the bench)

1. The present complaint is filed under Section 35 of the Consumer Protection Act, 2019 by the complainant, Consumer Rights Organization on behalf of the aggrieved party, alleging deficiency of service on the part of the Opposite Party and seeking appropriate direction to the Opposite Party

- i) To refund to the defacto-complainant a sum of Rs. 5, 18,500/- (Rupees Five Lakhs Eighteen Thousand and Five Hundred Only) along with interest @24% p.a. from 08.11.2015
- ii) To pay Rs. 5, 00,000/- (Rupees Five Lakhs Only) towards compensation for mental agony

- iii) To pay Rs. 5, 00,000/- (Rupees Five Lakhs Only) towards compensation for deficiency in service
- iv) To pay costs of Rs. 25,000/- (Rupees Twenty Five Thousand Only)
- v) To pass such other relief or reliefs which the Hon'ble Commission deems fit, just and proper in the circumstances of the case.

**2.** Facts necessary for adjudication are that the complainant received a complaint from Mr KLV Prasad (hereinafter called as “defacto-complainant) who is a resident of Secunderabad to file case against the Opposite Party – Realtor for collecting the amounts without developing the lay out and without getting necessary approvals from the authorities concerned. The Opposite Party has canvassed through local media and television that they were developing a site in survey No. 801/P situated in Raigir Village, Bhongir Mandal, Nalgonda District. Having attracted to the advertisements and canvass made by the Opposite Party, the defacto-complainant paid Rs. 12,000/- (Rupees Twelve Thousand) each towards the initial payment for the purchase of two plots admeasuring 150 sq. yards each at Rs. 3,999/- (Rupees Three Thousand Nine Hundred and Ninety Nine Only) per sq. yard and the Opposite Party had agreed to sell the plots on monthly instalment basis. Thereafter the defact-complainant paid Rs. 2, 59,250/- (Rupees Two Lakhs Fifty Nine Thousand Two Hundred and Fifty Only) in the pass book No. 0868 and Rs. 2, 59,250/- (Rupees Two Lakhs Fifty Nine Thousand Two Hundred and Fifty Only) in the pass book No. 1415 and the pass books were issued by the Opposite Party for the two plots. The defacto-complainant paid those amounts during the period from 08.11.2015 to 29.04.2017. The defacto-complainant, subsequently, came to know that the layout was not approved either by the HMDA or TTDA or DTCP as has been stated by the managing director of the Opposite Party on each and every time when the defacto-complainant approached him. It is submitted that as per the oral agreement on 08.11.2015, the Opposite Party has agreed to develop the site and hand over it by the end of August, 2019. It is further submitted that when the Opposite Party failed to develop the site and failed to get the approvals from the concerned authorities, the defacto-complainant approached the managing director of the Opposite Party for refund of the amount paid by him.

The Opposite Party collected the amounts from the defacto-complainant for the allotment of house plot without L.P. number and when the defacto-complainant cancelled the deal and sought for refund of the amount, the Opposite Party failed to refund the amount. After receiving the complaint from the defacto-complainant, the complainant organization had enquired with the Opposite Party and requested the Opposite Party to settle the matter and refund of the amount paid by the defacto-complainant. Due to the act of the Opposite party, the complainant and his entire family suffered with lot of mental agony and also sustained financial hardship. When the Opposite Party bluntly refused to refund the amount, the defacto-complainant, through the complainant organization filed the present complaint.

The Opposite Party resisted the complaint by filing written version. While denying the allegations, the Opposite Party raised preliminary objections with regard to locus standi of the complainant, not being a consumer dispute etc. It is averred that allowing the complaint would amount to miscarriage of justice, going against the objectives and principles established in the Consumer Protection Act, 2019 and most importantly frustrating the noble intention of legislature of giving an opportunity to genuine voluntary consumer associations legitimately registered under law in helping consumers who are helpless, poor and marginalized. It is further averred that the defacto-complainant had initially booked a plot of 150 sq. yards and was issued a pass book TW-0868 and thereafter he had voluntarily booked the second plot of 150 sq. yards and was issued pass book No. TW-1415. It is stated that the defacto-complainant paid an amount of Rs. 2, 59,250/- (Rupees Two Lakhs Fifty Nine Thousand Two Hundred and Fifty Only) out of total cost of Rs. 5, 99,850/- (Rupees Five Lakhs Ninety Nine Thousand Eight Hundred and Fifty Only) in each plot till date, which is much less than half of the price of each plot. It is further stated that the defact-complainant was irregular in paying instalments and stopped paying instalments since 29.04.2017. It is averred that the defacto-complainant on 02.04.2019 had signed an affidavit in favour of the Opposite Party opting out of the said scheme as per company norms, stating financial problems and further declaring that there shall not be any claims either from him or anyone else representing him. It is further averred that as per the mutually agreed terms and conditions of the project, the membership of the defacto-complainant is deemed to have been cancelled. It is submitted that the Opposite Party has

always been diligent in making necessary applications and compliances regarding the lands and plots. It is further submitted that the defacto-complainant has not submitted an iota of proof, even remotely, in proving any kind of deficiency of service on the part of the Opposite Party. Hence prayed to dismiss the complaint.

**3.** In the enquiry, the complainant filed evidence affidavit reiterating the version of the compliant and filed supporting documents which are marked at Ex A1 to Ex A5. On behalf of the Opposite Party, Smt. Geeta Jaideep filed evidence affidavit and their documents are marked at Ex B1 to Ex B7. Thereafter both parties filed written arguments and advanced oral submissions.

**4.** Based on the facts and material brought on record, and the oral and written submissions of both the parties, the following points have emerged for consideration:

- a) Whether the complainant have locus standi to file the case on behalf of defacto-complainant?
- b) Whether the complainant could make out the case of deficiency of service on the part of the Opposite Party?
- c) Whether the defacto-complainant is entitled for the claim / compensation made in the complaint? To what relief?

**5. Point No. a:**

It is evident from Ex A1 that the complainant, Upbhokta Adhikar Sanghatan, is registered under the Societies Registration Act, 1973 in the state of Madhya Pradesh. It is further evident from Ex A2 that the defacto-complainant has given an authorization letter authorizing The AP State President (Dr Vikas Pandey) of the complainant organization to settle the matter directly or through court of law and to do justice to the defacto-complainant.

Reliance is placed on the observation of the Hon'ble NCDRC in the case of Re ; Authorized Representative ..... vs Unknown

“Keeping in mind that the composition of consumer courts is such that it includes not only judicial members but also non-judicial members from the field of administration and social work this envisages a new approach, which is to be shorn of the shackles of procedural so that acers

to justice is easy and simple. In this context, to say, that a consumer association cannot plead the case of the consumer or an association cannot appear before a consumer court will be to defeat the purposes of the Act itself. Therefore recognized consumer associations should have the right of audience before the fora under the Act.”

In *Sunil Batra v Delhi Administration & Others*, the Hon’ble Apex Court departed from the traditional rule of standing by authorizing community litigation. The Court entertained a writ petition from a prisoner, a disinterested party, objecting to the torture of a fellow prisoner. The Court entertained the writ after reasoning that ‘these martyr’ litigations possess a beneficent potency beyond the individual litigant and their consideration on the wider representative basis strengthens the rule of law.” Significantly, citing “people’s vicarious involvement in our justice system with a broad-based concept of locus standi so necessary in a democracy where the masses are in many senses weak,” the Court permitted a human rights organization to intervene in the case on behalf of the victim.

In the instant case, it is evident from the document at Ex B7 submitted by the Opposite Party that the defacto-complainant, no longer resides in India and he has given authority to his father-in-law to pursue the refund matter. It is also evident that on the affidavit of the father-in-law of the defacto-complainant, the concerned person of the Opposite Party endorsed to refund the amount which was not paid to him till date as the Opposite Party did not produce any document to show the payment. It is established that the Opposite Party accepted the contents of the letter of the defacto-complainant and endorsed for refund of the payments made by him. It is further evident from Ex A2, that an authority letter was given to the consumer rights organization by the defacto complainant in the year 2020 for pursuing the refund matter as the Opposite Party had failed to make the payments despite the endorsement in Ex B7. Hence we are of the considered view that the complainant has locus standi to represent the present complaint.

**6. Point No. b:**

It is evident from Ex A3, Ex A4 and Ex A5 that the defacto-complainant paid Rs. 2, 59,250/- each in the pass book No. 1415 and pass book No. 0868 (also Ex B1 and Ex B2). It is further evident from Ex B3

and Ex B4 that the defacto-complainant was enrolled as member of "Tomorrow world" for the purchase of the open plot. It is clear from Ex B7 that the defacto-complainant authorized Mr Venukrishna Karedla (father-in-law of the de-facto complainant) to deal with the matter as the defacto complainant no longer resided in India and there was no other means of communication with the Opposite Party. The authorized person, Mr Venukrishna Karedla filed affidavit and sought refund of Rs. 5, 18,500/-. The undisputed fact is that the defacto-complainant paid an amount of Rs. 5, 18,500/- for the purchase of the open plots. On perusal of Ex B5 and Ex B6, it is clear that the letters dated 02.02.2018 and ..-07.2020 are the lay out approval permissions from the concerned authorities of the Government of Telangana with certain modifications and directions. As per clause 8 and 9 the layout applicant is directed to complete the above developmental works within a period of three years and the layout applicant shall display a board at a prominent place in the above site showing the layout pattern with permit L.P. number and with full details of the layout specifications and conditions to facilitate the public in the matter. Thus the Opposite Party got approvals from the concerned authorities in the year 2018 and 2020. The question of registration after getting approvals etc. does not arise in the present dispute as the Opposite Party endorsed on Ex B7 letter dated 09.04.2019 to refund the amount as per the Company norms and the said endorsement was done on 15.04.2019. Though the Opposite Party had endorsed to refund the amount paid by the defacto-complainant on the basis of the letter of the defacto complainant and affidavit of Mr. Venukrishna Karedla, the Opposite Party failed to pay the refund. The Opposite Party did not submit any document to substantiate that they had already refunded the amount to the defacto-complainant. As per Ex A5, page No. 10, the defacto-complainant had given elaborative reply with regard to default in payments. On perusal of the document, it appears that his friend who invested in the project is also unhappy and therefore requested to merge the amounts of both to settle the accounts of the defacto-complainant which was not replied by the Opposite Party. Further, it is evident from Ex A3 that the Opposite Party, despite endorsing to refund the amount on Ex B7, did not make the payment but revised the cost of plot from Rs. 12,000/- (Rupees Twelve Thousand Only) to Rs. 12,500/- (Rupees Twelve Thousand Five Hundred Only). This not only amounts to deficiency of service but also amounts to unfair trade practice by the Opposite Party.

As far as plea taken by the Opposite Party to the effect that the complainant is a defaulter, it may be stated here that in our considered opinion, when the complainant saw that no paper possession has been offered and no lay out approval has been obtained by the Opposite Party, he was right in not making the payment and seeking for refund. The purchaser cannot be made to wait for inordinate period for getting approval. In view of the matter, the complainant cannot be termed as defaulter.

The counsel for Opposite Party, in his oral submissions raised the point of delay stating that no delay condonation petition was filed by the complainant to condone the delay. On perusal of the endorsement made at the bottom of the document at Ex B7 dated 15.04.2019, we are of the opinion that there is no delay in filing the present complainant.

**7. Point No. c:**

In this case, it is admitted fact that the defacto-complainant has deposited an amount of Rs. 5, 18,500/- with Opposite Party towards purchase of the plots mentioned above. It is also admitted by the Opposite Party that the concerned person of the Opposite Party endorsed to refund the amounts to the defacto-complainant for which the defacto-complainant is entitled to and the Opposite Party was liable to pay, way back in the year 2019. Though they have admitted for the amounts, the Opposite Party did not pay the amounts. Furthermore, since the Opposite Party is still utilizing the amount paid by the defacto-complainant and has not refunded the same; in that event there is a continuing cause of action in his favour, in view of observations made by the Hon'ble National Commission in *KNK Promoters & Developers vs S. N. Padmini*, Revision Petition No. 340 of 2011, decided on 31 August, 2016, in which it was held that the builder cannot withhold the amount deposited by the allottee and if it is so, there is a continuing cause of action in favour of the allottee, to file a complaint seeking refund of the said amount.

At the same time, since in the present case, neither the payments made by the complainant, in respect of the plot in question are disputed nor the documents with regard to the payments and the pass book numbers placed on record by him are disputed by the Opposite Party. It is a case of non-offer and non-registration of the plot after taking the remaining sale consideration though the Opposite Party has collected 45% of the plot value.

In view of the above findings, the defacto-complainant is entitled to get the amounts from the Opposite Party along with interest on the amount along with cost and compensation. Hence, we proceed to pass the following order and direct the Opposite Party:

- i. To refund to the defacto-complainant a sum of Rs. 5, 18,500/- ((Rupees Five Lakhs Eighteen Thousand and Five Hundred Only) along with interest @9% p.a. from 08.11.2015
- ii. To pay Rs. 10,000/- (Rupees Ten Thousand Only) towards compensation for mental agony and deficiency of service
- iii. To pay costs of Rs. 5,000/- (Rupees Five Thousand Only).

This order be complied with by the Opposite Party, within 45 days from the date of receipt of its certified copy, failing which, the above granted amount, except costs, shall attract interest @ 12% p.a. till its realization.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 12<sup>th</sup> day of July, 2022.

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

Complainant (PW1) Vikas Pandey

WITNESS EXAMINED FOR THE OPPOSITE PARTY No. 1

DW-1 Geetha Jaideep

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- |       |  |
|-------|--|
| Ex.A1 | Copy of Incorporation Certificate of Complainant Organization.   |
| Ex.A2 | Copy of Letter from defacto-Complainant.<br>Page No.2: Passbook No. 868 with entries.<br>Page No.3: Passbook No. 1415 with entries |
| Ex.A3 | Copy of Ledger Account for Passbook No. TW-0868 dated 05.02.2019.  |
| Ex.A4 | Copy of Ledger Account for Passbook No. TW-1415 dated 01.04.2012 to 05.02.2019.  |
| Ex.A5 | Copy of Bunch of Receipts dated 08.11.2015 to 29.04.2017<br>Page No.1 to 6 bank receipts,  |



Page No.7 : 1857 Reviving Revolution Be Sure- Be Secure @  
Bhongir Yadadri.

Page No.8: 1857 Reviving Revolution Be Sure- Be Secure @  
Bhongir Yadadri.

Page No.9: Membership Application.

Page No.10: Email dated 16.08.2018.

Page No.11: Lr.Roc No. 1679/2016/ YTDA/H1 dated  
15.12.2016.

Page No.12: ID card of Venkat Rao Akondi.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY

- Ex.B1 Copy of Statement of Passbook No. TW 0868 dated  
01.04.2012 to 24.11.2020.
- Ex.B2 Copy of Statement of Passbook No. TW-1415 dated  
01.04.2020 to 24.11.2020.
- Ex.B3 Copy of Membership Application Form for Passbook No.  
TW-0868 dated 18.09.2015.
- Ex.B4 Copy of Membership Application Form for passbook No.  
TW-1415 dated 12.11.2018.
- Ex.B5 Copy of Lr.Roc No.3181/2016/YTDA, dated 02.02.2018.
- Ex.B6 Copy of Lr. Roc No. 2335/2018/YTDA dated \_\_07-2020
- Ex.B7 Copy of affidavit of defacto- complainant filed by  
Mr.K.Venu Krishna, with authorization letter dt.  
02.04.2019.

MEMBER

PRESIDENT

PSK  
Read by:-  
Compared by :-

In view of the above findings, the defacto-complainant is entitled to get the amounts from the Opposite Party along with interest on the amount along with cost and compensation. Hence, we proceed to pass the following order and direct the Opposite Party:

- iv. To refund to the defacto-complainant a sum of Rs. 5, 18,500/- ((Rupees Five Lakhs Eighteen Thousand and Five Hundred Only) along with interest @9% p.a. from 08.11.2015
- v. To pay Rs. 10,000/- (Rupees Ten Thousand Only) towards compensation for mental agony and deficiency of service
- vi. To pay costs of Rs. 5,000/- (Rupees Five Thousand Only).

This order be complied with by the Opposite Party, within 45 days from the date of receipt of its certified copy, failing which, the above granted amount, except costs, shall attract interest @ 12% p.a. till its realization.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 12<sup>th</sup> day of July, 2022.

MEMBER

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