

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
WEST BENGAL
11A, Mirza Ghalib Street, Kolkata - 700087**

**First Appeal No. A/365/2015
(Arisen out of Order Dated 16/02/2015 in Case No. CC/605/2014 of District South 24
Parganas)**

1. M/s. Greenhaven Realty Pvt. Ltd.
GF-12, 1953, Rajdanga Main Road(1st floor), Kolkata -
107, P.S. Kasba.

2. Mr. Biswanath Mondal
S/o Lt. Mongal Ch. Mondal, Chairman-cum-Managing
Director, M/s Greenhaven Realty Pvt. Ltd., Vill.-Purba
Goyalbati, Kheyadaha, Sonarpur, South 24 Pgs., Kolkata
-743 369.

3. Mrs. Ira Mondal
W/o Biswanath Mondal, Director, M/s Greenhaven
Realty Pvt. Ltd., Vill. Purba Goyalbati, Kheyadaha
Sonarpur, South 24 Pgs., Kolkata-743 369.

4. Mr. Sudipta Kr. Ghosh
Director, M/s Greenhaven Realty Pvt. Ltd., C-181,
Baisakhi Abasan, Block-AG, Salt Lake, Kol-91.Appellant(s)

Versus

1. Shri Prithwish Sarkar
S/o Sri Parimal Sarkar, Flat no.B-703, Kumar Pragati,
NIBM Road, Kondhwa, Pune -411 048, P.S. - Kodhwa.

2. Smt. Sangita Sarkar
W/o Sri Prithwish Sarkar, rep.by his constituted attorney,
Sri Digendra Nath Roy, S/o Lt. Mahendra Nath Roy,
35,School Road, Santoshpur, flat no.6, Kolkata-75.Respondent(s)

BEFORE:

HON'BLE MR. SAMARESH PRASAD CHOWDHURY PRESIDING MEMBER

For the Mr. Netai Chandra Modak Mr. Suresh Chandra Sarkar , Advocate
Appellant:

For the Mr. Ashok Kumar Singh, Advocate
Respondent: **Mr. Ashok Kumar Singh, Advocate**

Dated : 15 May 2017

Final Order / Judgement

Date of Filing – 24.03.2015

Date of Hearing – 04.05.2017

The present appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act') is at the instance of the Opposite Parties i.e. developer company and its directors against the Complainants/ intending purchasers to impeach the Judgement/Final Order dated 16.02.2015 passed by the Ld. District Consumer Disputes Redressal Forum, South 24 Parganas at Alipore (for short, Ld. District Forum) in Consumer Complaint no. 605/2014. By the impugned order the Ld. District Forum allowed the consumer complaint lodged by the Respondents under Section 12 of the Act with certain directions upon the Appellants like- (a) to refund Rs.6,00,000/- ; (b) compensation of Rs.1,00,000/- and (c) litigation cost of Rs.2,000/-.

The Respondents herein being Complainants initiated the complaint stating that on 26.10.2012 they entered into an agreement with the opposite parties to purchase of a piece of land measuring about 4 cottahs being Scheme Plot No.4B111, lying and situated at Mouza-Sngur, P.S.- Sonarpur, Dist- South 24 Parganas at a total consideration of Rs.4,40,000/-. The complainants have stated that they have paid the entire consideration amount as per schedule of payment. However, in the month of April, 2014 the men of the developer came with another proposal that they have decided to modify the projects 'Plot with Bungalow' and asked for further payments towards additional costs. The complainants declined to accept such offer and requested the developer to refund their money with banking rate of interest along with compensation. Ultimately, after several correspondences, on 16.08.2014 the developer issued a letter under the signature of OP no.4 intimating the refund of the amount of Rs.6,00,000/- through a cheque being No.098878 dated 16.09.2014. On the request of the OPs, the complainants did not deposit the cheque in the bank instantly, but ultimately when the said cheque was presented by complainant no.1 with his banker on 10.10.2014, the said cheque was dishonoured with the remarks 'funds insufficient'. Finding no other alternative, the respondents/complainants approached the Ld. District Forum with prayer for certain reliefs including refund of money of Rs.6,00,000/-, compensation of Rs.3,00,000/- etc.

The appellants being opposite parties did not contest. In fact, the summons/notices issued upon the opposite parties were returned with postal remark 'not claimed'. Under compulsion, the Ld. District Forum proceeded to dispose of the complaint in absence of the opposite parties.

After perusal of the materials on record, the Ld. District Forum by the impugned order, allowed the complaint with certain directions upon the opposite parties. Being aggrieved by and dissatisfied with the said order, the opposite parties have come up in this Commission with the present appeal.

I have scrutinised the materials on record and considered the submission advanced by the Ld. Advocates appearing for the parties including the written argument filed on behalf of the appellants.

Admittedly, the appellant no.1 is a private limited company incorporated under the Company's Act, 1956 represented by its Chairman-cum-Managing Director and other Directors being appellant nos. 2, 3 & 4, who used to look after day to day business of the appellant no.1 company. The appellant company has decided to develop land under the brand name of 'Green Heaven Realty Pvt. Ltd.' 400 bighas of land lying and situated in Mouza – Sangur under P.S.- Sonarpur, Dist-South 24 Parganas divided in various schemes of plots of land. The respondents in order to purchase a plot as to build their own house have paid Rs.88,000/- as 20% valuation of the

plot on 20.12.2011 by cheque No.002681 and the appellant's company acknowledged the same by their letter dated 06.01.2012 and intimated that plot being No.4B111 in the township project 'Green City Sonarpur' has been allotted. On 26.10.2012 they entered into an agreement with the appellants to purchase of a piece of land measuring about 4 cottahs being Scheme Plot No.4B111, lying and situated at Mouza-Sngur, P.S.- Sonarpur, Dist- South 24 Parganas at a total consideration of Rs.4,40,000/-. The schedule of payment goes to show that the respondents have paid the entire consideration amount.

However, the appellants could not keep their commitment and as such agreed to refund the amount and ultimately by a cheque being No.098878 dated 16.09.2014 they refunded the amount of Rs.6,00,000/-. The evidence on record goes to show that on the requests of the appellant company, the respondent no.1 did not deposit the cheque immediately but ultimately on 10.10.2014 the cheque in question was presented by the respondent no.1 to his banker, Axis Bank and the said cheque was dishonoured with the remark 'funds insufficient'.

The entire episode clearly depicts the gross negligence and deficiency in the services on the part of service provider towards a 'consumer' as defined in Section 2(1)(d)(ii) of the Act. In that perspective, the Ld. District Forum was quite justified in passing the order impugned. The respondents had to suffer much due to harassment and mental agony and as such the Ld. District Forum was also justified in imposing compensation of Rs.1,00,000/-. The acts and conducts of the appellants compelled the respondents to lodge the complaint and, therefore, the Ld. District Forum has also not committed any error by imposing a litigation cost of meagre amount of Rs.2,000/-. The opposite parties had no reason to come up in this Commission with the present appeal and as such the appeal being frivolous one, it is liable to be dismissed with cost of Rs.10,000/-.

Resultantly, the appeal is dismissed on contest with cost of Rs.10,000/- to be paid by the appellants to the respondents/complainants of the case.

The impugned Judgement/Final Order is hereby affirmed.

The Registrar of the Commission is directed to send a copy of this order to the Ld. District Consumer Disputes Redressal Forum, South 24 Parganas at Alipore (now at Baruipur) for information.

[HON'BLE MR. SAMARESH PRASAD CHOWDHURY]
PRESIDING MEMBER