

**NON-REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO. 16814/2017**  
(Arising out of SLP©No. 4520 of 2016)

Kusum Agarwal & Anr. .... Appellant(s)

Vs.

M/s Harsha Associates Pvt. Ltd. ....Respondent(s)

**J U D G M E N T**

**Deepak Gupta, J.**

Leave granted.

2. The respondent was building an office complex and issued an advertisement “Commercial space in Harsha Commercial Complex” to be constructed on Plot No.1, Local Shopping Centre, Gazipur, Delhi. The appellants who are the husband and wife jointly applied for one shop in the Complex which was offered to them by the respondent for a total consideration of Rs.4,80,000/-. Pursuant to

this, an agreement was entered into between the parties on 25.01.2004, whereby one shop was agreed to be sold to the appellants for a total consideration of Rs.4,80,000/- to be paid in installments.

3. On 06.12.2004, the respondent wrote a letter to appellant no.1 informing her that the shop is ready, requested the appellants to pay the balance amount of Rs.2,75,000/- and maintenance charges etc., i.e. a total amount of Rs.3,16,930.96/- on or before 15.12.2004. According to the appellants, though they were ready to pay this amount the shop was not handed over to them. The appellants sent a letter to the respondent on 19.04.2005 informing the respondent that Rs.2,05,000/- had already been paid and they are ready to take possession of the shop and pay the balance amount. Since possession of the shop was not delivered, the appellants filed a complaint before the District Consumer Disputes Redressal Forum, Delhi (for short 'District Forum'). Defence taken by the respondent was that the appellants were not ready and willing to pay the balance amount and, therefore, their amount had been forfeited. The District Forum directed the respondent to

handover the possession of the shop to the appellants on payment of the balance amount of Rs.2,45,000/- with interest @18% per annum from 28.03.2004 till the date of delivery of the possession along with other sundry charges. Thereafter, the appellants issued cheques for these amounts but the possession of shop was not delivered.

4. The respondent filed an appeal before the State Consumer Disputes Redressal Commission, New Delhi (for short 'the State Commission') and during the course of appeal it was disclosed by the respondent for the first time that the shop in question had already been sold prior to December, 2004 when letter was written to the appellants. The State Commission noticed that Rs.1,95,000/- had been paid earlier and Rs.10,000/- had been paid later and, therefore, directed the repayment of this amount within a period of one month. No interest was awarded and the appellants, therefore, filed revision petition before the National Consumer Disputes Redressal Commission, New Delhi (for short 'the National Commission'). The National Commission did not decide the matter on merits but held that the space was a commercial space and,

therefore, the appellants were not consumers and dismissed the petition.

5. At the outset, we may notice that this was not a defence raised by the respondent either before the District Forum or before the State Commission. In fact, the respondent had not even challenged the order of the State Commission. In our view, the National Commission, in a revision petition filed by the complainant praying for increase of compensation and payment of interest, could not have dismissed the petition itself. We, therefore, set aside the order of the National Commission.

6. As far as the merits are concerned, the conduct of the respondent clearly shows that he had not come to court with clean hands. In fact, in December, 2004 when a letter was written to the appellants offering them the commercial space in question, the same had already been sold to someone else. It would also be pertinent to mention that before the District Forum statement had been made by the counsel for the respondent that the shop in question was lying vacant and, therefore, the District Forum had passed the directions mentioned hereinabove. Later, it was stated that this statement had wrongly been made by the counsel due to

mis-communication. The fact remains that the shop booked by the appellants was sold to another customer on 04.11.2004, even before the letter dated 06.12.2004 was sent to the appellants. It is, therefore, a clear-cut case of deficiency in service by the respondent.

7. In view of the above, the appeal is allowed. Judgment of the National Commission is set aside and the respondent is directed to refund the amount of Rs.2,05,000/- , along with damages of Rs.50,000/-, i.e., Rs,2,55,000/- in all along with interest @18% per annum payable from 06.12.2004 till payment of the entire amount.

8. The appeal is disposed of in the above terms.

.....**J.**  
**(Madan B. Lokur)**

.....**J.**  
**(S. Abdul Nazeer)**

.....**J.**  
**(Deepak Gupta)**

New Delhi  
October 12, 2017