

(2024) 11 NCDRC CK 0004

National Consumer Disputes Redressal Commission

Case No: Appeal Execution No. 246 Of 2023

Naresh Bansal S/o. Sh. R.D. Bansal
& Anr

APPELLANT

Vs

M/s Omaxe Ltd Through Its
Managing Director

RESPONDENT

Date of Decision: Nov. 19, 2024

Acts Referred:

- Consumer Protection Act, 2019 - Section 73

Hon'ble Judges: Subhash Chandra, Presiding Member; Dr. Sadhna Shanker, Member

Bench: Division Bench

Advocate: Varun Dhingra, Devashish, Siddharth, Tarun Sharma, Manek Sharma, A. R. Pawan Aggarwal

Final Decision: Disposed Of

Judgement

Dr. Sadhna Shanker, Member

1. The present appeal execution has been filed under Section 73 of the Consumer Protection Act, 2019 (for short "the Act") by Naresh Bansal and Gagan Deep Goel (hereinafter referred to as the "decree holders") assailing the Order dated 20.09.2023 passed by the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the "State Commission") in Execution Application No. 105 of 2023 in Consumer Complaint No. 212 of 2014, whereby it was informed that the respondent (hereinafter referred to as the 'judgment debtor') had handed over a demand draft of Rs. 8,47,641/- and also cost of Rs. 1,00,000/- to the decree holders and the appeal execution is pending before the National Consumer Disputes Redressal Commission and the same is listed on 22.01.2024.

2. The complainant filed a consumer complaint before the State Commission.
3. The State Commission vide its Order dated 11.04.2023 allowed the complaint. The operative part of the Order dated 11.04.2023 reads as under:
 - (a) The opposite party is directed to deliver the possession of the plot no. 1886-D, Omaxe City, Sonipat within a period of two months after depositing a sum of Rs.8,47,641/- by the complainants within a period of two months from the date of receipt of this order.
 - (b) A sum of Rs.1,50,000/- is awarded in favor of complainants towards litigation costs.
4. The decree holders filed an execution petition before the State Commission.
5. It is admitted that that the order dated 11.04.2023 has been complied with by the decree holders by depositing the said sum with the respondent. It is pertinent to mention that the State Commission vide order dated 01.08.2023 had not passed any direction regarding the handing over the possession to the decree holders, despite the fact that this Commission, vide order dated 28.07.2023 in first appeal no. 741 of 2023 filed by the respondent against the appellant, has not stayed the operative part of handing over the possession of the plot in question as directed by the State Commission vide its order dated 11.04.2023.
6. The decree holders through execution petition prayed to direct the respondent to deliver the possession of the plot in question as there is no stay order in first appeal no. 741 of 2023 of the respondent but all the requests and submissions were declined. Hence, the present appeal is filed for the execution of the judgment dated 11.04.2023 for taking the possession of the plot in question with following prayer:
 - a. That this Hon'ble Commission may kindly set aside the impugned order dated 20.09.2023 which was passed by Ld. State Consumer Disputes Redressal Commission in Execution Petition vide EX. No. 105/23 titled as "NARESH BANSAL & Anr. VS OMAXE LTD".
 - b. Kindly direct the Ld. State Commission to execute the Judgement dated 11.04.2023 in respect of handing over the possession of plot bearing no. 1886-D, Omaxe City, Sonipat, Haryana, in favor of the Appellants.
 - c. Kindly direct the Respondent to hand over the possession of plot bearing no. 1886-D, Omaxe City, Sonipat, Haryana against the payment of Rs.8,47,641/- for which the Appellants are ready to pay the same for the satisfaction of the Execution Petition.
 - d. Such other or further order(s), as this Hon'ble Commission may deem just and proper in the above facts and circumstances, may also be passed in favour of the Appellants and against the Respondents.

7. Before us, the counsel for the decree holders argued that the decree holders had booked the plot with the judgment debtor on 22.07.2004 and the judgment debtor did not handover the possession in stipulated time of twelve months within an extended period of six months as per the builder buyer agreement, even though the decree holders had paid a substantial amount to the Respondents.

8. Further, it was submitted that the decree holders had filed an execution petition before the State commission. It is pertinent to note that the order dated 11.04.2023 was duly complied with by the decree holder and Rs. 8,47,641/- was paid to the judgement debtor.

9. Further, it was submitted that on the next date of hearing i.e. 01.08.2023, the counsel for the judgment debtor had disclosed to the State Commission that they had preferred an appeal before this Commission and if the respondent had preferred an appeal before this Commission, then why they had accepted the full and final payment from the decree holders. Considering the facts and circumstances, the State Commission ordered the respondent to refund the said amount to the decree holders along with additional cost of Rs.1,00,000/- on the Respondents.

10. Further, it was argued that the State Commission vide order dated 01.08.2023 had not passed any direction regarding the handing over the possession to the decree holders, despite the fact that this Commission in its order dated 28.07.2023 in the First Appeal No. 741 of 2023 filed by the Respondent against the decree holders, had not stayed the operative part of handing over the possession of plot in question as passed by Ld. State Commission. The order passed by this Commission shows the clear intention of the Hon'ble bench that the bench was not inclined to pass any order regarding not handing over the possession to the decree holders.

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9.910101011. The counsel for the respondent rebutted the decree holders' arguments and argued that subject to the adherence to the Payment Schedule by the allottee decree holders, the possession of the plot in question was to be transferred within 18 months i.e. from 29.09.2006 up to 28.03.2008. However, the default of the payment schedule by the said decree holders leading to the accrued subsisting dues of Rs.8,47,641/- against the total sale consideration amount of Rs.24,72,616/- caused a breach of the aforesaid allotment letter/ agreement dated 29.09.2006. Thereafter, the respondent company vide a Letter dated 20.12.2012 in terms of the Clause Nos. 16 & 17 of the Agreement dated 29.09.2006 not only forfeited the Earnest Money Amount of Rs.3,63,285/-, but also cancelled the Allotment. In this way, the possession of the residential plot could not be delivered.

12. Further, it is submitted that the State Commission has in an unreasonable manner by over-looking the substantial delay of more than a decade directed the respondent, despite a huge, as on date, escalation in sale price of the subject matter residential plot to the extent of more than 2 crore rupees, to deliver the possession of the plot against the receipt of the cancelled total sale consideration amount of Rs.24,72,616/- only. It is further submitted that the State Commission while passing any of the orders in terms of the subject matter property situated in the district Sonapat, Haryana lacked territorial jurisdiction as per section 17 of the Act. Also it was submitted that the issue/dispute involved in the instant appeal execution is contractual in nature and as such cannot be decided by a summary procedure and can be adjudicated only in civil suit by following the exhaustive and fair trial procedure.

13. It is submitted that the respondent Omaxe Limited has never consented to receipt of any amount from the decree holders in terms of the order passed by the State Commission on 11.04.2023. However, the decree holders own his own intent had transferred the amount of Rs. 8,47,641/- through R.T.G.S. in the bank account of the respondent. Thereafter, the said amount had been directed by the said State Commission vide an order dated 01.08.2023 to be refunded along with cost. Accordingly, the decree holders after having received the said sale consideration amount back from the respondent along with the levied cost have abdicated the claim of possession qua the subject-matter residential plot. It is further stated that the decree holders have now extinguished their right to assert the relief of possession.

14. We have considered the rival contentions of learned counsel for the parties and perused the order dated 11.04.2023 of the State Commission in C.C. No. 212 of 2014 and the Orders dated 01.08.2023 and dated 20.09.2023 in execution petition.

15. It is seen that the State Commission, vide its Order in the consumer complaint dated 11.04.2023, directed the respondent to deliver the possession of the plot in question. It is admitted that the decree holders in compliance of the order dated 11.04.2023 had deposited a sum of Rs.8,47,641/-. It is also seen that the respondent had filed appeal no. 741 of 2023 against the Order dated 11.04.2023 before this Commission. It is undisputed that the amount of Rs.8,47,641/- had been refunded to the appellant, and the execution is still pending in the State Commission. We are of the opinion that this Commission cannot step into the shoe of the executing court to enforce order of 11.04.2023 of the State Commission in CC No. 212 of 2023. The State Commission may proceed with the execution as per law.

16. The appeal execution stands disposed off in above terms. All pending applications, if any, stand disposed off.