

(2015) 03 NCDRC CK 0160

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

AGRA DEVELOPMENT
AUTHORITY

APPELLANT

Vs

SARDAR BHAGAT SINGH

RESPONDENT

Date of Decision: March 11, 2015

Citation: 2015 3 CPJ 121

Hon'ble Judges: AJIT BHARIHOKE , Rekha Gupta J.

Final Decision: Petition allowed

Judgement

1. THIS revision is directed against the order of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (in short, "the State Commission") dated 13.9.2013 in first appeal No.649/2013 whereby the State Commission concurred with the order of the District Forum, Agra and dismissed the appeal.

2. BRIEFLY put, facts relevant for the disposal of this revision petition are that respondent Sardar Bhagat Singh filed consumer complaint in the District Forum, Agra alleging that in the year 1993 he was allotted flat No.33 in North Edgah Colony developed by the opposite party. As per the allotment letter the consideration amount was Rs.1,73,066.57P against which the complainant had deposited 50% amount of Rs.86,567/- and got possession of the flat. The balance amount was to be paid in installments. It is the case of the complainant that he had deposited Rs.43,000/- against the balance consideration in installments. The complainants visited the office of the opposite party in 1996 to make the balance payment of Rs.43,500/- but the concerned official of the opposite party told him that he was required to pay Rs.2,84,003/-. On 31.5.2012 the opposite party issued a notice to the

complainant calling upon him to make the balance payment. According to the complainant the demand of Rs.2,84,003/- against the balance amount of Rs.43,500/- is not justified and it amounts to deficiency in service.

3. THE opposite party resisted the claim. It was admitted that the flat in question was allotted to the complainant and possession was delivered after obtaining 50% of the consideration amount. It is alleged that the balance 50% was to be paid within five years and as per the terms and conditions of the allotment letter in the event of default in payment of installments the complainant was liable to pay 26% interest on the defaulted amount. It was alleged that the complainant defaulted in paying the installments and therefore, the demand of Rs.2,84,003/- was raised which includes the interest for the delay in payment. The District Forum concerned on consideration of pleadings of the parties and the material on record allowed the complaint and directed as under:

- "The complaint of the complainant is admitted against the opposite parties and it is hereby ordered that the opposite party may receive the normal interest on the amount of Rs.43,500/- @ 12% p.a. w.e.f. 16.01.1996 till the date of filing of complaint within two months and the complainant may execute the sale deed of flat No.33 in question in favour of Latifuddin son of Shri Sahabuddin R/o 18/39 Nala Mantola Tehsil and District Agra. Both the parties will bear their own cost."

4. BEING aggrieved of the order of the District Forum the petitioner/opposite party preferred an appeal. The appeal was disallowed but the State Commission taking note of the fact that the complainant had deposited the consideration balance amount alongwith interest in terms of the order of the District Forum, directed thus:

"After proper analysis we reached to the conclusion that because the requisite amount has been deposited by the complainant, therefore with regard to the flat in question, it is expected that the sale deed is to be executed by the appellant Agra Development Authority without any delay. In this regard the Ld. Counsel on behalf of the appellant has submitted that because the remaining requisite amount alongwith interest has been deposited by the respondent/complainant, therefore, the sale deed will be executed within two months as directed by the District Forum.

In view of the aforementioned circumstances, we reached to the conclusion that it is not justified to keep pending the present appeal, hence the appeal is liable to be disposed of accordingly."

5. THIS has led to filing of the revision petition.

6. LEARNED counsel for the petitioner has contended that the impugned orders of the foras below are without jurisdiction. Firstly, because the orders have been passed ignoring the terms and conditions of the allotment of the flat. Secondly, it is contended that the Foras below have committed grave error in ordering execution of sale deed in favour of a third person, namely, Latifuddin who is stated to be the general attorney of the complainant.

7. SHRI Nikhil Jain, Advocate for the respondent on the contrary has argued in support of the impugned orders. He has contended that the District Forum has rightly directed the complainant to pay the balance consideration amount with 12% interest for the defaulted period. It is also argued that actually District Forum has not passed order in favour of third party but has clarified that the complainant shall execute the sale deed in favour of Latifuddin.

8. WE have considered the rival contentions and perused the record. Copy of the allotment letter dated 26th July, 1993 has been placed on record and its correctness is not disputed by the parties. On perusal of the allotment letter it is clear that the flat in question was allotted to the complainant Sardar Bhagat Singh in consideration of Rs.1,73,067.57P out of which 50% of the consideration amount was

paid at the time of delivery of possession. The allotment letter provides that balance consideration i.e. Rs.86,500/- was required to be paid by the complainant in quarterly installments of Rs.7090/- w.e.f. 1.10.1993 in five years. It is stipulated in the allotment letter that in the event of default in depositing the amount of installments the interest @ 26% shall be payable by the complainant. Thus, it is clear that as per the contract between the parties the respondent/complainant was liable to pay 26% interest on the defaulted amount of installments. The District Forum, Agra as also the State Commission have ignored this aspect and directed that interest shall be made only @ 12%. This being against the contract is not sustainable and can be termed as an order without jurisdiction.

9. SECONDLY , the order of the District Forum confirmed by the State Commission does not make sense. District Forum has directed the opposite party to receive the balance consideration amount of Rs.43,500/- @ 12% interest p.a. w.e.f. 16.1.1996 till the date of filing of complaint and directed that the complainant may execute the sale deed in favour of Latifuddin S/o Sahabuddin. From the record it is evident that Latifuddin is not the party to the proceedings, therefore, orders of the Foras below in favour of the third party are not sustainable. Even otherwise the order is not an executable order because unless the title of flat is conveyed in favour of the complainant, he cannot execute the sale deed in favour of Latifuddin. Thus, on this count also the order of the District Forum which has been confirmed by the State Commission is not sustainable.

10. IN view of the discussion above, we allow the revision petition and set aside the impugned orders.

11. WE would have dismissed the complaint but for the concession given at the bar by learned counsel for the petitioner/opposite party, to the effect, that the petitioner/opposite party is ready and willing to execute the sale deed in favour of

the complainant Sardar Bhagat Singh provided he makes payment of the balance consideration amount with 26% interest p.a. after adjustment of amount if any already paid pursuant to the order of District Forum. We therefore direct that in the event of the respondent making payment of the balance consideration amount with 26% interest p.a., subject to adjustment, within six months the petitioner/opposite shall execute the sale deed in favour of the complainant Sardar Bhagat Singh.