

(2006) 01 NCDRC CK 0060

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NANDITA SHAMNIK

APPELLANT

Vs

D.L.F. UNIVERSAL LTD.

RESPONDENT

Date of Decision: Jan. 19, 2006

Citation: 2006 1 CPR 321 : 2006 2 CLT 115 : 2006 2 CLT 245 : 2006 2 CPJ 8 : 2006 2 CPR 456

Hon'ble Judges: M.B.Shah , P.D.Shenoy J.

Final Decision: Review Petition dismissed

Judgement

1. THIS review application is filed by the D.L.F. Ltd., opposite party, contending that there is apparent inconsistency in the order dated 11.4.2005 passed by this Commission in Original Petition No. 18/2003.

2. BEFORE dealing with the review petition, we would point out that the complaint was filed by the consumer, a purchaser of the flat, who had paid Rs. 61 lakh in 1999 being the entire amount payable for purchase of the flat. The possession of the flat was not delivered to the complainant on one ground or other. Hence, during the pendency of the complaint before this Commission, by an interim order dated 30.5.2004, we directed the builder to deliver the possession of the flat. The relevant part thereof is as under:

"Undisputedly, complainant has paid, in all, more than approximately Rs. 61 lakh and the disputed amount of Rs. 4,44,480, to the respondent, DLF Universal Ltd. for purchase of an apartment in Windsor Court, DLF City, Gurgaon. Admittedly, all instalments are paid on or before 3rd December, 1999. Despite this, it is contended that respondent being a multi-millionaire company has not handed over possession

of the apartment and that complainant is required to stay in other premises. Hence, complainant has prayed that respondent be directed to hand over immediate possession of the apartment and also to pay interest at the rate of 20% for delay in handing over possession and also prayed for compensation of Rs. 5,000. The complainant has also prayed that respondent be directed not to charge holding charges, maintenance charges, interest on various subsequent amount raised without sanction of the law or agreement and without handing over possession of the flat. Considering the dispute involved, we suggested to the learned Counsel for the respondent to find out whether respondent was prepared to part with the possession of the apartment after receiving the registration and stamp charges as well as interest on delayed payment, if there is any delay in making the payment of any instalment. Today, when the matter is called out, complainant is present. It is her submission that for one or other reason respondents are exploiting the situation and twisting arms of the complainant by charging extra amount for one or other reason, despite the fact that complainant has paid entire amount of cost of construction in 1999. As against this, learned Counsel appearing on behalf of the DLF submitted that as per the agreement, respondent is entitled to recover holding charges because complainant has not accepted the possession of the apartment on 24th August, 2000. He submitted that apart from the holding charges, complainant is required to pay interest on delayed payment under Clause 9 of the agreement, as complainant has not deposited the amount on due dates of instalments and other charges in terms of the agreement and maintenance charges. We have heard the learned Counsel for the parties. For the time being, till the matter is finally decided, we direct as under: Opposite party, DLF, shall hand over possession of Apartment No. R 07A, Windsor Court, DLF City, Gurgaon (Haryana) to the complainant on or before 21st June, 2004. It is agreed that complainant would pay stamp duty as well as Registration charges to the respondent by Account Payee Cheque on or before 21st June, 2004. It is made clear that this order is passed subject to further determination of rights of the parties with regard to their claims in complaint as well as in written version filed by the opposite party. However, before taking possession of the apartment, complainant would file an unconditional undertaking before this Commission that, in case Commission directs the complainant to pay holding charges, maintenance charges or interest or any other amount, the said amount, would be paid by her within a period of 6 weeks from the date of the order. It is also made clear that before handing over possession of the premises, necessary Panchnama would be prepared with regard to the status of the premises so that future dispute with regard to proper construction or other facilities could be avoided."

That order was challenged before the Apex Court in an S.L.P. but the same was dismissed. Thereafter, possession of the flat was delivered to the complainant in the month of July, 2004.

At the time of taking possession, the complainant had raised 2 or 3 objections with regard to the fittings in the servant quarters and such other defects. Learned Counsel appearing on behalf of the builder stated that necessary repairs would be carried out and the matter was adjourned for deciding the remaining disputed questions. Thereafter, on 29.9.2004, the complainant pointed out that there was some leakage and requirement of change of cistern in the bathroom. Authorised representative appearing for the respondent stated that necessary action would be taken. The builder was also permitted to file additional affidavit as prayed for and the matter was finally decided on 11.4.2005.

3. THEREAFTER, this review petition was filed on 26.7.2005. At the admission stage, learned Counsel for the builder contended that there is inconsistency in the order passed by us on 11.4.2005, because the Commission has arrived at the conclusion that there was deficiency in service because the builder has not delivered the draft Sale Deed, even though the draft Sale Deed was delivered to the complainant in November, 2000. Subsequently, the matter was adjourned to 26.8.2005, and notice was given to the other side. Submissions:

Senior Counsel, Mr. A.N. Haksar, appearing for the builder submitted that-

(i) there is no deficiency in service because the draft Sale Deed was delivered to the complainant on 17.11.2000, as the Registration charges and the Stamp Duty were not paid till July, 2004, the builder was not required to deliver the possession of the flat. (ii) The order passed by this Commission awarding compensation of Rs. 2 lakh is beyond the prayers.

4. CONTRA, learned Amicus Curiae, Mr. K.L. Nandwani, appearing for the complainant submitted that this review petition filed by the opposite party is not maintainable as it is virtually an appeal filed under the guise of review against the order passed by this Commission. There is no error apparent on the face of record which calls for interference in review and this application ought to be dismissed. He contended that the judgment and order is passed by this Commission after taking into consideration the overall evidence on record and the over all conduct of the builder. Findings:

We agree with the aforesaid submissions of the learned Amicus Curiae that there is no error apparent on the face of record which would call for our interference. However, as we have heard the matter, we would discuss to some extent.

In our view, the first submission of the learned Counsel Mr. Haksar is without any substance because as per Clause 25 of the agreement between the parties which is quoted by the applicant, specifically provides that for the permissive possession for use and occupation the apartment is to be allotted, in case, where cash down payment is made. The relevant Clause 25 is as under:

"That the permissive possession for use and occupation only of the said premises shall be delivered to the apartment allottee as a "licensee" of the Company in the case apartment allottee has opted for 7 or 12 years payment plan or in case the apartment allottee has opted for cash down payment or two and half years payment plan, possession thereof shall be delivered after the said new multi-storeyed building(s) named DLF Windsor Court apartments is ready for use and occupation provided all the amounts due and payable by the apartment allottee upto the date of possession/permissive possession as stated in schedule of payments (Annexure II) attached with this Agreement are paid to the Company. The apartment allottee shall take possession/permissive possession of the said premises within thirty days of the Company dispatching written notice to the apartment allottee intimating that the said premises is ready and if the apartment allottee fails and neglects to take possession of the said premises from the Company for any reason, whatsoever, the apartment allottee shall be deemed to have taken possession/permissive possession on the expiry of the period mentioned in the notice and thereafter the said premises shall be at the risk and cost of the apartment allottee. If the apartment allottee still fails to take possession/permissive possession of the premises, he shall be liable to pay holding charges @ Rs. 5 per sq. ft. per month for the period the allottee delays taking possession/permissive possession on the expiry of the period of 90 days of the Company dispatching the aforesaid written notice."

5. THIS clause specifically provides that permissive possession for use and occupation was required to be delivered to the apartment allottee as a licensee of the company, if the amount was fully paid. In this case, admittedly, the complainant had paid the entire amount of purchase price in December, 1999 and there was no justifiable ground for not delivering the possession of the apartment.

6. HOWEVER, learned Counsel for the complainant submitted that as no Stamp Duty and Registration Charges were paid, the possession was not delivered in contravention of what is stated in Clause 37 of the Agreement which specifically provides that-

"That the apartment allottee shall pay, as and when demanded by the company, the Stamp Duty, Registration Charges and all other incidental and legal expenses for execution and registration of sale deed in favour for the Apartment/Parking Space Allottee, which shall be executed and got registered after receipt of the full price, other dues and the said charges and expenses from the Apartment/Parking Space Allottee in respect of the said premises".

This clause does not prevent the builder to hand over the possession. It talks of registration of the document in favour of the allottee.

The stamp and registration charges are to be paid at the time when the document is to be executed and registered and not in advance so that the money can be kept by the builder for their use. The builder is not supposed to retain the charges with him till his pleasure, which would, otherwise be an unfair trade practice.

7. APART from this aspect, the complainant was, all throughout, prepared to pay the stamp duty charges as stated in her letter dated 3.11.2000 which we have quoted in our judgment under review. She has stated as under:

"That stamp duty charges for registration of conveyance deed as per law is payable to Government of Haryana through you. I shall get the conveyance deed done after having physical possession of the apartment as its owner".

Hence, the submission that there is no deficiency in service on the part of the builder, as the draft sale deed was delivered to the complainant 17.11.2000 and yet the registration charges and the stamp duty were not paid till the Court directed to hand over possession to the complainant and that the stamp duty and registration charges were paid by the complainant only in July, 2004, when the builder delivered the possession, in our view, the stamp duty and registration charges are required to be paid at the time of execution of the deed. There is no necessity of prior payment to the builder for their use. Not only this, as per the agreements, possession of the building was required to be delivered to the complainant as soon as it is ready for occupation and when the amount is fully paid. Further, it has been rightly pointed out by the complainant that before seeking the possession she had given in writing that she was ready to make payment in respect of the balance amount, if any, without demur. She offered to make the payment of Rs. 7,50,952 as stamp duty to

be paid to Registrar for registration after the physical possession is given. After this, she stated that she would sign the conveyance deed. If this request was acceded to, there would not have been any cause of the complaint before the District Forum and thereafter when her complaint was dismissed on the preliminary contention raised by the builder that the District Forum has no pecuniary jurisdiction, she was compelled to approach this Commission. Re: Contention No. 2:

8. LEARNED Senior Advocate Mr. Haskar, thereafter contended that the compensation of Rs. 2 lakh which is granted by this Commission is beyond the prayers, and, it is without jurisdiction. In our view, this contention is without any substance. The prayer clause, *inter alia*, is as under:

(a) The complainant be directed to hand over of the apartment at the earliest with interest at the rate of 20% p.a. from the date of the payments of amounts to the date of providing possession of the apartments; (b) The respondent be refrained from charging holding charges, interest on various subsequent amounts raised without law or agreement; (c) The respondent be directed to refund parking charges and pay interest @ 20% p.a. and compensation of Rs. 50,000 for untold harassment and agony and costs of Rs. 20,000, and a direction for payment of any other amount deemed fit and necessary.

Apart from the prayer clause, if we take into consideration the fact that the complainant had paid Rs. 61 lakh on or before the end of December, 1999, and yet the possession is not handed over to the complainant, as per the agreement, the complainant definitely suffered either loss of interest or rent. If interest at the rate of 10% per year is taken into consideration, for more than three-and-a-half years, it would roughly be Rs. 20 lakh. If it is considered on the basis of loss of rent @ Rs. 22,000 as prayed by the complainant, for the period of three-and-a-half years, it would be Rs. 9,24,000. Thirdly, one of the prayer clauses is that this Commission may award compensation as it deems fit. Fourthly, the Act vide Section 14(1)(d) specifically requires the Commission to pass order for adequate compensation. Hence, in any case, awarding of costs is the duty and discretion of the Commission on the basis of the facts and circumstances of each case. In this view of the matter, there is no substance in this contention.

As discussed in the judgment, for one or the other reason, the builder failed to deliver the possession of the flat, which according to them was ready for its use. All these aspects were considered and, therefore, the impugned order passed by this Commission does not call for any review. Hence, there is no inconsistency in the order passed by this Commission. It is based on overall appreciation of facts and the

conduct of the builder.

9. IN the result, this review petition is dismissed. The applicant (opposite party) shall pay costs of Rs. 20,000 out of which Rs. 5,000 shall be paid to Mr. K.L. Nandwani, the Amicus Curiae and the rest of the amount shall be deposited with the N.C.D.R.C. Legal Aid Fund. Review Petition dismissed.