

(2018) 03 NCDRC CK 0117

In the National Consumer Disputes Redressal Commission

Case No : Revision Petition No. 389 Of 2017

Ambar Chatterjee

APPELLANT

Vs

Sandhya Ghosh & Ors

RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Citation : (2018) 03 NCDRC CK 0117

Hon'ble Judges : Prem Narain, J

Bench : Single Bench

Advocate : Alok Mukhopadhyay, Amarnath Sanyal

Final Decision : Partly Allowed

Judgement

1. This revision petition has been filed by the petitioner Ambar Chatterjee against the order dated 22.12.2016 of the State Consumer Disputes

Redressal Commission, West Bengal (in short "the State Commission") passed in FA/538/2014.

2. Brief facts of the case are that the respondents/complainants are the land owners, who entered into a development agreement with the

petitioner/opposite party on 23.11.2009. The development agreement provides for 34% of the total space to be given to the land owners/complainants

and the remaining will be disposed of by the opposite party/petitioner herein. The space was to be given on the ground floor, second floor and third

floor. This space was about 500 sq.ft. on each of these floors.

The plan of construction was sanctioned by the Howrah Municipal Corporation on 23.03.2010. Under this plan only ground floor, plus two floors (G+2)

were permitted to be constructed. The respondents/complainants filed a complaint before the District Consumer Disputes Redressal Forum, Howrah,

(in short the District Forum) stating that the complete share has not been given to the complainants in each floor. The District Forum, vide its

order dated 04.04.2014 allowed the complaint and ordered the opposite party to pay Rs.5,25,660/- being the valuation of 292 sq.ft. falling short of 34%

as per stipulations of the agreement. A compensation of Rs.30,000/- and cost of Rs.3,000/- was also ordered.

3. Aggrieved, the opposite party preferred an appeal before the State Commission bearing no.FA/538/2014 and the State Commission dismissed the appeal vide its order dated 22.12.2016.

4. Hence the present revision petition.

5. Heard the learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner stated that against the total constructed area of 4,608 sq.ft. an area of 820 sq.ft. on the ground floor and 873

sq.ft. on the second floor has already been given to the complainants, which is more than 34% of the total constructed area. Both the fora below have

found deficiency on the part of the petitioner that the third floor has not been constructed by the petitioner and thus petitioner has violated the

agreement dated 23.11.2009.

Learned counsel for the petitioner submitted that the Municipal Corporation approved the construction plan only for (G+2) floors and therefore, there

was no question of constructing third floor. The respondents have taken the plea that they were not aware about the sanction of the plan of the

construction by the Municipal Corporation in respect of only (G+2) floors. This plan was sanctioned on 23.03.2010 itself. The construction has been

made on the basis of this plan only and therefore, there was an implied consent of the respondents during construction to the effect that only (G+2)

floors will be constructed though as per the original agreement the total area was required to be given about 500 sq.ft. on each of three floors.

However, more than that area has been given to the respondents. The State Commission has imputed deficiency on the part of the petitioner that the

petitioner did not get the original agreement amended on the basis of the sanctioned plan and therefore, the petitioner was deficient in providing

service. It was argued by the learned counsel that the same applies to respondents as well and they were equally obliged to get the amendment in the

agreement. It was pointed out that the signatures on the plan that has been

approved by the Municipal Corporation are of the respondents only and therefore, they were fully aware of the plan approved by the Municipal Corporation.

7. On the other hand, learned counsel for the respondents stated that as the original development agreement was not amended, both the parties are bound by that agreement. Based on this position of law, both the fora have accepted the deficiency on the part of the petitioner/opposite party. It was further argued that the agreement was for the built up area. However, the area given to the respondents is the super area, which is more than 15% of the built up area. If he deducts 15% from the areas given to the respondents then also the original agreement has been breached.

8. As per the original agreement, the respondents were entitled to get about 500 sq.ft. on the ground floor, second floor and the third floor. As no area has been provided on the third floor, the respondents are constrained for not being able to use space on the third floor due to deficiency on the part of the petitioner/opposite party.

9. I have carefully considered the arguments of the learned counsel for the parties and have examined the material on record. From the plan approved by the Howrah Municipal Corporation, it is clear that the plan bears the signatures of the respondents and the same has been approved only for (G+2) floors. As the development agreement was signed when the plan was not approved, the same ought to have been amended by both the parties.

However, none of the parties formally did it. As the plan has been approved for (G+2) floors, it is clear that the development agreement could not

have been implemented in the form it was agreed upon. As the plan bears the signatures of the respondents, respondents/complainants were totally

aware of the plan of construction approved by the Howrah Municipal Corporation.

Similarly, the petitioner/opposite party was constructing the building as per the plan approved by the Howrah Municipal Corporation. He was also

aware that he will be constructing only upto (G+2) floors. As both the parties were aware about the extent of construction during the period of

construction, and even if they have not formally amended the development agreement, their consent is implied for amending the development

agreement as per the approved plan. So far as the area is concerned, it has not been denied by the learned counsel for the respondents during the

arguments that the total area constructed has been 4608 sq.ft. and 1693 sq.ft. has been given to the respondents/complainants though it was raised

that the agreement was for built up area and this area is super area which is 15% more than the built-up area.

I do not find merit in this argument because the area of 4608 sq.ft. and the area given to the complainants 1693 sq.ft. are commensurate figures i.e.

either both are built up area or the super area as it has not been pointed out by the learned counsel for the respondents that both figures are not

commensurate and they refer to different types of area. As the basic agreement in respect of 34% of the area to be given to the respondents has

been fulfilled, I do not find any reason to attribute deficiency on the part of the petitioner/opposite party in respect of the construction or in respect of

sharing of the area. The only shortcoming that could be attributed to the petitioner/opposite party is that he promised some space on third floor but

could not give the same to the respondents, though he has given the same space on other floors. In the facts and circumstances of the case as

analysed above, I deem it appropriate to award a compensation of Rs.1,00,000/- only to the complainants/respondents.

10. Based on the above discussion, I find merit in the revision petition and the same is partly allowed. Accordingly, the order dated 22.12.2016 of the

State Commission and order dated 04.04.2014 of the District Forum are modified to the extent that an amount of Rs.1,00,000/-(rupees one lakh only)

would be payable to the complainants/respondents by the appellant/opposite party instead of Rs.5,25,660/- as ordered by the District Forum and

confirmed by the State Commission. The rest of the order of District Forum remains unchanged. The order be complied by the petitioner/opposite

party within a period of 45 days from the date of this order.