
(2015) 05 NCDRC CK 0118

In the National Consumer Disputes Redressal Commission

Case No : 159 of 2014

AMOL SHARMA & ANR.

APPELLANT

Vs

MAHIMA REAL ESTATE PVT. LTD. & ANR.

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : 2015 3 CPJ 468

Hon'ble Judges : K.S. Chaudhari

Advocate : G.P. Sharma, Akhlesh Kumar, Sharma, Rishi Matoliya

Judgement

1. These appeals arise out of single order of State Commission; hence, decided by common order.

2. Appeal No. 159 of 2014 - Amol Sharma & Anr. Vs. Mahima Real Estate Pvt. Ltd. & Anr. has been filed by the complainant and Appeal No. 167 of 2014 - Mahimal Real Estate Pvt. Ltd. & Anr. Vs. Amol Sharma & Ors. has been filed by OP against the order dated 5.2.2014 passed by the learned Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench No. 2, Jaipur (in short, "the State Commission") in Consumer Complaint No. 48/2011 - Amol Sharma & Anr. Vs. Mahima Real Estate Pvt. Ltd. & Anr. by which, while allowing complaint partly, directed OP to refund service tax deducted from advance with 9% p.a. interest and to pay compensation of Rs.1,00,000/- and Rs.10,000/- as cost to the complainant.

3. Brief facts of the case are that complainants purchased one flat No.F-704, 7 th Floor from OP for a consideration of Rs.54,21,500/- and deposited advance amount of Rs.7,00,000/- through different cheques by 18.1.2011. Later on, OP by letter dated 19.2.2011 cancelled booking and refunded Rs.6,82,426/- after deducting service tax on the ground that complainant could not pay entire amount within stipulated time. It was further submitted that complainant got his loan sanctioned from Bank of Baroda. Alleging deficiency on the part of OP,

complainant filed complaint before State Commission. OP resisted complaint, admitted receipt of Rs.7,00,000/- against booking of flat, but submitted that inspite of reminders, balance amount was not deposited by complainant, so, booking of flat was cancelled. It was further submitted that flat has already been sold vide registered sale deed dated 3.10.2011 and now flat is not available with the OP. It was further submitted that Consumer Fora has no jurisdiction to entertain and decide such complaints and prayed for dismissal of complaint. Learned State Commission after hearing both the parties allowed complaint as mentioned above.

4. Heard learned Counsel for the parties finally at admission stage and perused record.

5. Appeal No. 167 of 2014 has been filed by OP with delay of 4 days. As there is delay of only 4 days in filing appeal, delay stands condoned for the reasons mentioned in the application.

6. Learned Counsel for the complainant submitted that complainant was entitled to get possession of disputed flat on the principles of lis-pendis; even then, learned State Commission committed error in disallowing this prayer; hence, appeal be allowed and impugned order be modified and possession of flat be given to him subject to payment of balance amount. On the other hand, learned Counsel for the OP submitted that on account of non-payment of balance consideration, booking of flat was rightly cancelled by OP; even then, learned State Commission committed error in allowing complaint partly; hence, appeal be allowed and impugned order be set aside.

7. It is not disputed that complainant booked flat No.F-704, 7 th Floor with OP for a consideration of Rs.54,21,500/- and complainant paid Rs.7,00,000/- by different cheques for which receipt dated 18.1.2011 was issued by OP.

8. Now, the core question to be decided is whether payment of balance consideration was to be made immediately or payment was to be made as per stage of construction. Learned Counsel for OP submitted that payment was to be made immediately, but in support of his contention he has not placed any document on record to substantiate that balance payment was to be made immediately. On the contrary, complainant has placed on record agreement of sale dated 19.2.2011 according to which payment was to be made as per stage of construction and as per clause 4 of the Agreement maximum period for delayed payment was two months and if the payment is not made within two months, builder had right to forfeit the payment paid by the purchaser and cancel allotment. No doubt, this agreement does not bear signatures of OP, but it bears stamp of OP. It appears that on the request of complainant, OP drafted agreement for sale in favour of the complainant for getting loan sanctioned from Bank of Baroda, but OP has not put signatures in between the stamp of OP. Merely because it does not bear signatures of OP, in the absence of any other agreement executed between the parties, it cannot be presumed that balance

sale consideration was to be paid by complainant immediately and it can very well be inferred that payment was linked with stage of construction and learned State Commission rightly observed that there was deficiency on the part of OP in cancelling the allotment.

9. Learned Counsel for the OP has placed reliance on letters dated 23.1.2011, 13.2.2011 and 19.2.2011 alleged to have been delivered by OP to the complainant, but complainant has denied receipt of these letters. OP has not placed any proof of delivery of these letters to the complainant and learned State Commission rightly not placed reliance on these letters. Thus, it becomes clear that OP without any reasonable justification cancelled allotment and returned balance amount after deducting service tax and learned State Commission has not committed any error in allowing refund of service tax with interest and compensation of Rs.1,00,000/-.

10. Learned Counsel for the complainant submitted that on the principles of lis-pendis complainant was entitled to get possession of booked flat. I do not find any force in this submission because complainant ought to have filed complaint immediately after receipt of letter of cancellation dated 19.2.2011, but he waited for five months without any justification. He should have filed complaint immediately along with application for stay for not creating interest of third party in the disputed flat. OP in its reply clearly mentioned that disputed flat has been sold to Mr. Ashok Kumar vide registered sale deed dated 3.10.2011; even then, complainant did not move application for impleadment of purchaser of the flat. In the absence of purchaser as a party in the complaint no adverse order can be passed against the purchaser of flat Mr. Ashok Kumar and learned State Commission has not committed any error in declining relief of possession of disputed flat.

11. In the light of above discussion, I do not find any illegality in the impugned order and both appeals are liable to be dismissed at admission stage.

12. Consequently, Appeal No. 159 of 2014 - Amol Sharma & Anr. Vs. Mahima Real Estate Pvt. Ltd. & Anr. filed by the Appellants/ complainants and Appeal No. 167 of 2014 - Mahimal Real Estate Pvt. Ltd. & Anr. Vs. Amol Sharma & Ors. filed by OP against the order dated 5.2.2014 passed by the learned State Commission in Consumer Complaint No. 48/2011 are dismissed at admission stage with no order as to costs.