(2017) 02 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

Case No : 37 of 2016

ANIL KUMAR JAIN APPELLANT

Vs

M/S. EMAAR MGF LAND LIMITED & ORS. RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

Income Tax Act, 1961, Section 203, Section 203, Section 203, Section 203 - Certificate for tax deducted
<a href=3999>Consumer Protection Act

Citation : 2017 1 CPR 382

Hon'ble Judges : B.C. Gupta, Prem Narain

Advocate : Lata Lochan

Final Decision : Appeal Dismissed

Judgement

1. This first appeal has been filed under section 19 read with section 21(a)(ii) of the Consumer Protection Act, 1986 against the impugned order dated 28.09.2016, passed by the UT Chandigarh State Consumer Disputes Redressal Commission (hereinafter referred to as ''the State Commission'') in execution application No. EA/99/2016, vide which, while dismissing the said application, it was held that the judgment debtors/respondents had paid the amount in question, as per the settlement, except the amount of tax deducted at source (TDS) and hence, they could not be punished by invoking the provisions of section 27 of the Consumer Protection Act, 1986. It has also been stated in the impugned order that the appellant/applicant should approach this Commission to get clarification, as to whether the tax could be deducted at source on the amount to be paid under settlement or not.

2. The brief facts of the case are that the appellant/complainant filed consumer complaint No. 42/2009 before the State Commission against the opposite parties/ judgment debtors for deficiency in rendering service and unfair trade practice, as they failed to deliver possession of the residential plot allotted in his favour. The said complaint was allowed vide order dated 09.12.2010 passed by the State

Commission. It was ordered that a refund of amount of 37,95,000/- deposited by the complainant be made alongwith interest @9% p.a. from the date of deposit till realisation, and also to pay a compensation of 50,000/- for physical harassment and mental agony etc. and 5,000/- as cost of litigation. Being aggrieved against the said order, the respondent/OP challenged the same by way of the first appeal, FA No. 22/2011 before this Commission. The said appeal was disposed of vide order dated 19.11.2015 in view of the settlement reached between the parties. An application giving the terms and conditions of the settlement, signed by both the parties, was filed before this Commission. As per the settlement, the total amount of refund including interest was calculated as 66,87,688/-. The said amount was to be paid by the respondent/OP in eight EMIs of 8,35,961/- each. The first instalment was to be paid on 10.01.2016. However, the complainant filed an execution application No. 99/2016 before the State Commission under section 27 of the Consumer Protection Act, 1986, alleging that the OPs failed to follow the terms and conditions of the compromise deed, as they deducted a sum of 2,89,269/- as TDS (Tax Deducted at Source) out of the amount payable in view of the compromise deed. The complainant contended that since the OPs had failed to follow the terms and conditions of the settlement, they were bound to pay the refund amount alongwith interest @12% p.a., rather than 9% p.a. in terms of the order dated 09.12.2010 of the State Commission.

3. The respondent/OP, however, averred that the tax was deducted as per the statutory provisions and paid to the authority concerned. Moreover, in terms of the settlement arrived at between the parties, the complainant was debarred from instituting any legal proceedings, civil or criminal, against the respondent/OP. The State Commission vide impugned order dated 28.09.2016, concluded that the judgment debtors/OP had paid the amount as per the settlement except the TDS and hence, they could not be punished by invoking the provisions of section 27 of the Consumer Protection Act, 1986. However, the State Commission stated that the complainant should approach this Commission to get clarification, as to whether tax could be deducted at source on the amount to be paid under settlement or not. Being aggrieved against the said order, the present execution appeal has been filed by the complainant.

4. During hearing, the Ld. Counsel for the Complainant/appellant stated that the judgment debtor/OP/respondent had violated the terms and conditions of the settlement and hence, they were liable to pay the refund amount alongwith interest @12% in terms of the order passed by the State Commission on 09.12.2010. The Ld. Counsel has drawn attention to a copy of form No. 16A issued as certificate under section 203 of the Income Tax Act, in which it has been stated that a sum of 2,89,269/- had been deducted by the OP as TDS and deposited with the Income Tax Department.

5. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced by the learned counsel for the

appellant/complainant.

6. The State Commission has made clear in their order that judgment debtors/ OP/respondent had already paid the amount as per the settlement except the amount of tax deducted at source. From the copy of Form 16A produced on record by the appellant, it is made clear that a sum of 2,89,269/- was deducted as TDS by the judgment debtor/OP/respondent and the said amount already stands deposited with the income tax department. It is clear, therefore, that there is no deficiency in service on the part of the respondent/OP as they have already deposited the amount with the income tax department. The appellant/ complainant is free to file an income tax return and claim refund from the said Department by following the prescribed procedure. The contention of the appellant/complainant that the respondent/OP had violated the terms and conditions of the settlement, is not true. It was the duty of the respondent/OP to deduct the tax as per the provisions laid down in the Income Tax Act. It is evident, therefore, that there is no force in the present appeal and the same is ordered to be dismissed and the orders passed by the State Commission upheld. There shall be no order as to costs.

