
(2017) 02 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Case No : 1144 of 2010

ANTONIO PAULO LOBO

APPELLANT

Vs

NANDINI PRAKASH SINARI & ORS.

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Citation : (2017) 02 NCDRC CK 0012

Hon'ble Judges : D.K. Jain

Advocate : SIDDHARTH DIAS, Gwen Karthika, Vinay Navare

Final Decision : Petition Disposed

Judgement

1. This Revision Petition, by Opposite Party No.3 in the Complaint, is directed against the order dated 20.1.2010 passed by the State Consumer Disputes Redressal Commission, Panaji, Goa (for short "the State Commission"), in Appeal No.121/2007. By the impugned order, the State Commission has affirmed the order dated 20.11.2007, passed by the District Consumer Disputes Redressal Forum, North Goa, Porvorim, Bardez (for short "the District Forum") in Complaint No.201/2002. By the said order, while accepting the Complaint filed by Respondent No.1 herein, alleging deficiency in service on the part of Meghavi Developers Pvt. Ltd., a real estate developer, and its Director, Opposite Parties No.1 and 2 respectively in the Complaint, for not delivering the possession of a shop bearing No.FS-11 in the building known as "A One Park" at Cansa Tivim, for which he had paid a sum of 1,66,000/- against a total consideration of 3,75,000/-, the District Forum had directed the developer and its Director to deliver possession of the subject shop to the Complainant and also pay to him a sum of 25,000/- as compensation and costs. While issuing the said directions, the District Forum also directed the Petitioner, who claimed to have purchased the same shop from the developer and being in peaceful possession, to vacate the shop within 30 days from the date of the said order and hand-over the possession thereof to the Complainant.

2. The main grievance of the Petitioner is that he, having purchased the said

shop from the developer for consideration, viz., 3,00,000/- and being in physical possession thereof since the year 1999, the Fora below has committed serious illegality in treating the Complaint as a Civil Suit for possession and decreeing it as such against him, when, in the first instance, there was no privity of contract between the Complainant and the Petitioner herein. It is urged that as a matter of fact, his impleadment as a party in the Complaint, was misconceived.

3. The developer and its Director did not respond to the notices issued to them and were proceeded against ex parte accordingly . I have heard learned counsel for the petitioner and the Complainant.

4. Having carefully perused the agreements, claimed to have been executed between the developer and the Complainant and between the developer and the petitioner herein and the pleadings, I am of the view that direction by the lower Fora to the Petitioner to vacate the suit premises and deliver its possession to the Complainant, is unsustainable. In his written version the Petitioner had clearly stated that he had purchased the subject shop, vide agreement dated 20.5.1999 and was in possession thereof since 11.9.1999, which plea was supported by the developer and its Director in their common written version. Apart from the fact that there was no rebuttal to the said specific averment on the part of the Complainant, in my view the question of title of the subject shop could not be adjudicated upon under the Consumer Protection Act, 1986, without elaborate proper evidence, oral or documentary, which is not within the domain of a Consumer Fora. Even otherwise, I do not find any adjudication by both the Fora below on the said question. Admittedly, there was no privity of contract between the Complainant and the Petitioner and therefore, the question of any "deficiency" the subject-matter of the Complaint, on the part of the Petitioner qua the Complainant, did not arise.

5. In view of the above, the Revision Petition is allowed and the impugned order, directing the Petitioner to vacate the subject shop and deliver its possession to the Complainant is set aside.

6. The Revision Petition stands disposed of in the above terms with no order as to costs.