(2015) 08 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

Case No : 912 of 2015

Ashok Kumar R. Singh And Ors. — APPELLANT

Vs

Pradeep Kulsrestha — RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Citation : (2015) 08 NCDRC CK 0028

Hon'ble Judges : J.M.MALIK J.

Judgement

1. THIS case has a chequered history. In each case, the Builder is not be held deficient. Each case cannot be ducked in the way, the allottee wants. The duty cast upon this Commission is to winnow truth from falsehood. The story advanced by the complainant must be solid and unflappable.

2. SH . Pradeep Kulsrestha, a Guard in the Railways, the complainant, booked a flat with M/s. M.S. Associates, a registered Partnership Firm, the OP4. All the partners, namely, Sh. Ashok Kumar R. Singh, Sh. Rupesh Vasant Shirke, Smt. Shashi Anand Pandey were arrayed as OPs 1 to 3. As per the Agreement, the flat was booked at Rs. 12,90,000/ -. The complainant paid a sum of Rs. 5,40,000/ -. Thereafter, the complainant approached UCO Bank for borrowing Home Loan. The UCO Bank demanded certain documents from the complainant and the complainant asked the OPs to do the needful. The OPs supplied the relevant documents, but the Bank ultimately refused to provide financial assistance to the complainant on the ground that OP1 -Mr. Ashok Kumar R. Singh, who had signed the registered Agreement of Sale as a Partner, was subsequently added as a ''Partner'', on 16.12.1999 and the requisite Deed of Partnership to that effect was not received by the Bank. The complainant could not get the loan and waddled out of the commitments/installments. The complainant approached the District Forum and filed the instant complaint with the following prayers: - - "The Hon''ble Forum be pleased to pass an order to put the complainant into possession of the residential premises flat No. 101, A -Wing, 1st Floor, Manisha Apartments, Dhanukarwadi, Kandivilli (West), Mumbai - 400 067 and direct the

Respondents to issue New NOC and to avail loan by the complainant of Rs. 7,50,000/ - as due payment to the Respondents.

b) The Hon''ble Forum be pleased to pass an order to pay the compensation to the complainant by the respondents.

c) The Hon''ble Forum be pleased to pass an order of injunction to restrain respondents from dealing, disposing of or creating third -party right or putting into the possession to any third -party against the Flat No. 101, Manisha Apartments, Dhanukarwadi, Kandivilli (West), Mumbai - 400 067.

d) Reliefs in terms of prayer (a), (b), (c)

e) Cost of the complaint

f) any further and other order/direction be given in need of complaint".

The District Forum partly allowed the complaint and passed the following order: - - "The complaint is partly allowed.

The Opposite Parties Nos. 1 to 4 are jointly & severally directed to pay to the complainant, an amount in sum of Rs. 5,40,000/ - together with interest @ 18% p.a., as from 19.10.2007, till realization of entire amount by the complainant, within a period of six weeks from the date of receipt of copy of this order.

It is hereby made clear that interim order dated 17.01.2008, passed by this Forum as regards restraining the opposite parties from creating third -party interest in respect of the flat in dispute, shall continue to remain in force for a further period of two weeks from the date of receipt of copy of this order by the complainant.

Rests of claims of the complainant stand rejected".

3. THE complainant filed appeal before the State Commission. The State Commission, in a cryptic order, dismissed the appeal, vide its order dated 13.08.2012.

4. AGGRIEVED by the said order, Revision Petition (RP 3452/2012) was filed before this Commission. This Bench, vide order dated 01.08.2014, remanded the matter to the State Commission, with a direction to hear the parties on merits and pass a speaking order. The State Commission, in compliance of this Commission''s order dated 01.08.2014, has partly allowed the appeal, as follows: "Appeal is partly allowed.

Impugned order dated 10.02.2011 passed by Mumbai Suburban District Consumer Disputes Redressal Forum, partly allowing Consumer Complaint No. 600 of 2007 is hereby set aside and it is substituted to be read, as under: - -

Consumer complaint is partly allowed.

On appellant/complainant paying balance consideration amount as per the agreement to the respondents/opponents within a period of six weeks from the date of receipt of this order, the respondent/opponents jointly and severally are directed to place the appellant/complainant in possession of the flat within a period of six weeks from the date of receipt of balance consideration from the appellant/complainant and the respondent/opponents shall also execute necessary conveyance in favour of the appellant/complainant.

It is hereby made clear that in case, the respondents/opponents refuse to accept the balance consideration amount as may be tendered by the appellant/ complainant in pursuance of this order, the appellant/complainant shall deposit such amount with the District Forum within a period of two weeks from the date of refusal on the part of the respondents/opponents to accept such balance consideration from the appellant/complainant.

In peculiar circumstances of the case, parties shall bear their own costs".

5. IT is not out of place to mention here that after the decision of the District Forum, the OPs sent to the complainant, a cheque in the sum of Rs. 8,82,000/ -, being the entire decretal amount. The complainant did not encash that cheque. Thereafter, the OPs entered into an agreement dated 07.09.2012 to sell the flat in question to one, Mr. Chandresh M. Talati. The proceedings in this case, filed by the OPs were stated to be pending before the Hon''ble High Court of Bombay. Mr. Chandresh M. Talati also filed a suit before the City Civil Court, Dindoshi.

6. WE have heard the counsel for the parties. The learned counsel for the complainant vehemently argued that the OPs did not extend help in getting the loan sanctioned. The attention of this Commission was invited towards para 11 of the Reply filed by the OP No. 2, before the District Forum, which is reproduced here, as under: - - "I further say that, time and again, the complainant was called and furnished with all the documents of zerox copy of thereof and asked him to obtain the loan from the Bank but the respondent fraudulently failed and neglected to comply with the requirements of bank in order to avail the loan facilities".

It was pointed out that the Agreement was signed by Sh. Ashok Kumar R. Singh. The last page of it, bears his signatures. He was appointed as Partner, in the year 1992. The Agreement was signed on 19.08.2005, but no modification was made in Form - E. The UCO Bank sent a letter dated 28.06.2006 to the complainant. The relevant portion runs as follows: - - "Sub: Your request for Loan under UCO Shelter.

With reference to your application dated 27.04.2006 on the above, we would like to inform that we agree in -Principle to sanction you a loan of Rs. 7,50,000/ - under our UCO SHELTER Scheme.

Kindly note that this letter is only an in -principle sanction and the regular sanction of the loan is subject to legal vetting of the documents and technical clearance of the proposal by the bank. Please submit the copies of the documents as mentioned in the attached list (Annexure II, Part -B), immediately, to enable us to proceed further in the matter and also deposit an amount of Rs. 21.5 being the processing charge".

7. AGAIN , on 29.06.2006, the UCO Bank, Matunga Branch, wrote a letter to Mr. Ashok Kumar R. Singh, the OPs, the portion germane of this controversy is reproduced, as under: - - "We have sanctioned in principle, a housing loan of Rs. 7.50 lacs to Mr. Pradeep Kulshresthra & Mrs. Alka Kulshresthra to purchase a flat No. flat No. 101, Manisha Apt, Vikas Nagar, Kandivali (W), Mumbai, final sanction will be made on confirmation/submission of following:

1) Copy of partnership deed as agreed by you

2) A letter eligible completion of bldg./flat regarding light connection, water connection, painting, etc., readiness for possession.

3) Undertaking that eligible peaceful possession will be handed over to the purchaser against eligible.

4) Date of possession & other formalities we the eligible full payment will be made against the keys/possession. Kindly let us know your account No. , Bank branch, for issuance of pay order".

8. UCO Bank, again, sent a letter dated 18.05.2007 to the complainant, as under: - - "Subject: Your application for loan under our UCO shelter Scheme.

We refer to our letter No. UCO/MAT/437/06 -07 dated 05.03.07 on the captioned subject, wherein we have called for further information/papers. In this connection, we wish to inform you that till date, we have not received the required information/papers.

You are once again requested to submit the same to enable us to proceed further in the matter. Since there has already been a considerable delay in submission, you are requested to do so at the earliest".

M/s. M.S. Associates, the OP, received another letter dated 15.09.2006 from the UCO Bank, Branch, which runs as follows: - - "Sub: Home Loan of Mr. Pradeep Kulshrestha for flat No. 101, Manisha Apartments.

With reference to the above, we request you to kindly furnish to the following eligible: - -

1) Development agreement dated 09.09.2004

2) Power of Attorney

3) N.A. Certificate

4) ULC Order

5) Completion certificate of Architect the same are - by our legal department for clearance of the payment to be made to you, we request you to kindly submit

the same at the earliest so as to enable us to release the balance payment".

9. THIS document is crucial. It is determinative of most of the key controversy. In this letter, the UCO Bank did not pick up a conflict with the Partnership Deed. They did not make any query about the Partnership Deed. They did not state that Sh. Ashok Kumar R. Singh was not a partner.

10. THE counsel for the complainant has also invited our attention towards order passed by the State Commission, on 05.10.2009, which is reproduced here, as under: - - "Heard both the sides.

The application and prayer made by complainant are reasonable.

The complainant has applied for loan and without production of these documents, he will not get the loan sanctioned. Hence, opponent is directed to supply true copy of (1) Partnership Deed of Registration of Firms (2) Occupation Certificate (3) Allotment Letter to complainant to intimate the approval before collecting the documents".

The learned counsel for the complainant argued that it is apparent that the OP did not correspond and deliberately help was not extended in favour of the complainant so that he may not get the loan. He contended that the plea raised by the OPs that he should get the loan from the private banks was not proper. He explained that as per Section 55 of the Transfer of Property Act and Section 13 of the Specific Relief Act, the complainant should have extended the help whole - heartedly. He claimed that revisional powers are limited and the just and reasonable order passed by the State Commission should not be disturbed. Lastly, the form given to the Registrar of Firms, dated 19.11.1989 does not show that Sh. Ashok Kumar R. Singh, was a partner.

11. WE clap no importance to these faint arguments. To top it all, the agreement is conspicuously silent about the ''help'' to be extended to the complainant for getting the loan from the UCO Bank. It may be mentioned here that, now -a - days, the terms and conditions in such like agreements and the circumstances have tremendously changed. The Builder takes the responsibility of granting loan from the Bank. There is no inkling of conditions or circumstances, in the whole agreement and this fact was admitted by both the parties. It must be borne in mind that it was not a part of the Builder''s duty to get the loan for the allottee. He is not bound by that. The complaint deserves dismissal on the short score.

12. AGAIN , by no stretch of imagination, it can be said that OP did not extend the full help in getting the loan from the Bank. The agreement for sale in question, deserves a look. The petitioner/complainant was to make 10 installments, including the earnest money. Thereafter, it was stipulated, as under: - - "The time of payment of each installment of consideration as aforesaid shall be essence of the contract, the party of the Second party makes any default in payment of any of the said installments on their respective due dates, as aforesaid and without prejudice to the rights of the party of the one part to treat

such default as a breach of this Agreement and forfeit the money/s paid by the party of the Second part or otherwise, it will be at the discretion of the party of the First part...."

On 23.06.2007, notice was given to the complainant to pay the rest of the installments/amounts.

13. THE OPs sent a legal notice dated 27.11.2006 to the UCO Bank. The relevant portion of which, runs as under: - - "My client states that the Certificate from the Architect is already submitted. The copy of the O.C. will be submitted to you as soon as it is available. Under the aforesaid circumstances, my client has instructed me call upon you to inform my client whether you are going to sanction the said Loan amount or not. Please don''t kill time. If you are not interested to sanction the loan. Kindly inform to my client accordingly so that my client may approach any other bank for getting the requisite loan.

Yours faithfully".

14. THE OPs, in response to the letter received in the year 2006, sent letter dated Nil, which runs, as under: - - "Sub: Your Letter No. RRB/CR/164/2006.

Respected Sir/Madam,

We hereby pleased to furnish you, below listed documents: - -

1) Copy of partnership deed

2) Payment receipt

3) Name & Style of M.S. Associates:

Bank Account No. 2100 at Ratnakar Bank Ltd., Kanivali (W) Branch, Iraniwadi, Mumbai - 400 067

4) Undertaking and NOC from Builder & Registered Agreement already has been given.

5) All compliance we have completed.

Please pay the balance amount as early as possible as per demand of agreement".

The Bank did not raise any objection to this letter. They did not ask the OPs that they had got any objection regarding the partnership Deed. On the contrary, they sent another letter asking for other documents.

15. IT is also clear that OPs did not try to hide or suppress any facts. They produced the Registered Partnership Deed, which clearly, specifically and unequivocally mentions the name of Ashok Kumar Rajbali Singh. This is dated 16.12.1992. The counsel for the petitioner has also proved on record, the application for addition of name in Form ''E'', Indian Partnership Act, 1982, wherein it was specifically mentioned that the constitution of the firm had

changed and the name of Ashok Kumar Rajbali Singh was also included. In case the registered deed of partnership firm has not changed the E -form, no liability can be saddled upon the OPs. The OPs furnished the partnership Deed. In case, the UCO Bank was not satisfied, it should have acted immediately and directed OP4 to place the ''E'' form. Consequentially, no deficiency can be attributed on the part of the OPs.

16. OUR attention was also invited towards the fact that other purchasers like, Shyam Shakharam Reshim took the loan from the Bank of Maharashtra, Bhaskar Shetty & Anr., took the loan from Vijaya Bank, Mangaldas Nitin took the loan from Bank of India. Consequently, OPs never asked the complainant to take the loan from a Bank, which is not a nationalized bank. The District Forum, in its order at para No. 20, clearly, specifically and unequivocally stated, as under: - - "20) Even after filing of present consumer complaint before this Forum on 19/10/2007 and even after getting documents pursuant to order of this Forum, the Complainant did not approach any other bank for getting the loan. That would have proved bonafides of the Complainant. In the process, more than three years have gone by. In the meantime, by issuing a notice dated 26/3/2007, the Opposite Party - Builder/Developer; cancelled the agreement. Before that by issuing a letter dated 27/11/2006 to the Branch Manager, UCO Bank, Matunga Branch, Mumbai; the Opposite Party - Builder/Developer; informed the bank that the firm was duly registered and there was no change in the constitution of the partnership. Copy of that letter dtd. 27/11/2006, is annexed to the compilation of the plaint in a suit instituted by the Opposite Party - Builder/Developer; before the Hon''ble Bombay High Court (Original Side). Therefore, upon taking all these facts into consideration, we are not inclined to hold the Opposite Party -Builder/Developer; guilty of deficiency in service and not inclined to give a direction to the Opposite Party -Builder/Developer; to furnish required documents to the Complainant".

17. AT the time of arguments, Sh. P.K. Kulshrestha, the complainant, was present in the Commission. He admitted that one, another house belonging to his parents is situated in Kolkata. He further explained that his father expired and that his brother and mother are residing there. He could not explain why that house was not mortgaged in this case. He has not come to the Commission with clean hands.

18. WE find that there is no deficiency on the part of the OPs. The OPs tried their best to help the complainant to get the loan. On the other hand, the complainant acted in a lackadaisical manner. He did not approach the Bank, on ''day -to -day'' basis. He could not produce any letter from the UCO Bank either addressed to him or addressed to the OPs that there were some defects in the Partnership Deed. He should have dealt with the matter, on a ''day -to -day'' basis and got the loan sanctioned, when all the documents were available and were in proper order. In the light of the above discussion, we hereby set aside the order of the State Commission and restore the order of the District Forum. The OPs are

directed to issue a fresh cheque in the sum of Rs. 8,82,000/ - in favour of the complainant, immediately, within 45 days'' from the date of receipt of copy of this order, otherwise, it will carry interest @ 18% p.a., till realization. If the said amount has already been deposited with the District Forum, the complainant is allowed to withdraw the same, along with interest, accrued thereon, if any.

19. THE District Forum concerned is directed, accordingly. Copy of the order be sent to the District Forum concerned.

