
(2016) 08 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

Case No : 572 of 2015

BIDHU SHEKHAR

APPELLANT

Vs

LAVASA CORPORATION LIMITED, & ORS.

RESPONDENT

Date of Decision : 12-08-2016

Acts Referred:

[Environment \(Protection\) Act, 1986](#), [Section 5](#)

Citation : 2017 2 CPR 724

Hon'ble Judges : V.K. Jain

Advocate : Santhosh Krishnan, Sudhir K. Makkar, Samir Tandon, Saumya Gupta

Judgement

1. The complainant, booked a residential villa admeasuring 2107.8 sq. mtr. with the opposite party, namely, Lavasa Corporation Ltd. in a project which the opposite party was to develop in Village Dasave Taluka Mulshi in District Pune of Maharashtra. The built up area of the said villa was to be 4947 sq.ft. and the total sale consideration was agreed at Rs.1,09,22,250/- plus Rs.86,57,250. As per clause 9.1 of the agreement executed between the parties on 17.7.2010, the possession of the villa was to be delivered to the complainant within 24 months, unless prevented by force majeure events. Under clause 9.3 of the said agreement, the opposite party had a grace period of three months and in case of its failure to deliver possession even within the grace period, it was required to pay interest @ 12% p.a. or 2% above the SBI Cash Credit Rate at the relevant time, whichever be higher, on the principal amount deposited by the complainant, till the date of handing over the possession of the villa.

2. A show cause notice dated 25.11.2010 was issued by the Govt. of India, Ministry of Environment and Forest to the opposite party under section 5 of Environment Protection Act 1986, alleging violation of the provisions of environment impact assessment notification 1994 as amended in 2004 and 2006. Pending decision on the show-cause notice, the opposite party was required to maintain status quo ante which the High Court later clarified as status quo as on the date of notice. As a result, further construction/development came to be

stopped. Vide communication dated 9.11.2011, Govt. of India, Ministry of Environment and Forest granted a conditional environmental clearances to the opposite party thereby enabling the resumption of the construction/development by the opposite party, subject to fulfilment of the said conditions. Thus, the construction/development remained stayed during the period from 25.11.2010 to 9.11.2011.

3. The grievance of the complainant is that even after the above-referred clearance given by the Ministry of Environment and Forest, the opposite party did not complete the construction and did not offer possession of the villa to him. The complainant, therefore has approached this Commission by way of this consumer complaint seeking the following relief:-

"(a) allow the present complaint and direct the opposite parties to perform and immediately complete all its obligations under the Agreement dated 17.7.2010 between the parties, deliver possession of the property contemplated therein and execute sale deed with regard thereto; and

(b) direct the opposite parties to pay to the complainant the compensation by way of interest payable as per Clause 9.3 of the Agreement dated 17.7.2010 for delay in delivery of possession;

and/or in the alternative:

(c) direct the opposite parties to refund the amount of Rs.1,87,21,213/- (Rupees one crore eighty seven lacs twenty one thousand two hundred and thirteen only) paid by the complainant to the opposite parties along with interest @ 18% per annum from the date of payments received till the date of filing of the present complaint along with pendent lite and future interest @ 18% per annum till repayment;"

4. The complaint has been resisted by the opposite party which has interalia stated that the despite they having obtained the requisite permissions from the State of Maharashtra which are Annexures 2 & 3 to the reply, the show-cause notice dated 25.11.2010 came to be issued by the Govt. of India, Ministry of Environment and Forest, which the opposite party challenged by way of Writ Petition No.9448 of 2010 pending before the High Court of Judicature at Bombay. The case of the opposite party is that it was on account of reasons beyond its control that the construction of the villa could not be completed within the stipulated time frame. This is also the case of the opposite party that the notice issued to it by the Govt. of India, Ministry of Environment and Forest was wholly unjustified and untenable and the matter is subjudice before the Hon"ble High Court, in above referred writ petition. It is pointed out in the reply that two other writ petitions were later filed by the opposite party before the High Court of Judicature at Bombay; one against the order of the Govt. of India, Ministry of Environment and Forest dated 17.1.2011 whereby a final order in pursuance of the show-cause notice was passed and the second against the order dated 17.1.2011 passed by the Govt. of India pursuant to the show cause notice dated

25.11.2010. A third petition had also been filed by the opposite party before the Hon'ble High Court, seeking declaration of the deemed approval or in the alternative, a direction for grant of the requisite approvals to the project. After filing of the said writ petition, conditional environmental clearance was given by the Govt. of India, Ministry of Environment and Forest on 9.11.2011 and an appeal before the National Green Tribunal has been filed by the opposite party against imposition of the conditions while granting the environmental clearances.

5. During the course of hearing, the learned counsel for the opposite party stated on instructions that the opposite party shall deliver possession of the villa complete in all respects and after obtaining all the legal clearances, to the complainant on or before 31.10.2016. He further states on instructions that all the amenities as per the agreement between the parties will be in place by that time. The learned counsel for the complainant states on instructions that the above-referred offer is acceptable to the complainant subject to his getting compensation for the period the possession has been and is further delayed.

6. In my view, the opposite party, while delivering possession of the villa to the complainant should also pay compensation agreed in the agreement dated 17.7.2010 for the period there was no stay against construction. As far as the compensation for the period the construction/development was stayed, in my opinion, the opposite party will have to pay compensation if it is found that the requisite environmental clearance was required but had not been obtained by it, before the show cause notice dated 25.11.2010 came to be issued.

7. The learned counsel for the opposite party states that since the conditions imposed by Govt. of India, Ministry of Environment and Forest while granting clearance vide its order dated 9.11.2011 were onerous, the opposite party was not in a position to commence construction immediately thereafter and that is the reason an appeal before the NGT was filed, challenging the said conditions. The contention is that the opposite party should not be made to pay compensation since the force majeure conditions continued even after the grant of conditional environmental clearances. I however, find no merit in this contention. The conditions imposed by the Govt. of India, Ministry of Environment and Forest were neither satisfied nor stayed by the National Green Tribunal, meaning thereby that the said conditions continued to remain applicable. Despite that the opposite party has gone ahead with the construction of the villa and that is why it is now in a position to offer the said villa complete in all respects, on or before 31.10.2016. Therefore, it will be difficult to say that despite the environmental clearance granted by the Govt. of India, the opposite party was not in a positions to resume the construction/development of the villa.

8. For the reasons stated hereinabove, the complaint is disposed of with the following directions:- (i) The opposite party shall file an undertaking within one week undertaking therein to hand over the possession of the villa allotted to the complainant complete in all respects and after obtaining all the legal clearances and providing all the amenities as per the agreement between the parties, on or

before 31.10.2016.

(ii) The opposite party shall pay compensation @ 12% p.a. or 2% above the SBI Cash Credit Rate whichever be higher for the period from 17.10.2012 till the date the possession in terms of this order is offered to the complainant, after excluding therefrom the period between 25.11.2010 to 9.11.2011.

(iii) If the Hon"ble High Court of Bombay holds that the opposite party had not obtained the requisite environmental clearance, required for the project in which the villa was booked by the complainant, the opposite party shall also pay interest at the above-referred rate for the period from 25.11.2010 to 9.11.2011.

(iv) In case the opposite party fails to furnish undertaking in terms of the statement made by its counsel or fails to offer possession to the complainant in terms of this order, it shall refund the entire amount received from the complainant along with interest at the above-referred rate from the date of receipt of each payment till date of refund.

(v) The balance amount payable by the complainant shall be adjusted by the opposite party against the compensation payable in terms of this order.

(vi) In the facts and circumstances of the case, there shall no order as to costs.