

(2012) 04 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

Chandigarh Housing Board, Through its Secretary, Sector-9,
Chandigarh

APPELLANT

Vs

Manmohan Singh

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 119 : 2012 2 CPJ 443 : 2012 2 CPR 364

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Rachana Joshi Issar , Nidhi Tewari

Judgement

1. PETITIONER Housing Board which was the Opposite Party before the District Forum has filed this Revision Petition against the order and judgment dated 19.01.07 passed by the State Consumer Disputes Redressal Commission, Chandigarh, UT (in short, ?the State Commission?) in appeal No.663/2006 whereby the State Commission confirming the order of the District Forum has dismissed the appeal filed by the PETITIONER.

2. FACTS:- Complainant/Respondent was allotted HIG (Upper) flat in Sector 38 (West) bearing No.5794-A by the Petitioner. After paying the full consideration amount as determined by the Petitioner, Respondent applied for issuance of ?No Objection Certificate? for getting the flat converted into free hold instead of lease hold. For this purpose, he moved an application on 16.3.01 along with affidavit and documents. In spite of his best efforts and repeated reminders, ?No Objection Certificate? was not issued and he had to pay ground rent/lease money to the tune of Rs.7,224/-. Alleging deficiency in service, Respondent filed the complaint before the District Forum seeking a direction to the Petitioner to issue ? No Objection Certificate?, refund Rs.7,224/- paid by him as lease money and to pay a compensation of Rs.10 lakh. Petitioner, on being served, entered appearance and filed its written statement taking the preliminary objection that the complaint was not maintainable as the complainant was not a ?consumer? inasmuch as he had not hired any services for consideration for issuance of ?No Objection Certificate? and the contract had been concluded by handing over of

possession. That 'No Objection Certificate' was not issued as the Respondent had misled the Petitioner by stating that no litigation was pending whereas the litigation was pending in the National Commission regarding payment of the amount. It was prayed that the complaint be dismissed. District Forum after taking into consideration the pleadings and the evidence led by the parties, allowed the complaint with compensation of Rs.10,000/- and costs of Rs.1100/-. Petitioner was also directed to issue 'No Objection Certificate' to the Respondent. Petitioner, being aggrieved, filed the appeal before the State Commission which has been dismissed by the impugned order. It is not disputed before us that dwelling unit bearing No.5794-A category HIG (Upper), Sector '38 West, Chandigarh was allotted to the Respondent. It is also not denied that the Respondent had paid the entire amount of the consideration. He had moved an application on 16.3.01 to the Chairman, Chandigarh Housing Board for issuance of clearance certificate for conversion of land under the dwelling unit into freehold and issuance of 'No Objection Certificate' thereof. Along with application, he had filed affidavit and declaration. In the declaration, he had stated that the dwelling unit was free from any litigation, i.e., no litigation was pending in any Court of law with respect to the dwelling unit with any person or with regard to the title of the dwelling unit. Respondent had filed complaint case No.104/99 titled Manmohan Singh Bakshi Vs. Chandigarh Housing Board. Complaint was allowed and the Petitioner was directed to allot the flat. Respondent was also awarded interest @ 18% p.a. on Rs.6,00,000/- deposited by him w.e.f.1.1.99 till 22.2.2000. Rs.6,000/- were awarded as costs. Against this order, Petitioner had filed the appeal before this Commission. The said appeal was admitted and notice was issued to the Respondent on the limited point of interest only. The letter, Annexure C-3 dated 3.3.2000 issued by the Petitioner shows that the Petitioner had received the full amount of Rs.8,37,700/- from the Respondent with respect to the dwelling unit in question. Thus, no amount was due from him as far as price of the dwelling unit was concerned. In the application filed by him against the column, whether there is any dispute pending in the any Court of law regarding title or otherwise, the answer given by him was 'No'. Taking the stand that since the appeal was pending in the National Commission and the Respondent had made a wrong statement, 'No Objection Certificate' was not issued.

Photo copy of the Chandigarh Administration Gazette Extraordinary published on Friday July 19, 1996 placed on record which contains the notification issued under the Capital of Punjab (Development and Regulation) Act, 1952. It is mentioned in sub clause VII of clause 10 that conversion would not be allowed in cases where the title of the property is in dispute and until and unless the dispute is duly settled. Since, the appeal filed by the Petitioner was admitted only on point of interest, dispute regarding the title of the flat in question was not pending. As the dispute regarding the title of the flat in question was not pending, the Petitioner was not justified in refusing to issue 'No Objection Certificate' on the plea that the litigation was pending in the National

Commission regarding the title of the flat and that the Respondent had misled the Court regarding the pendency of the litigation. Since the Petitioner itself had filed the appeal in which the notice was issued regarding interest only it knew that no dispute with respect to the title of the property as such was pending. Petitioner illegally refused to issue 'No Objection Certificate'. We agree with the view taken by the State Commission that the Petitioner was not justified in refusing to issue the 'No Objection Certificate' on the ground that the litigation regarding title was pending.

3. COUNSEL for the Petitioner then contended that since the Respondent had already sold the dwelling unit in favour of Dazy Koul vide sale deed dated 23.06.03, he did not have interest in the flat any longer and as such was not entitled to 'No Objection Certificate'. State Commission has observed that there is no evidence on record to show that the flat had been transferred in the name of the proposed vendee and unless and until the flat was transferred in favour of the vendee, Respondent continues to be owner of the flat. Cause of action for Respondent for filing the complaint arose before execution of the agreement to sell as such the Respondent was entitled to file the complaint. No other point was raised. For the reasons stated above, we do not find any merit in the revision petition and dismiss the same with no order as to costs.