(2016) 10 NCDRC CK 0101

In the National Consumer Disputes Redressal Commission

Case No : 189 of 2015

Chandigarh Royale City Promoters Pvt. Ltd. and another APPELLANT

Vs

Sandeep Singla RESPONDENT

Date of Decision : 21-10-2016

Acts Referred:

Citation : 2017 2 CPJ 511 : 2017 2 CPR 899

Hon'ble Judges : K.S. Chaudhari

Advocate : Himanshu Gupta, Amit Sharma, Yogesh Dass, Bhairav Dass

Judgement

1. This appeal has been filed by the appellant against the order dated 12.2.2015 passed by the State Consumer Disputes Redressal Commission, UT Chandigarh (in short, ''the State Commission'') in Complaint No. 172 of 2014, Sh. Sandeep Single v. M/s. Chandigarh Royale City Promoters Pvt. Ltd. & Ors. by which, complaint was allowed. 2. Brief facts of the case are that Opposite Parties/ Appellants launched their project of 200 Acres Smart City and invited desirous people for plots/apartments/commercial sites, while assuring all round development and basic amenities in March, 2011. It was stated that in the advertisement, the Opposite Parties were representing the possession of the plots being delivered and whole of the infrastructure ready to carve out a world-class township. It was further stated that tire complainant was invited by Opposite Party No. 3, in order to have an overlook of the project and explained through projector the entire setup of township having modern facilities, infrastructure, environmental friendly and adequate commercial set up along with the sites for hospital, school and club. It was further stated that Opposite Party No. 3 allured the complainant to book a plot while getting an Expression of Interest filled from him. It was further stated that the complainant showed interest for 400 sq. yard plot but since the same was not available, two forms were got 258 filled from him for two plots of 200 sq. yards each @Rs. 10,000 per sq. yard, in June, 2011. It was further stated that the aforesaid expression was neither on the stamp paper nor any other party signed in presence of any witness. It was further stated that the Opposite Parties also did not hand over

any allocation/allotment letter depicting the number or location of the plot. They however, assured the complainant to hand over the same within six months. It was further stated that the complainant had been asked to pay the booking amount of Rs. 10 lacs each and, as such, an amount of Rs. 20 lacs was paid vide cheques dated 8.6.2011 and 15.7.2011 in the sum of Rs. 10 lac and Rs. 4 lacs respectively, demand drafts dated 15.7.2011 in the sum of Rs. 5 lacs and dated 10.11.2011 for Rs. 1 lac. It was further stated that, as such, by the end of November, 2011, the complainant paid Rs. 20 lacs to the Opposite Parties, towards the part price of the two plots. It was further stated that despite the aforesaid payment, neither any information of approval of project and permissions was given to the complainant nor any agreement to sell was executed. It was further stated that it was assured by the Opposite Parties that in case they (Opposite parties) failed to commence the execution of project shortly after obtaining all the requisite permissions and approvals, then they would refund the amount with interest @12% per annum. It was further stated that vide letter dated 5.2.2013, the Opposite Parties intimated the complainant about sanctioning of layout plan and approval of their project of residential colony at their site on 31.12.2012 vide licence No. LDC-10/2012. It was further stated that the complainant was required to make payment due, as per schedule given therein, which included Rs. 6 lacs and EDC was tentatively mentioned as @Rs. 1,600 per sq. yard and, as such, Rs. 7,60,000 was asked to be paid within 15 days from the issuance of such letter (Annexure C-4). It was further stated that the complainant took up the matter vide email dated 19.2.2014 and expressed his concern over the delayed approval and showed his complete dissatisfaction over the matter in which the progress of the project was being executed. It was further stated that the complainant also visited the office of Opposite Party No. 3, on numerous occasions, requesting him to issue allotment letter or execute seller/buyer agreement but all went in vain. It was further stated that, after three months, the Opposite Parties sent a letter dated 25.5.2014 to the complainant requiring him to make payment of Rs. 15,97,945, which included Rs. 11,04,000 and interest thereon @21% amounting to Rs. 4,93,945 (Annexure C-7), in accordance with rescheduled payment plan. It was further stated that till date, the Opposite Parties did not enter into any agreement with the complainant and still they (Opposite Parties) were illegally imposing conditions for payment based on an agreement, which was not ever entered into between the parties. It was further stated that with the passage of time, instead of refunding money, the Opposite Parties finally issued allotment letter dated 27.9.2014 (Annexure C-9) whereby the complainant was allotted plot No. 511 measuring 200 sq. yards. It was further stated that the demand of EDC @ Rs. 1,600 per sq. yard was absolutely illegal as the agreed EDC at the time of initial deposit was Rs. 500 per sq. yard. It was further stated that there was a huge delay in progress of the project and even after the passage of almost more than three years, the Opposite Parties failed to render service as assured. It was further stated that the complainant requested the Opposite Parties on 15.10.2014 to refund the amount, but Opposite Party No. 3 flatly refused to refund the same and threatened him to face dire consequences, in case, he again visited his office. Alleging deficiency on the part of OPs, complainant filed complaint before State Commission. 3. OP resisted complaint and submitted that complainant does not fall within the definition of a consumer as per the Act, as he had booked two plots measuring 200 sq. yards each in November, 2011; that this Commission was not having any pecuniary jurisdiction to entertain and try the complaint as the complainant asked for refund of the amount along with compensation and as per settled principle of law, the payment made for immoveable properties at the time of booking and purchase, cannot be considered for fixation of the pecuniary jurisdiction, as held in Vinita Goyal and Anr. v. M/s. Unitech Ltd. & Anr, III (2014) CPJ 139, Complaint No. 19/2014 decided by State Consumer Disputes Redressal Commission, Haryana, on 21.2.2014 ; that this Commission was not having any territorial jurisdiction to entertain and try the complaint as the site falls within the jurisdiction of District Mohali, Punjab; that the dispute involved in the present complaint, being not a consumer dispute, was exclusively triable by the Civil Court and that the complaint was time barred as the last payment was made by the complainant on 10.11.2011 where as the same (complaint) was filed in the month of December, 2014. On merits, it was stated that the Opposite Parties launched the project within time and have been executing the sale deeds in favour of the buyers qua the plots, who have paid the full payment. It was further stated that the Opposite Parties a re still ready to execute the sale deed of the plot in favour of the complainant, subject to the payment of the dues. It was further stated that the complainant, on the one hand, stated that the Opposite Parties got approvals from the concerned Department whereas, on the other hand, it was averred that on 7.8.2012, they (Opposite Parties) launched the project. It was further stated that it was impossible for any developer to launch the project without getting the approvals from the concerned Departments and, therefore, the allegation of the complainant regarding not getting the approvals, was false and baseless. It was further stated that the complainant him self admitted that he was called by the Opposite Parties to enter into Buyer Agreement through letter Annexure C-4, and was informed that the Opposite Parties got the approvals along with licence but he himself failed to approach them (Opposite Parties). It was further stated that the complainant was at fault, whereas the Opposite Parties did not do anything wrong. It was further stated that the complainant, on the one hand, stated that he had booked two plots and requested the Opposite Parties to adjust the payment of two plots in one plot but they (Opposite Parties) did not bother, and on the other hand, he admitted the fact that the Opposite Parties adjusted the payment of two plots in one plot, so the statement of the complainant was not true. It was further stated that the Opposite Parties always informed the complainant qua the development on the site, and also requested him to make the balance payment so that they could enter into the execution of seller buyer agreement but he failed to do so. It was further stated that the complainant due to recession in the market wanted refund of his money. It was further stated that the complainant was defaulter and even failed to pay the EDC as agreed upon.

Denying any. deficiency on their part,prayed ford is missal of complaint. Learned State Commission after hearing both the parties, allowed complaint and directed OPs to refund Rs. 20.00 lakh with 9% p.a. interest and further directed to pay litigation cost of Rs. 15,000 against which, this appeal has been filed. 4. Heard learned Counsel for the parties finally at admission stage and perused record. 5. Learned Counsel for the appellant submitted that in spite of the fact that complainant does not fall within purview of consumer, as he applied for two plots and State Commission was not having jurisdiction to entertain the complaint for want of pecuniary jurisdiction, learned State Commission has committed error in allowing complaint; hence, appeal be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, appeal be dismissed. 6. Learned Counsel for appellant submitted that as per admission of the complainant himself , he was allotted three plots of 200 sq. yds. each and in such circumstances, complainant does not fall within purview of consumer. Learned Counsel for the appellant has placed reliance on e-mail sent by complainant to Chief Minister in which he has mentioned that he was a Hotted/ paid for three plots of 200 sq. yds. Perusal of complaint reveals that complainant had shown his interest for 400 sq. yds. plot. As it was not available, two forms for two plots of 200 sq. yds. each were got filled by complainant on the assurance that OP would provide both the plots together in order to meet his demand. OP in its written statement has nowhere pleaded that complainant applied/allotted three plots of 200 sq. yds. each. In such circumstances, aforesaid admission in e-mail of complainant cannot be relied on and at the most it can be said that he applied for allotment of two plots of 200 sq. yds. each which is proved by his signed expression of a interest and demand letter issued by OP for two plots of 200 sq. yds. each. Perusal of record also reveals that in one form expression of interest he opted for 200 sq. yds two plots, but later on in that form it was also inserted that second form needs to be filled and it appears that on account of this complainant filled second form for another 200 sq. yds. plot. Complainant has specifically pleaded in the complaint that he wanted 400 sq. yds. plot and as 400 sq. yds. plot was not available, he filled two forms for two plots of 200 sq. yds. each on the assurance that OP would provide both the plots together in order to meet his demand. OP in its written statement has not denied this fact and in such circumstances, it can be presumed that complainant has shown his interest only for one plot of 400 sq. yds. but as single plot of 400 sq. yds. was not available, he filled two forms for 200 sq. yds. each which were to be provided together so that he could have converted into one plot of400 sq. yds. for his residential purpose and in such circumstances, complainant falls within purview of consumer. Learned State Commission observed that as complainant was allotted only one plot of 200 sq. yds. he falls within purview of consumer. Record further reveals that allotment letter pertaining to Plot No. 511 issued by OP is not in favour of complainant, but it is in favour of complainant''s wife Manju Singla which has no concern with the complainant''s case as he was to be allotted Plot No. 548 and 664 and OP has not placed any allotment pertaining to aforesaid plot in favour II (2017) CPJ 515 (NC) of complainant on record and in such National Consumer Disputes, circumstances, it can be held that no plot was allotted by OP to the complainant as per his request. 7. Learned Counsel for the appellant further submitted that as complainant deposited Rs. 10.00 lakh for each plot, learned State Commission had no pecuniary jurisdiction to entertain the complaint. As observed above, complainant wanted to have allotted one plot of 400 sq. yds. adn for the purpose he deposited Rs. 20.00 lakh with OP and in the complaint claimed refund of aforesaid amount with interest and compensation which comes above Rs. 20.00 lakh and in such circumstances, learned State Commission had pecuniary jurisdiction to entertain the complaint. 8. Learned State Commission rightly observed that OP projected 200 acres City of Dreams whereas land used for residential purpose was granted only for part of the land in the year 2012 and in such circumstances complainant, who was allured by false advertisement was entitled to get refund of the amount with interest and learned State Commission has not committed any error in allowing refund with interest only at the rate of 9% p.a. 9. In the light of above discussion, I do not find any illegality in the impugned order and appeal is liable to be dismissed. 10. Consequently, appeal filed by the appellant is dismissed at admission stage with no order as to costs. Appeal dismissed.