(2016) 11 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Case No : 643 of 2016

CHANDRAKANT PRAKASH PATIL & ANR. APPELLANT

Vs

ANAND PROPERTIES RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Citation : 2016 4 CPR 368

Hon'ble Judges : V.K. Jain

Advocate : Atul B. Dakh, Raja Singh

Judgement

1. This appeal is directed against the order of the State Commission dated 04.05.2016 whereby the State Commission directed the appellants to pay the balance sale consideration along with Value Added Tax and Service Tax and also directed the respondent/OP to perform its statutory obligations as contemplated under the Maharashtra Ownership of Flat Act, 1963. The possession of the flat booked by the appellants with the respondent was directed to be delivered on receipt of the balance sale consideration, Value Added Tax and Service Tax. In the event of default in handing over possession, the respondent was directed to pay Rs.2,00,000/- as compensation to the complainants/appellants.

2. Being aggrieved from the order passed by the State Commission, the complainants/appellants are before this Commission. The issues involved in this appeal were also involved in First Appeal No.811 of 2016 and connected matters decided by this Commission on 23.9.2016. The following was the view taken by this Commission in the above-referred decision: "3. The following are the issues involved in these matters:

(a) Whether the appellants/complainants are liable to pay Service Tax to the respondent/OP?

(b) Whether the appellants/complainants are liable to pay Value Added Tax to the respondent/OP?

(c)Whether the appellants/complainants are entitled to compensation on account of delay in delivery of possession of the flats booked by them?

(d) Whether the respondent/OP has provided all the facilities and amenities as per the terms of the agreement with the complainants/appellants, including the brochure on the basis of which the bookings were made and as per the provisions of Maharashtra Ownership Flat Act, 1963.

4. The learned counsel for the appellants/complainants submits that they have with them the mails sent by the OP which would clearly show that the price at which flats were sold to the complainants/appellants was inclusive of Value Added Tax and Service Tax. The said e-mails however, were not filed before the State Commission. The learned counsel for the OP/respondent submits that the possession was delayed on account of the failure of the appellants/complainants to pay the balance sale consideration, Value Added Tax and Service Tax. He also would like to file additional documents in order to substantiate the case of the respondent/complainant in this regard.

5. On a perusal of the impugned order, I find that the State Commission has not gone into the question as to whether the sale consideration agreed between the parties included Value Added Tax and Service Tax or not. Moreover, the imposition of the Service Tax has already been struck down by a Division Bench of Delhi High Court in W.P.(C) No. 2235 of 2011 Suresh Kumar Bansal Vs. Union of India and connected matters decided on 03.06.2016. The alleged liability of the appellants/complainants in respect of the Service Tax therefore, needs to be considered in the light of the aforesaid decision as well as the documents exchanged between the parties. The alleged liability in respect of Value Added Tax also needs to be re-considered in the light of the mails exchanged between the parties.

6. I also find, from a perusal of the impugned order that the State Commission has not even adverted to the claim of the complainants/appellants for payment of compensation despite compensation having been demanded in the complaints. The State Commission ought to have examined the claim for payment of compensation in the light of the facts and circumstances of the case including the correspondence exchanged between the parties. The State Commission also needs to examine whether there was default on the

part of the complainants/appellants in making payment of the balance sale consideration and if so, what would be the effect the said default. The State Commission will also have to find out when the construction of the flats was complete and when the occupancy certificate was applied. In fact, according to the learned counsel for the appellants/complainants, the requisite occupancy certificate has not been obtained till date by the respondent/OP. It is a statutory obligation of the builder to obtain the occupancy certificate before delivering possession to the flat buyers. The State Commission therefore, needs to examine the effect of the alleged failure of the OP/respondent to obtain the requisite occupancy certificate before delivering possession of the flats to the complainants/appellants.

7. This is also the grievance of the complainants/appellants is that a number of facilities and amenities which the OP/respondent was to provide as per the promise made in the brochure on the basis of which the bookings were made by them, the terms of the agreements executed between the parties and the provisions of the Maharashtra Ownership Flat Act, 1963, have not been provided. The State Commission is required to examine as to whether there is any default on the part of the OP/respondent in performing the contractual and statutory obligations in respect of the amenities and facilities.

8. For the reasons stated hereinabove, the impugned order is set aside and the matters are remanded back to the State Commission for deciding the same afresh in the light of this order after giving opportunity to both the parties to file additional evidence including additional documents within four weeks of the parties appearing before the State Commission. The parties are directed to appear before the concerned State Commission on 18.10.2016.

9. The learned counsel for the complainants/appellants submits that they would like to amend the complaints so as to widen the scope of the complaints. If such applications are filed, the same shall be considered by the State Commission on merit.

10. The amount which the appellants/complainants had deposited with this Commission in compliance of the interim order passed by it, shall remain deposited during the pendency of these complaints but the State Commission will pass appropriate order as regards the disbursal of the said amount. The complaints shall be decided afresh within three months of the parties appearing before the State Commission in terms of this order."

3. The learned counsel for the complainants/appellants submits that they would like to amend the complaint so as to widen the scope of the complaint. If such application is filed, the same shall be considered by the State Commission on merit.

4. The amount which the appellants/complainants had deposited with this Commission in compliance of the interim order passed by it, shall remain deposited during the pendency of this complaint but the State Commission will pass appropriate order as regards the disbursal of the said amount. The complaint shall be decided afresh within three months of the parties appearing before the State Commission in terms of this order.

5. In view of the following, the impugned order is set aside and the matter is remitted back to the State Commission for deciding the same afresh in the light of this order, read with the order of this Commission dated 23.9.2016 passed in First Appeal No.811 of 2016 and connected matters, after giving opportunity to both the parties to file additional evidence including additional documents within

four weeks of the parties appearing before the State Commission. The parties are directed to appear before the concerned State Commission on 19.12.2016.

