(2015) 05 NCDRC CK 0122

In the National Consumer Disputes Redressal Commission

Case No : NO 353 of 2015

CHARU CHHABRA & ANR. APPELLANT

Vs

M/S. JAI MAA INFRASTRUCTURE PVT. LTD. RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : 2015 3 CPJ 292

Hon'ble Judges : V.K. Jain, B.C. Gupta

Advocate : Shweta Rani

Judgement

1. Residential flat No.1202 with a super area of about 1250 sq.ft. in Celestial Comfort Condominium was allotted by the opposite party to one Smt. Madhu Jindal. Complainant No.1 bought the aforesaid flat from Smt. Madhu Jindal on 19-08-2011 by way of an agreement to sell in her favour, for a consideration of Rs.33,00,000/-. Out of the aforesaid amount, Rs.25,00,000/- was paid to Smt. Madhu Jindal, whereas Rs.8,00,000/- was agreed to be paid to the opposite party at the time of taking possession of the flat. The opposite party issued a No Objection Certificate for the transfer of the aforesaid flat from the name of Smt. Madhu Jindal to the name of complainant No.1. The opposite party also accepted both the complainants as the new allottees of the aforesaid flat and agreed to give possession to them in March 2012. However, the opposite party unilaterally increased the area of the flat from 1250 sq.ft. to 1835 sq. ft.. Being aggrieved the complainants refused to take possession of the aforesaid flat. A new agreement was then enter into between the parties on 18-06-2012 whereby it was agreed that a sum of Rs.70,00,000/- will be paid to the complainants by a third party and the balance amount will be paid to the opposite party. It was further agreed between the parties that if such a transaction does not happen within the promised period, the flat No.1202 measuring 1835 sq. ft. will be transferred in favour of the complainants on payment of the previous balance amount of Rs.8,00,000/-. In a meeting held on 01-09-2014 the complainants

were informed that the aforesaid flat had been sold to someone and they would be paid by 30-09-2014 a sum of Rs.70,00,000/- out of which Rs.20,00,000/- will be paid by demand draft and balance amount of Rs.50,00,000/- will be paid in cash. Thereafter, extension of two months was granted to the opposite party to make the aforesaid payment along with interest at the rate of 18% per annum, and a sum of Rs.1,50,000/- was paid as interest to the complainants. However, the opposite party offered only Rs.20,00,000/- by draft and Rs.35,00,000/- in cash, which the complainants refused to accept. According to the complainants thereafter the opposite party again agreed to pay interest but did not pay either the principal amount or the interest. The complainants are, therefore, before this Commission by way of this complaint seeking the following reliefs: (a) principal amount along with the interest amount to the tune of Rs.1,33,56,000/-;

(b) compensation to the tune of Rs.1,20,00,000/- for causing mental agony, physical harassment and hardship;

(c) the cost of the proceedings in favour of the complainants and against the respondent.

2. A perusal of the agreement executed between the parties on 18-06-2012 would show that on account of the non-consented increase in area from 1250 sq.ft. to 1835 sq.ft. it was agreed that Rs.70,00,000/- will be paid to the complainants by a third party against the transfer of the flat in the name of the third party and the balance amount would be paid by the third party to the opposite party. In the event of the sale in favour of the third party not being executed within four months the aforesaid flat was to be transferred in the name of the complainants on payment of the balance amount of Rs.7,00,000/-. The aforesaid agreement contains no obligation on the part of the opposite party to pay any interest to the complainants on the principal amount of Rs.70,00,000/-. It is alleged in the complaint that in a meeting held on 01-09-2014, the opposite party was granted extension of two months as it agreed to pay interest amounting to Rs.1,50,000/-, which was calculated at the rate of 18% per annum. The impression we get from para 14 of the complaint is that the aforesaid payment of Rs.1,50,000/- was actually made to the complainants.

3. This is also the case of the complainants that in a meeting held on 18-02-2015 the opposite party again agreed to pay interest with effect from 18-10-2012. However, the complainant very conveniently does not disclose the rate of interest which the opposite party allegedly agreed to pay to the complainants with effect from 18-10-2012. In any case, there is no documentary evidence of the opposite party having agreed to pay interest to the complainants at the rate of 18% per annum with effect from 18-10-2012. This is extremely unlikely, if the complainants had already given them time till 30-01-2014 to make the aforesaid payment.

4. Thus, the principal amount which the claimants can claim from the opposite party is Rs.70,00,000/-. If we award interest as compensation to the

complainants at the rate of 9% per annum, which is the maximum interest being paid by the banks on fixed deposits, the amount of interest even for the period from 18-10-2012 to 05-05-2015 when the complaint was filed will come to about Rs.16,00,000/- The total amount payable to the complainant in that case would be about Rs.86,00,000/- comprising principal amount of Rs.70,00,000/- and interest amounting to about Rs.16,00,000/-. If we calculate interest at the rate of 18% per annum, with effect from 01-12-2014, the amount of interest will be much lesser. This Commission does not have pecuniary jurisdiction to entertain complaints having value of the goods or services at less than Rs.1,00,00,000/-. Therefore, we are of the considered view that the present complaint ought to have been filed before the concerned State Commission, instead of filing before this Commission.

5. If we entertain this complaint which, on the basis of an apparently unjust, unfair and unreasonable claim which in our view cannot result in award of more than about Rs.86,00,000/- to the complainants, it will deprive the opposite party of its valuable right to first contest the complaint before the State Commission and then approach this Commission by way of an appeal in case the State Commission is to rule against the said opposite party. Thus, entertaining this complaint will result in taking away a legal right available to the opposite party to avail the remedy of an appeal which the statute has provided to it in case the complaint is to be filed before the State Commission.

6. We are satisfied that the purpose behind filing this complaint before this Commission is to bye pass the State Commission and circumvent the procedure prescribed in the Consumer Protection Act for hearing a complaint having jurisdictional value of less than Rs.1,00,00,000/- despite knowing fully well that ultimately the complainants cannot get an amount of Rs.1,00,00,000/- or more from the opposite party. We have before us, a case, where the complainants having invested only Rs.25,00,000/-, less than four years ago, want the Commission to award them a sum of more than Rs.2,50,00,000/-, thereby giving them a return of 1000% on the investment made by them. The claim, to say the least is grossly inflated and highly unjustified and unreasonable. We, therefore, decline to entertain this complaint and reject the same. We, however, grant opportunity to the complainants to file a fresh complaint before the concerned State Commission after making appropriate amendments in the prayer clause.