(2017) 11 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

Case No : 2048 of 2017

DOLLY GULERIA W/O. LATE. COL. S.S.GULERIA — APPELLANT

Vs

M/S. ANSAL HOUSING & CONSTRUCTION LTD. — RESPONDENT

Date of Decision : 03-11-2017

Acts Referred:

Consumer Protection Act, 1986, Section 24A - Limitatioln period

Citation : (2017) 11 NCDRC CK 0003

Hon'ble Judges : V.K. Jain

Advocate : S.K. Nanda

Final Decision : Appeal Dismissed

Judgement

1. The complainant/appellant booked a residential flat with the respondent in the project namely "Woodbury Apartments" which the respondent was to develop in Zirakpur, Punjab. The complainant made a total payment of Rs.8,37,500/- to the respondent by 30.10.2010. An allotment letter dated 10.11.2010 was admittedly got signed from the Complainant, though her case is that the said letter was not delivered to her. Vide Email dated 24.6.2011, the respondent, presumably on the request of the complainant, asked them to put an application to change the payment plan and receive allotment letter of the flats. Vide Email dated 29.6.2011, the complainant requested the respondent to change the plan from lump sum payment to construction linked payment plan and incorporate a firm date of completion / possession in the allotment letter / agreement. It was further requested that if a firm date cannot be given, the complainant would like to withdraw their request for allotment and seek refund the advance paid by them with interest. Vide letter dated 06.3.2012, the respondent cancelled the allotment made to the complainant on the ground that they had not cleared the outstanding dues of Rs.13,69,551.90 and interest on that amount, despite call, notices and reminders. Responding to the aforesaid letter, the complaint stated that the allotment letter, agreements etc., were got signed from them in blank form and no call, notices and reminders had been received by them. They

therefore, requested the respondent either to accept payment of balance amount of Rs.13.00 lacs without any interest and remaining 5% amount on receipt of possession letter with a firm date of completion and possession of the flat, or to refund the amount paid by them with interest till the date of refund. Subsequently, vide letter dated 22.9.2015, the respondent sent a refund cheque of Rs.4,37,500/- to the complainant but the said cheque was not encashed by them. The complainant rather approached the concerned State Commission by way of a consumer complaint, seeking refund of the amount paid by them, along with interest and compensation.

2. The complaint was resisted by the respondent which took a preliminary objection that it was barred by limitation. On merits, it was alleged that the complainant had failed to make the balance payment and therefore, the allotment was cancelled and the amount paid by the complainant was refunded after deducting the Earnest Money.

3. Vide impugned order dated 14.8.2017, the State Commission directed the respondent to refund the amount of Rs.6,12,500/- to the complainant along with interest @ 12% per annum with effect from 19.4.2012 and cost of litigation quantified at Rs.20,000/-. The respondent was permitted to deduct 10% of the sale consideration towards the Earnest Money. Being aggrieved from the order of the State Commission, the complainants are before this Commission by way of this Appeal.

4. It is an admitted position that the allotment made to the complainant was cancelled vide letter dated 06.3.2012. The complainant was informed vide above referred letter that 20% of the basic cost shall be forfeited. She was advised to contact the company and surrender the payment receipts and allotment letter in order to obtain the refund after due deductions. On receipt of this letter, the complainant came to know that the opposite party was seeking to deduct 20% of the basic cost out of the money paid by them and only balance amount was sought to be refunded without any interest. The cause of action to seek refund of the entire amount along with interest therefore arose on receipt of the aforesaid letter dated 06.3.2012. The consumer complaint therefore ought to have been instituted on or before two years from the date of receipt of the letter, dated 06.3.2012. Since the aforesaid letter was responded by the complainant on 19.3.2012, it is obvious that they had received the letter dated 06.3.2012, prior to 19.3.2012. The complaint however, came to be instituted in the year 2016 and therefore was patently barred by limitation. The complaint ought to have been dismissed on this ground alone.

5. On merits also, I find no ground to interfere with the view taken by the State Commission. The contention of the learned counsel for the appellant/ complainant is that the allotment letter dated 10.11.2010 was never received by her though admittedly it was signed by the complainant. It is difficult to accept that the complainants would have signed the allotment letter dated 10.11.2010 without even retaining a copy of the said letter. Though it is claimed that a blank

document was signed by the complainant, on the terms and conditions of the aforesaid document being in print, it cannot be accepted that he complainant was not aware of the contents of the aforesaid letter of allotment dated 10.11.2010. As per Clause 3 of the allotment letter, the complainant was required to pay the sale consideration as per the agreed payment plan as per Annexure-A. No copy of Annexure A has been filed by the complainant. It is contended by the learned counsel for the complainant/appellant that they were not aware of the contents of Annexure-A. The aforesaid contention however, cannot be accepted since there was reference to Annexure-A in Clause 3 of the document. No prudent person would have signed the document without going through the contents not only of the documents but also its Annexure particularly with the Annexure was an important document such as payment plan agreed between the parties. At no stage, the complainant wrote to the respondent that Annexure A was not annexed to the allotment letter when it was got signed from them. I therefore, hold that the complainant had agreed to a particular payment plan which was incorporated in Annexure-A to the allotment letter dated 10.11.2010. It is an admitted position that no payment at all after 30.10.2010 was made by the complainant / appellant to the respondent. Thus, there was absolutely no payment to the respondent on or after 10.11.2010 when the allotment letter was got signed from the complainant / appellant. The respondent therefore was justified in cancelling the allotment and forfeiting the Earnest Money.

6. It is obvious from the letters written by the complainant/appellant to the respondent that while applying in the change of the payment plan, she was insisting on conditions such as a firm date for completion. The payment plan was never actually changed by the respondent. As a result, the payment plan contained in Annexure-A to the allotment letter dated 10.11.2010 continued to remain valid and therefore, the complainant / appellant ought to have made payments accordingly.

7. For the reasons stated hereinabove, the order passed by the State Commission which has already directed refund of the balance payment after deduction of only 10% of the agreed sale consideration as Earnest Money and has also awarded interest @ 12% per annum to the appellant / complainant does not call for any interference by this Commission in exercise of its appellate jurisdiction. This is more so when the complaint, when instituted was patently barred by limitation prescribed under Section 24-A of the Consumer Protection Act.

8. For the reasons stated hereinabove, the appeal is hereby dismissed with no order as to costs.

