(2018) 03 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

Case No : First Appeal No. 1330 Of 2017

Estate Officer, Greater Mohali Area Development Authority & Anr — APPELLANT

Vs

Gaurav Mutneja — RESPONDENT

Date of Decision : 01-03-2018

Acts Referred:

Citation : (2018) 03 NCDRC CK 0095

Hon'ble Judges : D.K. Jain, J;M. Shreesha, J

Bench : Division Bench

Advocate : Vinay Kumar

Final Decision : Disposed Off

Judgement

D.K. JAIN, j

Challenge in this Appeal, by the Estate Officer (Housing), Greater Mohali Area Development Authority (for short â??GMADA), is to the order dated

10.3.2017 passed by the State Consumer Disputes Redressal Commission, Punjab at Chandigarh (for short â??the State Commissionâ?) in

CC/140/2016. By the impugned order, while reaching the conclusion that there was deficiency in service on the part of the Appellants herein in not

delivering the possession of the flat in question within the stipulated time and accepting the Complaint filed by the Respondent herein, the State

Commission has issued the following directions to the Appellants :

1. calculate interest @ 8% compounded annually on a sum of Rs.63,30,750/- on the date of deposit till payment and after deducting the amount

already paid, the balance amount be paid to the complainant;

2. pay Rs.2 Lacs on account of compensation for physical and mental harassment

and compelling the complainant to go for litigation for not

completing the flats within the stipulated time and not to pay the amount due to the complainant; and

3. pay Rs.21,000/- as litigation expenses.

The abovesaid directions be complied within 45 days from the receipt of certified copy of the order, otherwise, entire payment will carry interest @

8% per annum before 45 days referred above.

The main ground on which legality and correctness of the said order is questioned is that the State Commission was not justified in awarding

compensation of 2,00,000/- in addition to interest @ 8% computed annually on the amount deposited by the Complainant, i.e., 63,30,750/- and further

the objection now being raised on behalf of the Complainant that the Appellants are not entitled to deduct the Income-tax at source (TDS) and Service

Tax on the amounts directed to be paid to the Complainant, is misplaced, inasmuch as the said deductions have been made strictly as per the

provisions of the statutes.

At the outset, we may note that during the pendency of this Appeal, the entire amount directed to be paid by GMADA to the Complainant in terms of

the afore-extracted directions, except the element of TDS and Service Tax already stands paid to the Complainant. This fact has been recorded by

the Executing Court in its order dated 14.11.2017 in Execution Application being EA/102/17. In the said order, while observing that the only pending

dispute between the parties â?" the Judgement Debtor and decree-holder, was with regard to the Service Tax and TDS, there is not even a remote

indication that the amounts released to the Complainant by the Appellants were subject to the final outcome in the present Appeal.

In that view of the matter, the controversy surviving for our consideration in this Appeal is whether GMADA was justified in deducting Service Tax

and TDS at the time of making payment to the Complainant in terms of the order impugned in the present Appeal?

We find that the said issue was raised on behalf of the Complainant before the State Commission. The State Commission disposed of the said issue

observing thus :

â??Another plea has been taken by the counsel for the complainant that a sum of Rs.21,321/- has been deducted on account of service tax and

Rs.11,239/- on account of TDS. Service Tax is to be paid by the complainant in case services were rendered by OP. In case no services were

rendered then OPs were not entitled to deduct the Service Tax. It was argued by the counsel for the OP that in case Service Tax has been paid by

the OP then the complainant can claim the service tax from the Department but no such document has been placed on the record by OPs to show

that service tax was deposited with the Government. In case it was deposited, only depositor will have a right to get a refund.â??

It is evident from the afore-extracted observations that there is no final finding on the issue in the impugned order and the same has been kept open,

depending upon the applicability of the relevant statutory provisions and the availability of the documents for deposit of the said amounts. In the

absence of any conclusive finding on the said deductions and in the light of the above observations, the issue can be examined by the Executing Court

with reference to the relevant statutory provisions and production of relevant documents. Consequently, we do not find any illegality in the afore-noted

observation in the impugned order on the question of deductibility of the two taxes, warranting interference. Consequently, the Appeal fails and is

dismissed accordingly.

However, before parting, we may note that in the absence of any material on record indicating the circumstances under which the compensation, as

directed by the State Commission, was paid by the Appellants to the Complainant, the said payment shall not be treated as a precedent in other similar

cases. We also clarify that having regard to the afore-stated circumstances, we have also not expressed any final opinion on the quantum of the

compensation awarded by the State Commission.

The Appeal stands disposed of in the above terms, leaving the parties to bear their own costs. The statutory amount deposited at the time of filing the

Appeal, shall be refunded to the Appellants.