

(2012) 11 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

Indiana Audio Equipment

APPELLANT

Vs

Raj Wadhawan

RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:

Citation : 2012 0 NCDRC 899 : 2013 1 CPJ 122

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : Appeal dismissed

Judgement

1. APPELLANTS which were Opposite Party Nos. 1 and 3 before the State Commission have filed this Appeal against the judgment and order dated 10.11.2006 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, "the State Commission ") in Complaint No. 301/1998 wherein the State Commission partly allowing the complaint filed by the Respondent Nos. 1 and 2 has directed the Appellants to pay a lump sum compensation of Rs. 50,000 to the Respondents/ Complainants besides Rs. 10,000 towards costs of litigation. Appellant No. 1/OP No. 1 was also directed to hand over the possession of the servant quarter to the Respondents/Complainants subject to payment of Rs. 75,000.

2. BRIEFLY stated the facts of the case are that the Appellant No. 1 builder (hereinafter referred to as "the Appellant ") entered into a collaboration agreement on 17.2.1993 with the Appellant No. 2, original owner of property No. D-34, Jangpura Extension, New Delhi for the development of the said property. As per the said agreement, Appellant No. 1 had some share in the developed property and he was authorized by the Appellant No. 2 to deal with the said portion in any manner. Subsequently, Appellant entered into two different agreements to Sell on 5.10.94 with the Complainants/Respondents, husband and wife (hereinafter to be referred to as the "Respondents ") in respect of flat No. D-34, First Floor, Jangpura Extension, New Delhi. Respondents paid a sum of Rs. 14,50,000 to the Appellant out of total consideration of Rs. 16,00,000. Possession of the flat was handed over to the Respondents on 30.10.1994.

3. AS per averments made in the complaint, there were certain defects in the construction of the flat; the interior fixtures and fittings were of sub-standard quality; registered sale deed was not executed and the possession of the servant quarter was not handed over as promised by the Appellant. Complainants, being aggrieved, filed the complaint before the National Commission which was transferred to the State Commission for want of pecuniary jurisdiction. Complainants filed the amended complaint before the State Commission.

4. APPELLANT , on being served, entered appearance and filed its written statement resisting the complaint, inter alia, on the grounds; that as per the collaboration agreement, Appellant No. 2 was to execute the General Power of Attorney in favour of the Appellant so that it could execute the sale deed in favour of its buyers; that as the Appellant No. 2 did not execute the GPA in favour of the Appellant, the Sale deed could not be executed in favour of the Respondents; that the possession of the servant quarter could not be delivered to the Respondents since they did not make the payment of Rs. 75,000 as agreed upon; that there was no defect in the construction of the flat; that after 10 months of taking the possession of the flat, a certificate dated 23.8.1995 was given by the Respondents to the effect that the premises is complete in all respects. State Commission, after scanning the material available on record and going through the evidence led by the parties allowed the complaint and directed the Appellants to pay a lump sum compensation of Rs. 50,000 to the Respondents/Complainants besides Rs. 10,000 towards costs of litigation. Appellant No. 1/OP No. 1 was also directed to hand over the possession of the servant quarter to the Respondents/Complainants subject to payment of Rs. 75,000. State Commission observed thus: "As is apparent from rival contentions of the parties there are mainly three aspects that need to be determined in these proceedings. First is with regard to the contract of sale and purchase. The explanation of OP No. 1 that it was due to the conduct of OP No. 4 that it could not comply with the terms and conditions of the contract executed between him and the complainant cannot come to his rescue as the contract between the complainant and OP No. 1 was an independent contract and therefore unless and until OP No. 4 was made a party to this contract as to his part of obligations, OP No. 1 cannot take any plea of deficiency on the part of OP No. 4 and the Complainant. Second part is deficiency in respect of quality of construction and third part is not providing servant quarter. As regards the poor quality of construction only estimate has been produced and not actual expenses incurred by the complainant. However, photographs produced and estimate prepared shows that quality of the construction was not upto the mark. Merely because complainant did not bring it to the notice of the OP within one year and gave a certificate within ten months cannot absolve OP No. 1 from the charge of harassment deficiency in service in using poor quality of material and fittings and fixtures. Even if we assume that no substandard material was used but the very fact that any defect in a new building if the floors start getting cracked and plaster starts peeling off and roof starts chopping leads to the inference that sub-

standard materials were used by the contractor as well as poor workmanship. As regards the servant quarter we accept the version of the OP No. 1 had agreed to provide the servant quarter but according to him it was to be provided against payment of Rs. 75,000 and we do not hold him guilty for deficiency in service. "

Appellants, being aggrieved, have filed the present appeal.

5. AT the time of admission of Appeal on 19.4.2007, limited notice with regard to execution of sale deed was directed to be issued to the Respondents. We have heard the learned Counsel for the parties on the limited question of execution of sale deed in favour of the Respondents.

6. WE agree with the view taken by the State Commission that the collaboration agreement dated 17.2.1993 entered into between the Appellant and the Appellant No. 2 (O.P. No. 3 before the State Commission), the original owner of the Property No. D-34, Jangpura Extension, New Delhi for the development of the said property and the agreements to sell dated 5.10.1994 entered into between the Appellant and the Respondents for purchase of the Flat No. D-34, First Floor, Jangpura Extension, New Delhi were two separate and independent agreements. The plea taken by the Appellant that the sale deed could not be executed in favour of the Respondents as the Appellant No. 2, the original owner of the property did not execute the General Power of Attorney in its favour, cannot be accepted. As per Clause 25 of the Agreement dated 17.2.1993, the Owner has given a irrevocable General Power of Attorney to the Builder to enable it to execute sale deed in favour of the proposed buyers. Clause 25 of the agreement reads as under: "After construction of the floors mentioned hereinabove for the portion allocable to the builder, the owner shall get the relevant documents executed/registered in the name of the builder or their nominee(s) at the cost and expenses of the Builder. To enable the builder to do so the owner has given a irremovable General Power of Attorney. However, the owner shall accompany the builder to get the Agreement for sale deed registered if necessary within 15 days of receipt of the intimation for the builder as agreed upon is both the parties. "

For the reasons stated above, we do not find any merit in the appeal and accordingly dismiss the same with no order as to costs. A sum of Rs. 60,000 has been deposited by the Appellants with this Commission in compliance of the order dated 19.4.2007. We direct the Registry to release the said amount in favour of the Respondent in satisfaction of the decretal amount. Appeal dismissed.