

(2016) 09 NCDRC CK 0087

In the National Consumer Disputes Redressal Commission

Case No : 2643 of 2016

JAHARLAL KANU S/O. LATE RAM KIRIT KANU

APPELLANT

Vs

DR. KRISHNENDU MUKHERJEE & ORS.

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Citation : 2016 4 CPR 58

Hon'ble Judges : V.K. Jain

Advocate : A. Chatterjee, Ganesh Banerjee

Final Decision : Petition Dismissed

Judgement

1. The complainant who is a Doctor by profession, entered into an agreement with the petitioner for purchase of a commercial space measuring 945.71 sq. ft. on the first floor of a building which the petitioner was to construct at Mouja - Nowapara within the limits of Rajpur-Sonarapur Municipality. He made part payment of Rs.8,75,000/- to the petitioner. The possession was agreed to be delivered to him within 24 months and the balance payment was linked with the progress of the construction of the building in which commercial space was sold to the complainant. The petitioner by way of a legal notice, cancelled the allotment on the ground that the complainant had failed to make the balance payment of the sale consideration. A cheque of Rs.8.75 lacs representing the part consideration paid by the complainant was annexed to the said legal notice. The aforesaid cheque dated 03.09.2010 however, was not encashed by the complainant who approached the concerned District Forum by way of a consumer complaint seeking possession of the said commercial space alongwith compensation. The cheque of Rs.8.75 lacs was returned by him to the petitioner before filing the consumer complaint.

2. The complaint was resisted by the petitioner primarily on the ground that the complainant had failed to pay the balance sale consideration as per the payment schedule agreed between the parties and since timely payment of the sale consideration was the essence of the contract, the allotment made to the

complainant had rightly been cancelled.

3. The District Forum vide its order dated 06.05.2013, directed the petitioner to deliver possession of the commercial space to the complainant within 30 days. He was also directed to pay compensation quantified at Rs.20,000/- and the cost of litigation quantified at Rs.10,000/-. The complainant was directed to pay the balance consideration on or before the date of giving the possession/registration of the Conveyance Deed.

4. Being aggrieved from the order passed by the District Forum, the petitioner approached the concerned State Commission by way of an appeal. The said appeal, having been dismissed vide impugned order dated 28.06.2016, he has approached this Commission by way of this Revision Petition.

5. The learned counsel for the petitioner has submitted that the State Commission fell into error in holding that the petitioner had failed to complete the construction within the stipulated period of 24 months. According to him, the construction was completed within the stipulated period and in fact it was the complainant who was in default since he failed to make the balance payment despite receiving reminders from the complainant.

6. The agreement executed between the petitioner and the complainant, to the extent it deals with payment of the sale consideration reads as under: 3) That the total consideration in respect of the Commercial Space No. 1 to be sold under this Agreement for Sale is fixed at Rs.16,00,000/- (Rupees sixteen lakhs) only and the purchaser has agreed that the said total consideration money will be paid to the developer/promoter/vendor in the manner as follows:

a) Rs.2,50,000/- (Rupees two lakhs fifty thousand) only to be paid on or before execution of this agreement for sale.

b) Rs.5,00,000/- (Rupees five lakhs) only to be paid after sanction of the proposed building plan by the office of the Rajpur-Sonarpur Municipality.

c) Rs.1,25,000/- (Rupees one lakh twenty-five thousand) only is to be paid after completion of the plinth work of the said building and that must be paid within ten days from the date of completion of the plinth work on intimation by the developer/promoter to the purchaser.

d) Rs.1,25,000/- (Rupees one lakh twenty-five thousand) only is to be paid after roof casting of ground floor and that must be paid within ten days from the date of roof casting of ground floor on intimation by the developer/promoter to the purchaser.

e) Rs.1,25,000/- (Rupees one lakh twenty-five thousand) only is to be paid after roof casting of first floor and that must be paid within ten days from the date of roof casting of first floor on intimation by the developer/promoter to the purchaser.

f) Rs.1,25,000/- (Rupees one lakh twenty-five thousand) only is to be paid after

roof casting of second floor and that must be paid within ten days from the date of roof casting of second floor on intimation by the developer/promoter to the purchaser.

g) Rs.1,25,000/- (Rupees one lakh twenty-five thousand) only is to be paid after roof casting of third floor and that must be paid within ten days from the date of roof casting of third floor on intimation by the developer/promoter to the purchaser.

h) Rs.1,25,000/- (Rupees one lakh twenty-five thousand) only after super structural work (brick work, plaster work of purchaser's portion) and that payment should be paid within ten days from the date of intimation.

i) Rs.1,00,000/- (Rupees one lakh) only before delivery or physical possession of the commercial space no. 1.

Time of payment as stated hereinabove shall be the essence of the contract. It is pertinent to mention here that developer/promoter/vendor shall complete the entire project within 24 (twenty-four) months from the date of execution of this agreement for sale.

It is an admitted position that the complainant made payment of Rs.8.75 lacs to the petitioner meaning thereby that the first three installments were duly paid by him. The fourth installment was payable after roof casting of ground floor, fifth installment was payable after roof casting of first floor, sixth installment was payable after roof casting of second floor, seventh installment was payable after roof casting of third floor, eighth installment was payable after completion of super structural work and Rs.1,00,000/- were payable at the time of delivery of the possession. There is absolutely no evidence of the petitioner having informed the complainant from time to time about casting of the roof of the ground floor, first floor, second floor or third floor and asking him to pay the installments of Rs.1,25,000/- each in terms of the agreement between the parties. There is no evidence of the petitioner having sent any notice to the complainant intimating him about the completion of the super structural work and asking him to make payment of Rs.1,25,000/-. Admittedly, possession was never offered to the complainant and therefore, there was no occasion to demand even the last installment. Though the case of the petitioner is that he had completed the construction within the stipulated period of 24 months, reply filed by him before the District Forum is completely silent as to the dates on which the roof of the ground floor, first floor, second floor and third floor were cast by him. The reply is also silent as regards the specific date on which the super structural work was completed by the petitioner. No certificate from the Architect of the building was produced before the District Forum to prove the dates on which the roofs of the ground floor, first floor, second floor and third floor were cast and the date on which the super structural work was completed. In these circumstances, it would be extremely difficult to accept the contention of the petitioner that he had demanded the installment payable on the casting of the roofs of the ground floor,

first floor, second floor and third floor and on completion of the super structural work, from the complainant and he had failed to pay the said installments. Though some photographs were filed by the petitioner before the District Forum while answering the interrogatories submitted by the complainant, the said photographs did not by themselves prove that the construction had been completed within two years from the date of the agreements.

7. It is lastly submitted by the learned counsel for the petitioner that the commercial space in question may no more be available to the petitioner since he had, after cancelling the agreement with the complainant, entered into an agreement with a third party for the sale of the said commercial space. Reliance in this regard is placed upon the reply given by the petitioner to the interrogatories submitted by the complainant. I however, find that in his written version, the petitioner did not even claim that after cancelling the agreement with the complainant, he had entered into an agreement with a third party for the sale of the commercial space in question. More importantly, he does not say even in the reply to the interrogatories that the possession of the commercial unit which he had agreed to sell to the complainant, was no more with him and has been delivered to the subsequent purchaser. Therefore, it would be difficult to say that the petitioner is not in a position to comply with the order passed by the fora below.

8. For the reasons stated hereinabove, I find no merit in the revision petition and the same is accordingly dismissed, with no order as to costs.