

(2015) 05 NCDRC CK 0179

In the National Consumer Disputes Redressal Commission

Case No : 3844 of 2013

JEETENDER KAUR

APPELLANT

Vs

NOIDA AUTHORITY

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 05 NCDRC CK 0179

Hon'ble Judges : K.S. Chaudhari

Advocate : MADHURENDRA KUMAR, RAJIV YADAV

Judgement

1. This revision petition has been filed by the petitioner against the order dated 30.07.2013 passed by the U.P. State Consumer Disputes Redressal Commission, Lucknow (in short, "the State Commission") in Appeal No. 2600 of 2011 - Jeetender Kaur Vs. The Chairman, NOIDA Authority by which, appeal filed by complainant was dismissed.

2. Brief facts of the case are that Complainant/Petitioner applied for a residential flat and Flat No. 12-A, Block A-5, Sector 71 was allotted on 3.6.2002 on the then cost of Rs.5,25,000/-. A sum of Rs.40,000/- as registration amount and a sum of Rs.98,000/- as allotment money was deposited by the Complainant and the remaining amount was to be deposited by the Complainant in 16 half yearly installments along with interest. The Complainant filed a complaint case no. 1133 of 2003 before the District Consumer Forum, Gautam Budh Nagar for taking the possession of the flat which was decided on 21.06.2004. An appeal no. 1496/2004 was preferred by the

NOIDA against the order which was decided on 21.02.2006 by State Commission. State Commission provided in the said judgment that if the appellant of this appeal Smt. Jitender Kaur deposits the total amount of

installments with simple interest within one month from the date of judgment i.e. 21.02.2006 with NOIDA, the penal interest shall not be charged and the possession would be delivered within one month from the date of deposit on completion of all the formalities and the sale deed shall also be executed simultaneously and if the said amount is not deposited then the NOIDA may give the said flat to any other applicant. The complainant instead of complying the aforesaid judgment of State Commission went in Revision before the Hon"ble N.C.D.R.C. wherein an interim order dated 29.3.2006 was passed stating therein that the respondent i.e. NOIDA is directed to handover the possession of the flat in question, if the construction is completed without insisting for payment of simple interest as awarded by the State Commission on an undertaking by the petitioner that in case the revision is dismissed, the petitioner shall pay the same. The alleged Revision No. 698 of 2006 was decided by the Hon"ble NCDRC on 24.2.2010 wherein the following order was passed; "It is not disputed before us that the petitioner had deposited a sum of Rs.5,25,000/- though belatedly and the respondent has handed over the possession of the flat to the petitioner. State Commission allowed the appeal of the respondent waiving the interest awarded by the District Forum on the deposited amount to be paid by the respondent to the petitioner. The petitioner has been directed to pay simple interest on the delayed payment of the installments amount due. The State Commission has done a favour to the petitioner by asking him to pay only simple interest whereas the respondent was entitled to charge interest @ 24% compoundable as per terms of the allotment and brochure of the scheme. Respondent has accepted the order passed by the State Commission as it has not filed any revision petition. We are of the opinion that the order passed by the State Commission is fair and just and does not call for any interference". Complainant filed Execution Case No. 36 of 2011 before District Forum and learned District Forum passed following order on 27.9.2011: "Case was presented. Decree Holder is present. Respondent did not speak. Head the Decree Holder. The respondent party has been ordered to execute the lease deed in compliance of State Consumer Forum order dated 21.02.2006. Respondent be informed".

Later on, District Forum vide order dated 3.11.2011 reviewed order dated 27.9.2011 and request of Decree Holder for directing OP to execute sale deed / lease deed was rejected and Execution Application was dismissed. Appeal filed by complainant was allowed by learned State Commission vide order dated 26.3.2012. OP challenged this order before this Commission in R.P. No. 4009 of 2012 and this Commission vide order dated 9.4.2013 remanded the matter back

to the State Commission to decide it afresh after giving an opportunity of being heard to both the parties. Learned State Commission vide impugned order dismissed appeal of the complainant against which, this revision petition has been filed.

3. Heard learned Counsel for the parties finally at admission stage and perused record.

4. Learned Counsel for the petitioner submitted that learned District Forum committed error in reviewing order dated 27.9.2011 and committed further error in not considering payment of Rs.93,000/-; hence, revision petition be allowed and impugned order be set aside and OP be directed to execute necessary deed. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

5. Perusal of record reveals that District forum by three line order allowed Execution Application without hearing OP and later on reviewed this order by order dated 3.11.2011. Learned District Forum had no power to review its earlier order dated 27.9.2011 in the light of judgment of Hon"ble Apex Court in - (2011) 9 SCC 541 - Rajeev Hitendra Pathak and Others Vs. Achyut Kashinath Karekar and Anr . case and learned State Commission without considering this aspect committed mistake in dismissing appeal of complainant by impugned order. Learned State Commission ought to have allowed appeal and remanded the matter back to District Forum to decide Execution Application afresh after hearing both the parties.

6. In the light of aforesaid discussion, impugned order is liable to set aside and matter is to be remanded back to District Forum.

7. Consequently, revision petition filed by the petitioner is allowed and impugned order dated 30.7.2013 passed by learned State Commission in Appeal No. 2600 of 2011 - Jeetender Kaur Vs. The Chairman, NOIDA Authority is set aside and order dated 3.11.2011 and 27.9.2011 passed by District Forum in Execution Application No. 36/2011 are set aside and matter is remanded back to District Forum to decided Execution Application after giving an opportunity of being heard to both the parties and after considering all the payments made by complainant.

8. Parties are directed to appear before District Forum on 9.6.2015.