
(1997) 06 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

KAUSHALYA KWATRA

APPELLANT

Vs

DREAM CITY BUILDERS PVT. LTD.

RESPONDENT

Date of Decision : 18-06-1997

Acts Referred:

Citation : 1997 3 CPJ 309 : 1998 1 CPC 679 : 1998 1 CPR 625

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Complaint allowed

Judgement

1. MRS. Kaushalya Kwatra, hereinafter referred to as the complainant, entered into an agreement-dated 30.3.88 with M/s. Dream City Builders Pvt. Ltd., hereinafter referred to as the opposite party, for the allotment of an apartment No. V201 in a project called Violet House on the second floor with an area of approximately 113.49 sq. metres @ Rs. 4,407.44 per sq. metre. The total consideration was Rs. 5,00,200 / - with no escalation clause. The Violet House was to be constructed on piece of land bearing Municipal No. 274/2 described in detail in the agreement aforesaid situated at Delhi Palam Road, Gurgaon. Possession was to be delivered by 31.12.88 or within 90 days grace period there from. The complainant paid advance of Rs. 41,000/- and first instalment by two cheques dated 11.4.88. The balance amount was to be paid in 15 instalments related to the stage of construction and she actually paid the instalments according to the schedule. Upto 16.9.88 she had paid a sum of Rs. 2,40,500/-. The construction was started. Some progress was made. Further construction had to be stopped in August or September 88 in circumstances hereinafter appearing. The complainant caused legal notice dated 24.2.90 to be served on the opposite party. On 18.8.92 the parties entered into an agreement. Under the agreement the opposite party delivered the cheque for Rs. 4,74,785/- which included the amount actually paid by the complainant and interest thereon @18% per annum upto 31.10.92. It was further agreed that the cheque would be presented for payment to the Bank only after obtaining consent of the opposite party (drawer) in writing. In case of further delay, the principal amount was to carry interest for the delayed period @18% p.a. As consent for

presentation of the cheque was not given the cheque was not presented. The complainant, therefore, got issued another legal notice dated 27.1.94 claiming refund of the amount with 24% interest. Yet another notice dated 26.3.94 was sent to the opposite party by way of reminder. Reply to both the aforesaid notices dated 31.3.94 was received. The complainant having failed to receive any amount, the present complaint was instituted on 4.7.94.

2. IN the written version filed by the opposite party, the main facts averred by the complainant have not been disputed. What has been stated is that the opposite party had constructed two multi storeyed apartments of 91030 sq.ft. area and had developed the site. During the progress of the construction the Government of INDia in the Ministry of Defence issued a Gazette Notification dated 26.4.86 laying restrictions on the land in which the construction was being made. This was done u/Section 3 of the INdian Works of Defence Act, 1903. A claim for compensation amounting to Rs. 376.20 crores had been made by M/s. Rohit Raj Potteries in which the opposite party herein were entitled to 10% of the amount. The claims are pending before District Judge, Gurgaon and the amount actually paid by the complainant together with interest @18% p.a. thereon would be paid as and when compensation is received under orders of the District Judge, Gurgaon. In support of her case, the complainant filed her own affidavit. No affidavit has been filed on behalf of the opposite party.

We have heard Miss Ritu Makkar, Advocate for the complainant and Miss Rani Chhabra, Advocate for the opposite party and have carefully gone through the records.

3. FROM the facts stated above, there is no dispute that the complainant booked an apartment on certain agreed terms and conditions. The possession of the apartment could not be delivered within the stipulated period and because of the restrictions imposed by the Government of India in the Ministry of Defence u/ Section 3 read with Section 7 of the Indian Works Defence Act, 1903, it is not possible for the opposite party to complete the construction and deliver the apartment. There is, however, no dispute that the complainant had actually paid Rs. 2,40,500/- on various dates during the period 11.4.88 to 16.9.88. At one stage the parties entered into an agreement whereby, the opposite party gave a cheque for Rs. 4,74,785/- including interest @ 18% upto 31.10.92 but the cheque could not be cleared from the Bank apparently because of financial difficulties being faced by the opposite party. The contention of learned Counsel for the opposite party is that all along the opposite party has been willing to perform its part of the contract firstly by making the construction and secondly by offering to refund the amount with interest. It was another thing that construction could not be completed because of the notification of the Government of India and payment could not be made owing to financial difficulties being faced by the opposite party. It was pointed out that the money received from the various purchasers had been invested in the construction already made and unless and until compensation was received from the

Government, it was not possible for the opposite party to make the payment. It was also submitted that the opposite party is already in liquidation and, therefore, the amount, if any, would not be recovered. Learned Counsel had, however, no objection if the amount was made a first charge on the compensation regarding which the opposite party had made an application to the District Judge, Gurgaon. On behalf of the complainant it was submitted that the amount had been paid way back in 1988 and if the complainant made the investment in another property, the value thereof must have multiplied many times. The complainant had invested her life's savings and was left high and dry and was not even being given the amount actually paid by her. It was also submitted that the compensation application had been pending for a very long time and there was no reason why the recovery should be linked with the receipt of the compensation amount. It was also pointed out that no order regarding liquidation of the opposite party Company had been placed on record and in any case the question of recovery was a separate one and would be dealt with when the same is squarely raised at the time of recovery of the amount u/Sections 25/27 of the Consumer Protection Act. After careful consideration of the respective submissions, we find that there is no difficulty in our proceeding to decide this complaint. No order regarding liquidation of opposite party Company has been placed on record. The refund of the amount should not, in our view, be linked with the actual receipt of compensation by the opposite party. The opposite party, having received and utilised the amount, is bound to restore the same to the complainant even though such refund would be actually no substitute for the loss which the complainant has suffered by being deprived of the real estate for which she had entered into agreement with the opposite party. Keeping in view the facts and circumstances of the case, we direct the opposite party to refund Rs. 2,40,500/- alongwith interest @ 18% p.a. from the date of actual payment till date of refund. In the facts of the present case, we do not think that refund of the amount alongwith interest would compensate the complainant for the loss suffered by her. We, therefore, further direct the opposite party to pay Rs. 20,000 / - in addition to the interest aforesaid on account of compensation. The opposite party is given three months" time to make the payment failing which necessary proceedings u/Secs. 25/27 of the Consumer Protection Act is liable to taken. A copy of this order be conveyed to the parties. Complaint allowed.