
(2014) 12 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Krish City

APPELLANT

Vs

Laxmi Garg W/O Suresh Garg

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : 2015 1 CPJ 504

Hon'ble Judges : J.M.MALIK , S.M.Kantkar J.

Advocate : R.K.SALECHA , N.U.Ahmed , Laxmi Garg

Judgement

1. WE have heard the counsel for the parties.
2. LEARNED counsel for the petitioner filed the certificate to the effect that the possession of the premises was given to the complainant/respondent, who was present in the Commission alongwith her husband. The complainant/respondent responded that only key of the premises in dispute was given to her and she was not permitted to enter into the house by the opposite party on the plea that this revision petition is pending.
3. IT appears that the document produced by learned counsel for the petitioner in the court is an eyewash. It is also made clear that the District Forum will see to it that the possession is actually delivered to the complainant. The case of the complainant is this. The complainant, Smt. Laxmi Garg booked a flat for Rs.15,40,000/- with the Krish City, opposite party. The agreement was executed and the complainant was allotted a flat measuring 1265 sq. feet. The opposite party was supposed to give the possession of the flat within 18 months otherwise the opposite party was to pay Rs.3/- per sq. feet per month to the complainant. The complainant deposited the entire amount in the sum of Rs.78,995/- alongwith service tax. According to the agreement, the possession was to be given by 16.5.2012.
4. AFTER one year, for the first time, the opposite party asked the complainant to take the possession of the flat. When they went to see the flat, it transpired that the key of the flat was missing. On the contrary, the petitioner/opposite party

sent the demand letter dated 28.5.2013 to deposit Rs.4 sq. feet per month and interest thereon. The complainant sent letter informing the opposite party that she had not received the possession.

5. ULTIMATELY , the present complaint has been filed, wherein it was prayed that the opposite party should not demand Rs. 4 per sq. feet and compensation in the sum of Rs. 1 lakh alongwith litigation costs and advance fee be granted in favour of the complainant.

6. THE District Forum partly allowed this complaint. The OP was restrained from charging Rs. 4 per sq. feet per month from the complainant and the opposite party was directed to pay Rs.49,335/- and Rs.5,000/- as costs of complaint.

7. THE State Commission headed by Mr. Justice Ashok Parihar in a cryptic order dismissed the appeal. It is also notable that Ms. Shashi Kumar Pareek and Ms. Sunita Ranka, Member of State Commission also signed that cryptic order. It is reported that Justice Ashok Parihar has since retired but we hereby warn both the members, Ms. Shashi Kumar Pareek and Ms. Sunita Ranka not to pass such like cryptic order otherwise their case will be sent to the Apex court for its perusal.

8. WE are not inclined to remand the case because this case involves small controversy.

9. IT is also transpired that no litigation charges were directed to be paid to the complainant/respondent. The petitioner is directed to pay Rs.10,000/- as litigation charges to the respondent through demand draft, directly, within two weeks otherwise this order can be executed.

10. LEARNED counsel for the petitioner vehemently argued that the complainant is yet to pay a sum of Rs.25,000/-. The petitioner has filed its own statement of account. It goes to show that Rs.25,000/- were pending on 22.11.2012.

11. THIS argument appears to be an after thought. The evidence has to be read holistically. There is statement for costs of the flat No. OS -10 Block Orchid, which goes to show a construction named plan. It has got various items. The last entry shows that "on possession, the complainant has to pay 5 % of BR + IFMS + 50% of EDC + STP + Electrical". In accordance with the entries, the petitioner has paid a total sum of Rs.16,17,469/-. No demand was made at that time according to the case of the opposite party itself.

12. WE have perused the written version filed by the opposite party. There is no such averment made in whole of the written statement. Para 5 of the complaint runs as under: "5. That the complainant deposited more amount than the rate of flat demanded by the respondent by demand letters. Thereafter the respondent sent an email on the mail ID of the complainant to take possession of the flat. The mail was sent on 23.04.2013 whereas the possession of the flat was to be made within 18 months as per agreement i.e. till 16 -5 -2012. Thus the respondent committed default on in service by not giving possession within 18

months whereas the complainant has deposited all amount asked by the respondent through demand letters."

13. REPLY of para 5 of the complaint has been given in para 5 of the reply, which runs as under: "5. That the para No. 5 of the complaint is correct to the extent that the humble respondent sent email to the complainant. Rest of the para is false and not admitted. There is not even a whisper, syllable or word regarding the payment of extra amount of Rs.25,000/ -. The petitioner has tried to mislead this Commission and has made an attempt to throw dust in the eyes of law. He has produced a wrong evidence before this Commission. The opposite party is liable of perjury. He has admitted in his reply that all the payments were made. In para 4 of the reply, the opposite party has further admitted that the complainant had deposited the amount from time to time.

14. THE email dated 23.2.2013 is an eyewash. The possession was not given on 23.04.2013. At the time of admission of this case, we had ordered that possession of the premises would be given to the respondent/complainant within 15 days. Although, the opposite party has handed over the key of the premises to the complainant, yet, she was not allowed to enter into the room. That is why both the complainant and her husband appeared before this Commission on the last date. Had they received the possession, they would have not taken the trouble to come along all the way to Delhi. The opposite party has filed a false affidavit. He has no respect for the law and flouted the law at the level of National Commission.

15. CONSEQUENT LY , we hereby dismiss the revision petition with a direction to the opposite party to pay delay charges in the sum of Rs.49,335/ - to the respondent/complainant and to further pay the said amount till 30.11.2014. The petitioner/opposite party is warned and directed to put the complainant in possession immediately and don't put any hindrance to her possession and execute the sale deed within 30 days from the date of receipt of this order otherwise he will be liable to pay penalty of Rs.500/ - per day till the needful is done. We further impose costs of Rs.25,000/ - besides the costs imposed by the District Forum, which be paid to the complainant through demand draft within 30 days from the date of this order otherwise it will carry interest @12% per annum till its realisation. After the expiry of above said 30 days, the present decree will become executable. The order of District Forum and this Commission be complied with strictly.