
(2016) 01 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Case No : 3102 of 2015

LT COL AMRIK SINGH (RETIRED)

APPELLANT

Vs

GOVT OF PUNJAB & ORS

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Consumer Protection Act, 1986, Section 21(b), Section 24A, Section 2(1)(d) - Jurisdiction of the National Commission - Limitation period - Definitions

Citation : (2016) 01 NCDRC CK 0008

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Final Decision : Petition dismissed

Judgement

1. Revision petition no. 3102 of 2015 has been filed against the judgment dated 13.05.2015 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh ("the State Commission") in Appeal no. 486 of 2015.

2. The facts of the case as per the petitioner are that in the year 2002, the petitioner had bought plot no. R 44 in their said Estate at New Amritsar vide allotment no. 7671 dated 05.07.2002 and paid full consideration vide receipt no. 022992 dated 02.08.2002. Through the said allotment letter, the respondents committed to execute the deed of conveyance in the name of petitioner on receipt of full payment and to supply him the copies of the zoning plan and the building by laws to enable him to submit the necessary drawings for approval of the construction of the building and provide him the necessary developed infrastructure by way of roads, water, sewerage, electricity and fencing for security before he could construct the building and live therein. However, despite the petitioner's written petition dated 02.08.2002 and 24.08.2009 and repeated telephonic reminders to provide the agreed service to him, the respondents knowingly, deliberately and with intent to cause wrongful gains to themselves and wrongful loss to their customers/ consumers never complied with their said commitments promptly. By their own admission vide letter no. PSIEC/Estate 1507 dated 28.04.2006 the opposite parties have admitted that the development

of the said Estate was not complete at the time of allotment of the said plot to the complainant and it was contested that the same was still incomplete on the ground till March 2010 when the petitioner was forced to sell the said plot.

3. The complainant alleges that the aforesaid sale deed was brokered by the property dealers, who intimated that the said plot could not be sold until the petitioner would pay a sum of Rs.24,375/- towards extension fee and Rs.45,000/- towards the transfer fee to the respondents. Pending remedies, the petitioner had no other option but to pay the respective amounts. Alleging deficiency in service, complaint was filed seeking directions to the respondents to refund him a sum of Rs.24,375/- recovered from him by them on account of extension fee of Rs.45,000/- recovered from him on account of transfer charges, to refund Rs.66,939/- by way of interest waived and pay suitable compensation and litigation expenses were also demanded.

4. The respondent in their written version before the District Consumer Disputes Redressal Forum, Amritsar ("the District Forum") stated that the plot no. R 44, measuring 250 square yards at Focal Point, Amritsar (New) was allotted to the complainant on free hold basis on 05.07.2002 and possession was taken over by the petitioner on 11.11.2002. All the basic development works were completed by 30.06.2004 and as such the date of allotment was changed from 05.07.2002 to 30.06.2004. No interest/ penal interest and extension free up to 30.06.2004 had been charged from the petitioner. Later on, the petitioner sold the plot to Smt Sarika and Smt Sakshi and consequently transfer letters number 17280-83 dated 29.03.2010 was issued in that respect. The extension fee and transfer fee was charged as per the terms and conditions of the allotment/ policy of the corporation. The petitioner was not serious in raising construction thereon and as such sold the plot to the aforesaid ladies. Since the petitioner was no more a consumer after alienating the property and as such the petitioner has no right to file the present complaint on the ground of alleged deficiency in service. While denying and controverting other allegations, dismissal of complaint was prayed.

5. The District Forum vide its order dated 21.08.2014 while dismissing the complaint observed as under: "It is an admitted case of the complainant that he sold the plot in question to Smt Sarika and Smt Sakshi and he himself applied to the opposite parties for transfer of the plot in question from the name of complainant in the name of purchasers, i.e., Smt Sarika and Smt Sakshi vide application Ex. R 20 and also filed an affidavit dated 19.02.2010 Ex R 21 and indemnity bond Ex R 22. Resultantly, the opposite parties transferred the plot in question from the name of the complainant to aforesaid vendees namely Smt Sarika and Smt Sakshi vide letter dated 29.03.2010 Ex. R 9. So, the complainant no more remained owner of the plot in question, with effect from 29.03.2010 and as such he cannot be said to be a "consumer" qua the plot in question and the opposite parties, with effect from 29.03.2010. As such, the complainant was no more consumer qua the opposite parties from 29.03.2010 onwards. Further, the cause of action accrued to the complainant on 11.11.2002 when he took delivery

of the possession of plot in question vide possession certificate Ex R 14. The cause of action no more remained to the complainant with effect from 29.03.2010 when the plot in question was transferred in the name of vendees Smt Sarika and Smt Sakshi as per letter Ex R 9 whereas the present complaint has been filed by the complainant on 20.07.2010 after a lapse of period of more than 2 years 4 months (i.e., after more than 2 years as admissible under the Consumer Protection Act). Moreover, no application was filed by the complainant along with the complaint for the condonation of delay. Resultantly, we hold that the complaint is barred by limitation as per Consumer Protection Act. Moreover, the complainant no more remained owner of the plot in question with effect from 29.03.2010 when he transferred the plot in question in the name of Smt Sarika and Smt Sakshi. As such, the complainant cannot be said to be a "consumer" of the opposite parties qua the plot in question.

Resultantly, the complaint is not maintainable and the same is hereby dismissed with no order as to costs".

6. Aggrieved by the order of the District Forum the petitioner filed an appeal before the State Commission. The State Commission vide its order dated 13.05.2010 dismissed the appeal and upheld the order of the District Forum. In their order, the State Commission held as under: "11. Primarily, the complainant had challenged the charging of extension fee and transfer fee deposited with the OPs on 22.02.2010 and 25.03.2010. If as per the version given by the complainant this extension fee and transfer fee was illegally charged by the OP from the complainant then according to Section 24 A of the Act, he was required to file the consumer complaint within a period of 2 years but the complaint was filed on 20.07.2010, certainly after a period of two years and that the complaint was not attached with any application for condonation of delay as required under Section 24 A of the Act. Therefore, the District Forum was justified to return the findings that the complaint so filed by the complainant is barred by limitation which could not be rebutted by the complainant who was present before this Commission. Therefore, we are of the opinion that the findings so recorded by the District Forum that the complaint filed by the complainant is barred by limitation are correct findings and we affirm the same.

12. The next point is with regard to the "consumer". The definition of "consumer" has been given under section 2 (1) (d) which reads as under:

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or

promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose] ;

{Explanation For the purposes of this clause, "Commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment}.

13. This definition will make it clear that in case any property was purchased for commercial purpose then that person does not come under the definition of the "consumer". A plea was taken by the OPs that after selling the property in the month of March 2010, the complainant is not more "consumer" because the property was transferred from his name to any other person in case it is taken that extension fee and transfer fee was paid by him before transfer of the plot then he has a right to challenge the same. Then in case he had purchased the property for the purpose of sale then he had invested his amount in the property for investment purposes and was not a potential user, therefore, on that ground, he cannot said to be a "consumer". On that point also, the findings so recorded by the District Forum are hereby affirmed.

14. In view of the above discussion, the complainant was unable to make any point for admission of the appeal and the same is hereby dismissed in limine."

7. Hence, the present revision petition.

8. We have heard the petitioner in person. The petitioner has stated that the impugned order should be set aside as it had ignored the fact that the plot was allotted to him in the year 2002 and there was no development work and hence, he was compelled to sell the plot in the year 2010. As the area was not developed, he could get the building plan prepared and approved for construction of the building. He was, therefore, compelled to sell the plot but before he could sell the plot and get it transferred in the name of the new owner he was compelled to pay the extension fee of Rs.24,375/- and a sum of Rs.45,000/- towards the transfer fee. He further contended that the amount recovered from him was wrong, illegal, arbitrary, unjust and uncalled for and hence, the amount should be reimbursed to him along with suitable compensation. The respondents were not provided the agreed services for almost eight years.

9. We have gone through the record. It is seen that petitioner was allotted R 044 on a free hold basis vide allotment letter dated 05.07.2002. As per condition no. 10, conveyance deed had to be executed by the petitioner in the prescribed form and manner as directed by the respondents. As per condition no. 11, after taking over the possession of the plot petitioner had to get the building plans prepared from a registered architect conforming to the zoning plan and building bye laws

of the corporation and send it for approval. As per condition no. 18, in case the petitioner failed to construct residential building within three years from the date of allotment, unless the date was extended, the plot could be resumed and its possession taken back. Petitioner however, could get the date extended by paying the extension fee.

10. From the record available on file, it is seen that petitioner made the full payment but the conveyance deed was not get executed. Further, the respondents vide letter dated 28.04.2006 had informed him that the development works in the pocket, where his plot was located stood completed by 30.06.2004. Accordingly, it has been decided to make effective the date of allotment letter with effect from 30.06.2004 instead of the original date 05.07.2002. Hence, no extension fee would be charged with reference to the earlier date of allotment. It is also an admitted fact that the petitioner has since sold the plot in March 2010 after paying the extension fee due as per rules as also the transfer fee.

11. In view of the above, the District Forum and the State Commission have correctly come to the conclusion that the complaint is not maintainable due to limitation. He had been allotted plot in the year 2002 and thereafter the date of allotment was further changed to 30.06.2004 after the development of the pocket was completed. In case he had any complaint or grievance regarding the development of the said pocket, he should have filed a complaint by June 2006. Thereafter, he sold the plot in March 2010. On 29th March 2010 he had already paid the extension fee and the transfer fee and if he had any grievance about the payment he should have filed a complaint by March 2012. However, the complaint was not filed till 20th July 2012. We also agree with the District Forum and the State Commission that after he sold the plot in March 2010 he was no longer a consumer qua the respondents.

12. The Hon"ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., 2011 3 Scale 654 has observed: "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

13. Thus, we find that no jurisdictional or legal error has been shown to us in the impugned order to call for interference in the exercise of powers under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby, dismissed.