

(2017) 04 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

Case No : 267 of 2015

M. AHUJA PROJECT (INDIA) PRIVATE LIMITED

APPELLANT

Vs

LOKESHWARI NAGPURE W/O. HARENDRA KUMAR NAGPURE

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(a\)\(ii\)](#) - Jurisdiction of the National Commission

Citation : 2017 2 CPR 475

Hon'ble Judges : Dr. B.C. Gupta, Presiding, Dr. S.M. Kantikar

Advocate : R.K. Bhawnani, S.K. Dewanker

Judgement

1. First appeal No. 267/2015 has been filed under section 19 read with section 21(a)(ii) of the Consumer Protection Act, 1986 against the impugned order dated 04.02.2015, passed by the Chattisgarh State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in consumer complaint No. 14/12, filed by the present respondent Lokeshwari Nagpure, vide which, the said appeal was allowed and the following order was passed:-

"1. The OP within 3 months from the date of the order will remove the defects as mentioned in para 10 of this order and will register the sale deed in favour of the complainant and will give the possession to the complainant.

2. In this case the price of the house is fixed for Rs.15,91,000/- out of which Rs.11,90,000/- has been paid by the complainant and the balance amount will be paid by the complainant before the registry and after the payment by the complainant the sale deed will be executed and possession will be given to the complainant.

3. The OP within 3 months the remove the defects and if the OP fails to remove the defects then he will refund the amount of Rs. 11,90,000/- from the date of agreement dated 26-03-2012 @24% to the complainant.

4. The OP will also pay the amount of Rs.1,00,000/- for mental harassment.

5. The complainant will also be entitled for the amount of Rs. 10,000/- as cost from the OP."

2. First appeal No. 268/2015 has been filed by the same appellant/builder against the impugned order of even date, i.e., 04.02.2015, passed by the State Commission in consumer complaint No. 14/11, filed by the complainant Mukesh Kumar Janghel, vide which, a similar order was passed by the State Commission. The only difference between the two orders is that in the former case, a sum of 11,90,000/- has been paid by the complainant, whereas in the latter case, a sum of 12,05,000/- has been paid by the complainant. Since the facts and circumstances in the two cases are similar, this single order shall dispose of both the appeals and a copy of the same be kept on each file.

3. The facts of the case in FA/267/2015 are that the complainant Lokeshwari Nagpure, entered into an agreement with the OP builder for booking a house No. B-3 in their project, "Clay Castles" at village Gunda, where 70 houses were to be constructed from 26.01.2010 to 01.05.2012. The price of the house was quoted as 15,91,000/- and its possession was to be given by 30.06.2012. The complainant paid a sum of 11,90,000/- upto February 2012 to the OPs. Alleging that the OPs failed to complete the construction of the building within the stipulated time, the consumer complaint in question was filed, seeking directions to the OPs to pay the market value of the house, i.e., 30 lakhs alongwith interest @24% p.a. and also to pay a compensation of 1 lakh for mental harassment etc. The complaint was resisted by the OP builder by filing a written statement before the State Commission, in which they stated that the constructed area of the property had increased and now the total price of the house had become 19,19,118/-, after including the additional service tax and expenses of electric meter etc. The OP also stated that the complainant had failed to pay the regular instalments and hence, she was not entitled to any relief. The State Commission after considering the averments of the parties, concluded that the OP had not filed any evidence, from which it could be proved that the constructed area had increased. The State Commission also concluded that the complainant was not entitled to receive back the present market price of the house in question. The State Commission, therefore, ordered that considering the price of the house as 15,91,000/-, the balance amount shall be paid by the complainant and, thereafter the sale-deed will be executed and possession delivered to the complainant after removal of defects. The State Commission also ordered that in case, the said defects were not removed, the OP builder shall refund a sum of 11,90,000/- to the complainant alongwith interest @24% p.a. from the date of the agreement, i.e., 26.03.2012. In addition, a sum of 1 lakh as compensation against mental harassment and 10,000/- as cost of litigation was also ordered to be provided.

4. In FA No. 268/2015, the facts are exactly similar apart from the fact that the amount deposited by the complainant is 12,05,000/-. The directions given by the State Commission in the impugned order are also the same as in the previous

case.

5. Being aggrieved against the said orders of the State Commission, the OP Builder is before this Commission by way of the present first appeals.

6. It was contended by the learned counsel for the OP Builders at the time of arguments that the houses, in question, were ready for occupation, and they were prepared to hand over the possession of the same to the complainants. The learned counsel stated that the complainants had already filed execution petitions against them before the State Commission. When asked as to why the OP builder had challenged the impugned order before this Commission, the learned counsel stated that their grievance was only with regard to the payment of interest @24% p.a. in the case of refund.

7. Per contra, the learned counsel for the respondents/complainants stated that the houses in question, were still not ready for occupation.

8. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

9. A perusal of the impugned orders of the State Commission makes it clear that the OP builders have been directed to hand over the possession of the constructed property to the complainants after receiving the balance amount from them as per the agreement. The State Commission have also directed that the possession of the property should be handed over to the complainants, after removing the defects in the property, and the sale-deed should also be got registered. The contention of the appellants at the time of arguments has been, that the houses in question were ready for occupation. It is evident, therefore, that no steps were taken by the builders for handing over the possession of the property in terms of the order of the State Commission. In so far as the removal of defects etc. in the said properties are concerned, the OP Builders should state their position before the executing court in the presence of the other parties. In so far as the plea taken by the OP Builders regarding the grant of interest @24% p.a. in the case of refund is concerned, the said plea loses meaning in the light of their stand, that the houses are

ready for occupation and they are prepared to hand over the possession of the same to the complainants. There is nothing wrong in the order of the State Commission on this ground as well. In so far as the increase in the constructed area etc. is concerned, the State Commission have pointed out in their order that the OP Builders were not able to lead any evidence in support of their contention that the built-up area had increased.

10. In the light of the discussion above, it is held that there is no merit in these two first appeals and the same are ordered to be dismissed because there is no illegality, irregularity or jurisdictional error in the orders passed by the State Commission. There shall be no order as to costs.