

(1999) 01 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

MAHALAKSHMI LAND And FINANCE CO. (P.) LTD.	APPELLANT
Vs	
RAM PRAKASH GUPTA	RESPONDENT

Date of Decision : 13-01-1999

Acts Referred:

Citation : 1999 1 CPC 685 : 1999 1 CPJ 507

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

Final Decision : Appeal disposed of

Judgement

1. MR. Ram Prakash Gupta, complainant, booked flat No. 410 having an area of 736 sq. feet on the 4th Floor of Chhabra-Mahalakshmi Tower, which was to be constructed by the Mahalakshmi Land and Finance Co. (P.) Ltd., hereinafter referred to as the opposite party. The complainant deposited Rs. 20,000/- as the booking amount on 23.6.1989 and his case is that he was assured that possession would be delivered in two to three years" time. He paid four instalments totaling Rs. 1,34,000/-, inclusive of booking amount, he had said Rs. 1,54,008/- out of a total of Rs. 8,42,240/- by 9.4.1991. The complainant wrote to the opposite party on 27.9.1993 enquiring when the possession was likely to be delivered. He received reply dated 4.10.1993 that RCC slab for the basement had been laid and pillars were being raised and he would receive notice on the completion of first floor slab in accordance with the agreement. The complainant visited the site and found that no construction activity was going on there. He, therefore, requested the opposite party to refund the amount together with interest and adequate compensation.

2. THE plea of the opposite party was that the complaint was barred by limitation and delay occurred in the progress of construction as G.D.A. (Ghaziabad Development Authority) had stopped them from carrying on the construction. THE opposite party had to approach the High Court and it was only thereafter that necessary building plans were sanctioned on 12.3.1993 and construction work resumed. Reference was invited to Clause 12 of the agreement under which the Builder was not liable for delay in the construction of the building for reasons

beyond its control. It was, therefore, stated that the opposite party was not liable for any interest for compensation. On a consideration of the matter, District Forum-I allowed the complaint and directed the opposite party to refund the amount paid by the complainant together with interest @ 18% from the date of respective deposit till date of repayment, besides Rs. 25,000/- as compensation and Rs. 500/- as costs. Aggrieved by the order, the opposite party has preferred this appeal. We have heard learned Counsel for both the parties.

The contention of Mr. Sachdeva, learned Counsel for the appellant is that admittedly the last payment of Rs. 34,224/- was made by the complainant on 9.4.1991 and reckoned from that date, the complaint was filed after the expiry of limitation of two years prescribed in Section 24A of the Consumer Protection Act and was barred by limitation. We find no merit in this contention. The agreement between the parties was for a constructed flat on payment being made according to the stage of construction. Under Condition No. 3, time of payment was essence of the contract. Under Condition No. 4, the allottee was required to make the payment within 15 days of demand and in case of delay, he was liable to pay interest @ 18% per annum. Condition No. 5 further laid down that if the dues remained unpaid for a period of one month from the date of notice, the entire amount of earnest money i.e. 15% of the cost already paid by the allottee against the booking of flat would be forfeited in favour of the builder Company and booking of flat would stand cancelled and the defaulting allottee shall cease to have a lien or right on the said flat without any further notice. It was also laid down that the balance amount paid by the allottee will be refunded without any interest on production of receipts. In the facts of the present case, it is not claimed that the opposite party sent any notice on the completion of the slab of the first floor and the complainant never defaulted in making further payment. In the absence of any default, there was no question of the agreement being cancelled. In fact, the complainant was forced to conclude that construction was not going to be completed within a reasonable time. In other words, the contract remained alive and the complainant had a continuing cause of action. There was no question of the complaint being barred by limitation.

3. THE next contention of Mr. Sachdeva is that the appellant was not liable to pay either interest or compensation for the reason that the construction was stopped by an illegal order of GDA and the appellant had to approach the High Court, where after only GDA sanctioned the building plan, on 12.3.1991. No material has been placed on record as the reasons why construction was not proceeded with further after the sanction of the building plan. In the absence of any material it cannot be held that the builder Company was unable to proceed with the construction within stipulated time due to any circumstances beyond its control. Clause 12 of the agreement is thus, not attracted to the present case. In the facts and circumstances of the case, we find that award of interest of 18% per annum from the date of respective deposit is sufficient compensation and there was no case made out for award of an additional sum of Rs. 25,000/-. We, therefore, set aside direction of the District Forum to party Rs. 25,000/- in

addition to the interest referred to above. Except for the said modification we find no merit in the appeal and the same is accordingly disposed of with no order as to costs in the appeal. This order shall be complied with within four weeks of the receipt of a copy of the order which may be conveyed to the parties as well as District Forum-I. Appeal disposed of.