
(2014) 11 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

Mantu Ranjan Dutta

APPELLANT

Vs

Ahindra Mohan Biswas

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : 2015 2 CPJ 626

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : SANJOY KUMAR GHOSH , Babita Chowdhury , Debasish Mondal

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 26.11.2013 passed by the West Bengal State Consumer Disputes Redressal Commission, Kolkata (in short, "the State Commission") in S.C. Case No. FA/1003/2012 Mantu Ranjan Dutta Vs. Ahindra Mohan Biswas by which, while dismissing appeal, order of District Forum allowing complaint was upheld.

2. BRIEF facts of the case are that complainant/respondent no. 1 and 2 entered into an agreement for purchase of 771 sq. ft. flat from OP NO. 4/Respondent No. 3 on 22.5.2010 for a consideration of Rs.13,50,000/- . Complainant paid entire amount except Rs.1,00,000/- towards consideration, but OP No. 3 did not execute deed of conveyance inspite of repeated requests. It was further submitted that OP No. 1/Petitioner No. 1 with unlawful object was denying right of the complainant. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP No. 1 and 2/Petitioners and Respondent No. 5 resisted complaint and submitted that power of attorney granted to OP NO. 3 and 4 has been revoked by deed of revocation dated 15.6.2007 and OP No. 4 is not owner of the property and there was no obligation on the part of OP No. 1 and 2 to execute deed of conveyance in favour of the complainant. OP No. 3 and 4 also resisted complaint and submitted that OP No. 1 and 2 owner of the land are withholding registration of flat. It was further submitted that OP No. 4 was given absolute power to register deeds in favour of intended purchasers and OP NO. 1 and 2 has illegally revoked power of attorney and there is no deficiency on the part of OPs and prayed for dismissal of complaint. Learned District Forum

after hearing both the parties allowed complaint and directed complainant to pay balance money Rs.1,00,000/- to OP No. 4 and directed OP NO. 4 to execute sale deed and further directed OP NO. 1 and 2 to confirm execution of deed and further awarded Rs.1,00,000/- for mental agony and Rs.10,000/- as litigation cost against all the OPs. OP No. 1 filed appeal before State Commission which was dismissed by impugned order against which this revision petition has been filed.

3. HEARD learned Counsel for the parties finally at admission stage and perused record. Learned Counsel for the petitioner submitted that there was no allegation against petitioner in the complaint and there was no obligation on the part of petitioner to execute deed and in spite of the fact that the petitioner has not received any sale consideration, learned District Forum committed error in allowing complaint against him and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order against him be set aside. On the other hand, learned Counsel for the respondents submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

4. LEARNED Counsel for the parties apprised that sale deed has already been executed as per directions of Hon'ble District Forum and 50% of the awarded amount has already been paid by OP No. 3 and 4.

5. NOW , the core question is to be decided whether petitioner is liable to make any payment as ordered by District Forum.

6. PERUSAL of complaint reveals that in the complaint no averment has been made against OP No. 1. No doubt, OP No. 1 and 2 were owner of the property and they entered into an agreement for development of land with OP NO. 3 and 4 and by irrevocable power of attorney they authorized OP NO. 3 and 4 to sell 60% of flats as per agreement. OP NO. 3 and 4 entered into an agreement with complainant for sale and purchase of flat which does not bears signatures of OP No. 1 and 2. It is also admitted case of the parties that no consideration was received by OP No. 1 and 2 towards sale of flat by OP NO. 3 and 4 to the complainant. District Forum also directed OP No. 4 to receive balance consideration and execute conveyance deed and OP No. 1 and 2 were directed to confirm execution of deed. There was no occasion for the District Forum to direct OP No. 1 and 2 to pay compensation and litigation cost, as no deficiency was pleaded in the complaint against OP No. 1 and 2. Learned State Commission further committed error in dismissing appeal only on the basis of irrevocable power of attorney executed by OP NO. 1 and 2 in favour of OP NO. 3 and 4. All compliance were to be made by OP NO. 3 and 4 and nothing was to be done by OP No. 1 and 2 and in such circumstances, order awarding compensation against OP No. 1 is liable to set aside as only OP No. 1 has filed appeal as well this revision petition.

7. CONSEQUENT LY , revision petition filed by the petitioner is allowed and

impugned order dated 26.11.2013 passed by learned State Commission in S.C. Case No. FA/1003/2012 Mantu Ranjan Dutta Vs. Ahindra Mohan Biswas and order of District Forum dated 16.10.2012 in CC No. HDF 44 of 2012 - Ahindra Mohan Biswas and Anr. Vs. Mantu Ranjan Dutta and Ors. is set aside to the extent of petitioner and complaint stands dismissed against petitioner with no order as to costs.