

(2017) 01 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

Case No : 183 of 2015

MANZOOR BAIG S/O. MANSOOR BAIG

APPELLANT

Vs

ARMAN DREAMS HOMES PVT. LTD. THROUGH AQUEEL S/O.
ANWAR UL HAQ SIDDIQUI

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19 - Appeals

Citation : 2017 1 CPR 147

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : SHUBHADA DESHPANDE, UJWAL R. PHASATE, SMITA ALIGAVE

Final Decision : Appeal Dismissed

Judgement

1. This First Appeal, under Section 19 of the Consumer Protection Act, 1986 (for short "the Act"), by the Complainant, is directed against the order dated 27.1.2015 passed by the State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench at Nagpur in CC/11/19. By the impugned order, the State Commission has dismissed the Complaint filed by the Petitioner, alleging deficiency in service on the part of the Respondent, a real estate developer, in failing to deliver the possession of the flat in terms of the sale agreement dated 14.3.2009 executed between the parties.

2. Under the said agreement, the Complainant had agreed to purchase from the Respondent a flat admeasuring 1,000 sq.ft. for a total consideration of 22,00,000/-, in the building named and styled at "Armaan Residency", located in Tehsil and District Nagpur. A number of flats, out of which the Complainant had to get one flat, were to be constructed on a property, admeasuring 2,700 sq.ft., originally owned by the Complainant along with 7 others in the "Baig" family. In terms of the sale agreement, the Complainant paid a total sum of 15,000/-, all in cash, in two instalments and the balance amount of 17,85,000/- was to be paid at the time of delivery of possession of the flat in question, which was expected

to be delivered within 15 months from the date of the sale agreement.

3. Having failed to get the possession of the flat, the Complainant filed the Complaint, praying for a direction to the Respondent to execute the sale deed in respect of the aforesaid flat and payment of 20,00,000/- as compensation for non-performance of the contract along with interest at the rate of 12% p.a., till realization of the amount as also a further sum of 1,00,000/- towards damages for delay in delivery of the flat.

4. The Complaint was resisted by the Respondent. In the written version filed on its behalf, while admitting that a sum of 4,15,000/- had been received from the Complainant, it was stated that the sale agreement was cancelled on 30.5.2009 and the entire amount paid by him was refunded to him; a sum of 1,00,000/- by means of a cheque dated 30.5.2009 drawn on Allahabad Bank and the balance amount of 1,15,000/- in cash in the presence of a person, who was a witness to the sale agreement dated 14.3.2009.

5. On evaluation of the evidence adduced by both the parties, the State Commission has rejected the stand of the Complainant that the refund of 1,00,000/- by the Respondent to the Complainant by cheque was in respect of some other transaction, and the balance amount was never received. The State Commission has held that the Complainant has failed to prove the nature of the other transaction and has accepted the stand of the Respondent that the entire amount of 4,15,000/- has been refunded by the Respondent to the Complainant. Hence, the present Appeal.

6. Having heard learned counsel for the parties and perused the documents on record, we are of the opinion that the Appeal is without any merit. In so far as the refund of 1,00,000/- by cheque is concerned, the Complainant has not brought on record even an iota of evidence to even remotely show the nature of transaction under which the said amount was due to him from the Respondent. In the absence of any rebuttal to the affidavit in lieu of evidence filed by way of evidence by one Kamal Anwar Siddiqui, who was admittedly one of the witness to the sale agreement, wherein he had categorically stated that on the assurance given by the Complainant on 30.5.2009, the said amount of 3,15,000/- was refunded to him in cash and the balance amount by cheque in his presence and another witness, we do not find any illegality in the view taken by the State Commission.

7. In view of the above, we do not find any legal or factual infirmity in the impugned order warranting our interference. Consequently, the Appeal fails and is dismissed accordingly with no order as to costs.