(2017) 01 NCDRC CK 0097

In the National Consumer Disputes Redressal Commission

Case No : 43 of 2017

MITESH BALLASAAHEB ADDHATE — APPELLANT

Vs

M/S. JVPD PROPERTIES PRIVATE LTD. & 2 ORS — RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

Consumer Protection Act, 1986, Section 2(1)(d) - Definitions

Citation : 2017 1 CPR 458

Hon'ble Judges : V.K. Jain

Advocate : Md. Fuzail Khan, Prakash Kumar Singh

Judgement

1. The complainant booked a residential flat with OP No.1 JVPD Properties Private Ltd. in a building which the said OP was proposing to construct on land bearing C.T.S No. 63A/5 and 64D, ''S''/Ward of Village-Tirandaz, Taluka-Kurla, Mumbai. An allotment letter dated 06.02.2014 was issued to the complainant after receiving a sum of Rs.85,15,000/- from him. He also claims to have paid an additional amount of Rs.2,00,000/- for the car parking. The allotment letter issued to the complainant, to the extent it is relevant, reads as under: 4. You have inspected the proposed plans, title documents, in respect of the building in which the said Flat is to be situated and you have confirmed that you are fully aware of the risks involved in the project not taking off and getting cancelled, with regard to the same in all respects. We have also disclosed to you that presently, the plans for the construction of the new building in which the said Flat is proposed to be situated are pending for submissions and the specifications, size, dimensions, and location of the said Flat is subject to approval of such plans and that the said Flat may have certain variations from what is presently proposed in accordance with the final approved plans and construction related approvals.

6. As aforesaid, the completion of this building and the redevelopment of the scheme shall be subject to approvals and permissions from the various authorities. We shall make all endeavors to complete construction of the building

in which the said Flat is situated with a period of 42 months from receipt of the final commencement certificate from plinth level.

8. It is agreed that you are an Investor and hence in the event if we do not obtain the requisite clearances on the land title and/or Intimation of Disapproval from the Municipal Corporation of Greater Mumbai in relation to construction on the plot within a period of 9 (Nine) months from the date hereof, plus a grace period of 3 months, subject to force majeure, then and in such an event, you shall terminate this letter and claim refund from us of the amounts till then paid by you to us together with interest thereon calculated at the rate of 24% p.a. from the date of payment of the respective amounts by you till the date of termination.

9. In the event of termination as mentioned above in clause No.8, the amounts paid by you shall be treated as loan till the amount is repaid to you along with interest @ rate mentioned in Clause 8.

2. The grievance of the complainant is that despite 33 months having expired from the date on which the allotment letter was issued, the OP has neither commenced construction of the building nor obtained requisite permission for the said construction. The complainant is therefore, before this Commission seeking the following reliefs: 1. Refund of Rs.87,78,114/- (Eighty Seven lacs Seventy Eight thousand and One Hundred Fourteen only) paid by the Complaints to the Opposite Parties on 06.2.2014 towards the said Flat D Wing on 38 th floor of the said Building (being 36 th residential floor above 2 podiums).

2. Interest amounting to Rs.57,93,556/- at the agreed rate of 24% p.a. on the aforesaid amount of Rs.87,78,114/- for 33 months period from the date of payment on 06.2.2014 till the filing of the Complaint:

3. Further Interest at the rate of 24% p.a. on the aforesaid aggregate sum of Rs.1,45,71,670/- from the date of the Complaint till payment or realization;

4. Compensation of Rs.50,00,000/- arising due to harassment and inconvenience caused to the Complainant due to the deficiency of services and unfair trade practices on part of the Opposite Parties.

3. It would be seen from a perusal of clause 4 of the allotment letter that the complainant was fully aware that at the time of issue of the said letter, the OP had already submitted plans for construction of the proposed building but the said plans had not been approved. As per clause 6 of the allotment letter, the OP was expected to complete construction within a period of 12 months from the receipt of the commencement certificate from the plinth level. Though it is alleged in para 7 of the complaint that the commencement certificate has not been obtained by the OP but the complaint is silent as to the reasons for such a certificate having not been issued by the concerned authorities. This is not the allegation in the complaint that the OP did not even apply for issuance of the commencement certificate. Therefore, if clause 6 of the allotment letter is strictly

applied, the complainant can, at this stage, has no grievance on account of the possession of the flat having not been delivered to him, unless the non-issuance of the commencement certificate is attributed to some act or omission on the part of the builder. No such act or omission has been pleaded by the complainant. In fact, this is to meet such an eventuality that clause 8 of the allotment letter expressly provided that in the event of the OP not obtaining the requisite clearance on the land title and/or intimation of disapproval from the Municipal Corporation within nine months from the date of the allotment letter plus a grace period of three months, the complainants would be entitled to refund of the amount paid by them alongwith interest @ 24% per annum. Therefore, in terms of the contractual obligations of the parties, the complainant, at this stage, seem to be entitled only to refund of the amount paid by him alongwith interest @ 24% per annum.

4. The more important question which arises for consideration is as to whether the complainant can be said to be a ''consumer'' as defined in Section 2(1)(d) of the Consumer Protection Act. The aforesaid provision expressly excludes from its ambit a person who hires or avails the service for a commercial purpose. Vide clause 8 of the allotment letter, the complainant expressly agreed that he is an investor and therefore, in the event of requisite clearances not being obtained, he would be entitled to refund alongwith interest @ 24% per annum. The rather exorbitant rate of interest stipulated in clause 8 of the allotment letter is a strong indicator that the complainant in fact was an investor or financer in this project and that is why he agreed that in the event of the clearance not been given, he would be entitled to refund after a period of 9 months plus a grace period of three months, alongwith interest @ 24% per annum. Such a person, in my view, cannot be said to be a consumer as defined in the Consumer Protection Act, as his primary purpose in making such a transaction is to obtain heavy returns on the investment made or finance provided by him in the project which a builder is proposing. Therefore, a consumer complaint for the redressal of the grievance of the complainant is misconceived.

5. For the reasons stated hereinabove, the complaint is hereby dismissed. It is however, made clear that dismissal of the complaint will not come in the way of the complainant approaching a Court or Forum other than a Consumer Forum for the redressal of his grievances. In the event of the complainant approaching a Court or a Forum other than the Consumer Forum, the observations made and the view taken in para 3 of this order would not influence the decision of the said Court/Forum in any manner.