
(2016) 04 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

Case No : 806 of 2015

M/S. DLF LTD.

APPELLANT

Vs

M/S. MRIDUL ESTATE PVT. LTD.

RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Citation : 2016 2 CPR 460

Hon'ble Judges : K.S. Chaudhari, Prem Narain

Advocate : Aditya Narain, ?Seema Sundd, ?Davesh Bhatia, ?Saurabh Kumar, ?Pritpal Nijjar, ?N.P. Singh, ?Vinay Kumar, ?Anupama Kaul

Judgement

1. This appeal has been filed by the appellant against the order dated 15.07.2015 passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short "the State Commission) in Complaint No. 37 of 2010 - M/s. Mridul Estate Pvt. Ltd. Vs. M/s. DLF Ltd. by which complaint was allowed.

2. Brief facts of the case are that complainant/respondent applied for a flat with two parking space in the project "The Aralias" at Gurgaon of OP/appellant and paid Rs.24,40,000/- as booking

amount on 25.9.2004. Total sale consideration of plot was Rs.2,44,00,000/- and flat was to be handed over in semi-finished position within 18 months from the date of booking and interiors were to be completed by complainant. On 11.5.2005, OP sent drawings of the apartment to complainant for enabling it to plan interior works and complainant proposed some changes in drawings and OP again returned plan proposing certain modifications. OP intimated complainant that they were in process of applying for occupation certificate and raised demand of Rs.12,77,256/- towards increased area which was paid by complainant. It was further submitted that OP offered to shift complainant to another project "The Mangolias" vide letter dated 11.4.2007 which was refused by complainant. Twice theft took place in the apartment. It was further submitted that vide letter dated 24.10.2009, OP cancelled allotment of apartment and

complainant requested to restore the allotment for which OP demanded Rs.1,09,63,010/-. Alleging deficiency on the part of OP, complainant filed complaint before learned State Commission.

3. OP resisted complaint, admitted booking of flat, payment of amount, cancellation of flat and demand for restoration of flat, but submitted that complaint was not maintainable as complainant was engaged in purchase and sale of real estate with the objective of earning profit and annual turnover of complainant runs into crores of rupees; so, prayed for dismissal of complaint. Learned State Commission after hearing parties, allowed complaint and quashed demand of Rs.1,09,63,010/- and directed to handed over symbolic possession and execute conveyance deed and further directed to pay compensation of Rs.2 lakhs and litigation cost of Rs.50,000/- against which, this appeal has been filed.

4. Heard learned Counsel for the parties finally at admission stage and perused record.

5. Learned Counsel for the appellant submitted that inspite of specific objection regarding non-maintainability of complaint, learned State Commission has committed error in allowing complaint without deciding objection; hence, appeal be allowed and impugned order be set aside and matter may be remanded back to the learned State Commission. On the other hand, learned Counsel for the respondent submitted that instead of remanding the matter back to the learned State Commission, objection regarding maintainability of complaint may be decided in the appeal.

6. Admittedly, complainant raised first preliminary objection regarding maintainability of complaint and specifically pleaded that complainant was engaged in purchase and sale of real estate with the objective of earning profits. Admittedly, learned State Commission has not dealt with this objection. Before proceeding on merits, learned State Commission was under an obligation to hold that complainant was falling within purview of consumer and as learned State Commission has not dealt with the objection of OP, impugned order is liable to set aside and matter is to be remanded back to the learned State Commission. This Commission is not supposed to decide preliminary objection of OP in appeal and all objections taken by OP in written statement are to be firstly decided by the learned State Commission and if any party is aggrieved by that findings, this Commission will decide all those matters in appeal/revision.

7. Consequently, appeal filed by the appellant is allowed and impugned order dated 15.7.2015 passed by learned State Commission in Complaint No. 37 of 2010 - M/s. Mridul Estate Pvt. Ltd. Vs. M/s. DLF Ltd. is set aside and matter is remanded back to the learned State Commission to decide all objections of OP taken in written statement and decide complaint afresh after giving an opportunity of being heard to the parties. Learned State Commission is expected to decide complaint at the earliest.

8. Parties are directed to appear before learned State Commission on 27.5.2016.