

(2017) 03 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

Case No : 980 of 2016

M/S. KARWA DEVELOPERS & ORS

APPELLANT

Vs

SHREE VINAYAK CO-OPERATIVE HOUSING SOCIETY LTD. &
ORS.

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19, Section 24A, Section 2(1)(d), Section 21(a)(ii) - Appeals - Limitatioln period - Definitions - Jurisdiction of

Citation : 2017 1 CPR 590

Hon'ble Judges : B.C. Gupta, Dr. S.M. Kantikar

Advocate : S.B. Prabhavalkar

Judgement

1. This first appeal has been filed under section 19 read with section 21(a)(ii) of the Consumer Protection Act, 1986 against the impugned order dated 04.07.2016, passed by the Maharashtra State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in consumer complaint No. CC/14/139, vide which, while partly allowing the complaint, a direction was given to the appellants/opposite parties (OPs) to pay a sum of 5 lakh to the complainant cooperative housing society for the delay in handing over the possession of the property to the members of the society in terms of the agreement between the parties. A litigation cost of 30,000/- was also allowed to the complainant society.

2. The facts of the case are that the complainant Shree Vinayak Cooperative Housing Society Limited, registered under the Maharashtra Cooperative Societies Act, 1960, filed a consumer complaint No. CC/14/139 before the State Commission, saying that the Society had entered into a development agreement on 01.08.2009 with the OP/ Builders vide which, they were required to re-develop the plot, measuring 717 sq. yard and the building thereon, and to provide flats to the members of the said society. It has been alleged that the

developers failed to honour their commitment as per the development agreement. They provided flats of less area to the members of the society and also less space for car parking. A number of amenities/facilities as promised were also not provided to the members of the society. The consumer complaint was filed seeking directions to the OP builders to make payments on various counts for compensating the members of the society. However, the State Commission vide impugned order, allowed the consumer complaint only partly and directed that payment of 5 lakh should be made to the society for the delay of 5 months in handing over the possession, because the OP developers were bound to pay a sum of 5 lakh for the delay as per clause 14(a) of the development agreement. Being aggrieved against the said order of the State Commission, the OP builders, are before this Commission by way of the present appeal.

3. It was contended by the learned counsel for the appellants that the order passed by the State Commission was perverse in the eyes of law, because the complaint filed by the society was not maintainable, as the society itself was not a consumer under section 2(1)(d) of the Consumer Protection Act, 1986. The society had not paid any consideration to the builder and hence, it was not a consumer. Further, a resolution authorising Mr. Bhonsale for filing the complaint had been passed by the Managing Committee of the Society only, whereas such resolution should have been passed in the meeting of the General Body of the society. The complaint was also barred by limitation as per section 24A of the Consumer Protection Act, 1986. Further, as per clause 14(a) of the agreement, only monetary relief had been asked due to delay in handing over the possession. The society should have filed a civil suit under the Specific Relief Act for seeking compensation under this clause. It is also stated in the grounds of appeal that the complaint was not within the pecuniary jurisdiction of the State Commission.

4. The material produced alongwith the memo of appeal has been examined and due consideration has been given to the arguments led by the learned counsel for the appellant. A perusal of the consumer complaint and the order passed by the State Commission reveals that it was alleged that there was shortfall in the area provided to the members of the society after the re-development of the property. Moreover, the developers were required to bear all the municipal taxes from the date of demolition upto the date of occupation certificate. They were also required to pay maintenance charges under section 26(g) of the Agreement with the society. They were also supposed to give reimbursement towards monthly rent for the alternate accommodation to the members. In addition, various amounts had been claimed from the developer under different headings, but the State Commission allowed compensation of 5 lakh only for the delay in handing over the flat in accordance with the clause 14(a) of the development agreement.

5. The first issue that requires consideration in this matter is whether the complaint is barred by limitation as provided in section 24A of the Consumer

Protection Act, 1986. It is admitted that the building was to be completed within 18 months from the date of issuance of the commencement certificate, which was issued on 09.06.2010. The building was, therefore, required to be completed on or before 09.12.2011. The possession of the flats was handed over to the members of the society on 24.02.2012, whereas the complaint has been filed on 20.02.2014. The State Commission has held that the complaint was filed within two years of the delivery of possession to the individual members. We are in complete agreement with this contention of the State Commission, because till the possession was physically delivered by the OP builder to the members of the society, they could not have discovered the discrepancies in the developed property. Had the developer delivered the possession by the promised date, i.e., 09.12.2011, the cause of action would have arisen from the said date. It is held, therefore, that the conclusion arrived at by the State Commission that the complaint is not barred by limitation, is in accordance with law.

6. The next point for consideration in the matter is whether Mr. Bhonsale was duly authorised to file the consumer complaint in question or not. It is clear from the facts on record that the Managing Committee of the society had passed a resolution, authorising Mr. Bhonsale to file the complaint. The appellants have not been able to show in any manner, whether such authorisation could be given by the General Body of the Society only. This contention of the appellant is also, therefore, without any valid ground.

7. The next point to be considered is whether the society falls under the definition of consumer under the Consumer Protection Act, 1986. In this regard, the State Commission has aptly brought out that as per the re-development agreement dated 01.08.2009, the OP developers were authorised to sell the remaining plots to prospective buyers and also to retain 1.5 portion of the parking. This provision in the agreement amounted to a consideration paid by the complainant society to the OP developers in lieu of re-development of the plot and handing over the possession to the existing members. The State Commission has, therefore, rightly brought out that the OP developers are service providers to the society and hence, the society falls under the definition of consumer under the Consumer Protection Act, 1986.

8. In so far as the pecuniary jurisdiction of the State Commission to entertain the complaint is concerned, as per the complainant society, a compensation of 98,83,712/- had been demanded, which was within the pecuniary jurisdiction of the State Commission.

9. We also do not find any substance in the plea taken by the appellant that under clause 14(a) of the development agreement, the complainant was required to file a civil suit under the Specific Relief Act only, because they were asking for monetary relief. The State Commission rightly stated that the relief sought in the complaint were on account of deficiencies committed by the OP Developers, vis-a-vis, the society. Since there is a specific clause in the agreement for giving the possession of the flat within specific time frame and penalty has been provided if

the developers failed to develop the same, the society was well within its rights to file consumer complaint against the OP builder.

10. The State Commission in their impugned order concluded that since the complainants could not provide requisite evidence to prove their allegations against the OP developer, the society was required to provide compensation for the delay of 5 months in handing over the flats in question as provided in clause 14(a) of the agreement. There is no denial on the part of the appellant, regarding the time frame laid down in the said clause and the penalty provided for the said delay. We, therefore, do not find any infirmity, illegality or jurisdictional error in the impugned order passed by the State Commission. The said order is held to be in accordance with law and the appeal is ordered to be dismissed in limine. There shall be no order as to costs.