

(2017) 02 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

Case No : 1030 of 2016

M/S. KRISHNA KUNJ

APPELLANT

Vs

RABINDRA NATH BASU & ORS

RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 2\(1\)\(o\)](#), [Section 2\(1\)\(g\)](#) - Definitions - Definitions

Citation : 2017 1 CPR 315

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

Advocate : Partha Sil, Tavish B. Prasad, Preeti Shukla

Judgement

1. M/s. Krishna Kunj, (opposite party No.1/petitioner) being a builder agreed to sell the flat in question at Rs.14,50,000/- at the rate of Rs.2,000/- per sq.ft.. The complainants have already paid Rs.12,59,000/- as per agreement of sale, and the balance amount of Rs.1,92,000/- was to be paid on the date of execution of the deed of conveyance, but the opposite party No.1 failed to keep his promise and demanded enhanced price at Rs.2,500/- per sq. ft. from the complainants. Thus, the complainants, Mr. Rabindranath Basu and Mrs. Manju Basu, filed the complaint before the State Consumer Disputes Redressal Commission, West Bengal on the allegation that inspite of agreement of sale dated 31-05-2010 between them and opposite party No.1, M/s. Krishan Kunj, the developer is not executing and registering the sale deed of the flat, and hence, the opposite party be directed to execute and register deed of conveyance and to deliver possession, to pay Rs.5,50,000/- as compensation for mental agony and harassment and to pay Rs.50,000/- towards enhanced cost of registration, along with Rs.20,000/- as litigation cost.

2. The State Commission after considering the material on record allowed the complaint and directed the opposite party No.1 and the other opposite parties who were land owners to execute and register the deed of conveyance in favour of the complainant jointly and severally. Also, they were directed to handover possession of the same within thirty days. The complainants were directed to

make payment of balance amount, prior to the date of execution of deed. Further, the opposite party No.1 was directed to pay Rs.3,00,000/- as compensation and Rs.10,000/- as litigation cost also.

3. Aggrieved by the impugned order, the opposite party No.1 developer filed this instant first appeal.

4. We have heard the learned counsel, Mr. Partha Sil at the time of admission. The counsel argued that the complainant had not made payment at the rate of Rs.2,500/-. The opposite parties Nos.2 to 19 were the land owners. They had entered into a development agreement with opposite party No.1 for construction of multi-storeyed building. Also the opposite party No.1 has made a genuine request for enhancement of cost owing to rapid increase in the cost of raw material and the government valuation of the property and escalation and the present market value of the said property is Rs.18,12,500/-. The opposite party No.1 claimed enhanced price at Rs.2,500/- per sq. ft. owing to increase in the price of materials like cement, rods, sand, bricks, etc.. Also after the agreement, the fire safety rules were introduced for which opposite party had to install heavy pumps along with separate pipelines and additional tanks. Thus, opposite party No.1 had to pay an additional amount of Rs.4,36,610/-. Therefore, the opposite party No.1 was unable to complete the flat at the rate which agreement was entered, and was ready to refund the price with interest. He further submitted that, the agreement in question suffers from inherent defect, as it is not properly stamped.

5. We have perused the agreement and the affidavit evidences on the record. We are of the considered view that, the parties are bound by the agreement and nothing can be added or detracted from the agreement. The agreement does not include any clause for escalation of price; therefore, the question of enhancement of price does not arise at all. Thus, as per settled law, the original price will prevail. The opposite party cannot charge enhanced price, either for original flat or alternative flat. Thus, the opposite party No.1 should not enhance the price unilaterally. It is also a fact that non delivery of possession of flat within stipulated time amounts to deficiency in service on the part of the opposite party No.1 within the purview of Section 2(1)(g) read with Section 2(1)(o) of the Act. The State Commission made observation that "in the written version the opposite party No.1 took the plea of pendency of civil suit, but did not take pains to produce a single scrap of paper to substantiate the same."

6. On the basis of foregoing discussion, it is clear that the complainant No.1 being a retired employee, invested substantial money for his shelter, but for more than six years, the couple had to suffer mental agony and pain and stay away from their property. Therefore, we agree with the State Commission, which has passed a well-reasoned order. Accordingly, the first appeal is hereby dismissed in limine.