
(2016) 05 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

Case No : 1356 of 2015

M/S. OM ENTERPRISE

APPELLANT

Vs

KALPANA SEN

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Citation : 2016 2 CPR 787

Hon'ble Judges : V.K. Jain

Advocate : Subhasish Bhomick, Anamika, Saumya Dutta

Judgement

1. The petitioner received a sum of Rs. 7,18,000/- from the complainant/respondent vide pay order dated 18.01.2012 drawn on UCO Bank. A post-dated cheque of Rs. 2,05,000/- is also alleged to have been given to the petitioner but the payment of the said cheque was later stopped by the complainant/respondent. The case of the complainant is that the aforesaid payment of Rs. 7,18,000/- was made to the petitioner for carrying out interior decoration work in her flat No.E-3 CC-57/4, Narayantala East, Kolkata but, despite receiving the aforesaid payment coupled with the post-dated cheque of Rs. 2,05,000/- payment of which she later got stopped, he did not execute the said interior work. Alleging deficiency on the part of the petitioner in rendering service to her, the complainant/respondent approached the District Forum by way of a complaint.

2. The petitioner resisted the complaint and denied having entered into any agreement with the complainant/respondent for carrying out interior work in her flat.

3. The District Forum vide its order dated 05.11.2012, directed the petitioner to refund the aforesaid amount of Rs. 7,18,000/- to the complainant alongwith compensation quantified at Rs. 30,000/- and cost of litigation quantified at Rs. 4,000/-. The petitioner was also directed to pay cost of Rs. 20,000/- as penalty for the unfair trade practice, to be deposited in the State Consumer Welfare Fund. Daily penalty of Rs. 100/- in case of non-compliance was also directed to

be paid by the petitioner.

4. Being aggrieved from the order passed by the District Forum, the petitioner approached the concerned State Commission by way of an appeal. Vide impugned order dated 20.3.2015, the State Commission dismissed the appeal filed by the petitioner. Being aggrieved, he is before this Commission by way of this revision petition.

5. As noted earlier, it is an admitted case that the petitioner had received and encashed a pay order of Rs.7,18,000/- from the complainant/respondent. The case of the complainant, as set out in the complaint is that the petitioner had raised two separate bills, one for Rs.7,18,000/- and the other for Rs.2,05,000/- while receiving the above referred pay order and post-dated cheque from her. The aforesaid bills were duly produced before the District Forum. The Complainant/respondent also produced the money receipt dated 18.01.2012 before the District Forum and filed an affidavit proving the said bills and receipt. It was clearly stated in the money receipt that the petitioner had received a sum of Rs.7,18,000/- from the complainant for the purpose of interior decoration of residential flat No.E-3, 4 Floor, on the South Western side th being premises No.CC-57/4 Narayantala, Kolkata and the specifications of the work were contained in the bills issued by the petitioner. The learned counsel for the petitioner submits that the aforesaid money receipt is a forged document and in fact the aforesaid amount of Rs.7,18,000/- was received by the petitioner from the complainant as her profit in the sale of the flat which the petitioner had initially agreed to purchase from a developer namely Timir Biswas, proprietor of Tara Maa Construction Company and which the petitioner had later surrendered and was purchased by the respondent/complainant. However, there is no evidence of the aforesaid pay order having been received towards payment of the profit of the petitioner in the above referred flat. On the other hand, it was clearly admitted in the money receipt dated 18.01.2012 that the aforesaid pay order was received by the petitioner for carrying out interior work in the flat of the complainant.

6. As regards the genuineness of the above referred money receipt, I find that though the complainant filed an affidavit by way of evidence proving the said receipt, no affidavit by way of evidence was filed by the petitioner to controvert the aforesaid part of the affidavit of the complainant and to dispute the genuineness of the aforesaid money receipt dated 18.01.2012. In the absence of any rebuttal from the petitioner, the fora below were fully justified in accepting the aforesaid money receipt which otherwise purports to be typed on the letter head of the petitioner, as a proof of the aforesaid amount of Rs. 7,18,000/- having been received by the petitioner as advance for executing the interior work in the flat of the complainant and not towards payment of the profit of the petitioner in the residential flat which she had purchased from the builder after the petitioner had got the agreement in his favour cancelled by mutual consent. Moreover, the aforesaid money receipt also stands corroborated from the bills

which the petitioner issued to the complainant and which are available on pages 105 to 107 of paperbook. The said bills were also duly proved by the complainant before the District Forum.

7. Another important aspect which demolishes the contention of the petitioner is that in the written version filed by him before the District Forum, he did not claim that the aforesaid pay order of Rs. 7,18,000/- was received by him towards payment of profit from the flat which the complainant had purchased from Mr. Timir Biswas.

8. For the reasons stated hereinabove, no justification for interfering with the order passed by the fora below is made out, to the extent the petitioner has been directed to refund of Rs. 7,18,000/- with compensation quantified at Rs. 30,000/- and the cost of litigation quantified at Rs. 4,000/-. Since no interest was awarded to the complainant, I am not inclined to set aside the direction for payment of the daily penalty which is far below the normal interest on the principal amount. However, I find no justification for directing the petitioner to deposit Rs. 20,000/- as penalty with the State Consumer Welfare Fund. The aforesaid direction is therefore, set aside. The revision petition stands disposed of accordingly.