(2017) 09 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

Case No : 3024 of 2016

M/S. PROGRESSIVE ESTATES & PROMOTERS PVT. LTD. — APPELLANT

Vs

MOHAN LAL SHARMA S/O. BAGPAL SHARMA, & ORS. — RESPONDENT

Date of Decision : 14-09-2017

Acts Referred:

Citation : 2017 4 CPR 186

Hon'ble Judges : Prem Narain

Advocate : Rajesh Aggarwal, Jaspreet Singh

Judgement

1. These revision petitions have been filed by the Petitioner, M/s. Progressive Estates and Promoters Pvt. Ltd. against order dated 6.9.2016 passed by the State Consumer Disputes Redressal Commission, Uttarakhand (for short, State Commission) in First Appeals Nos. 3024 of 2016, 3025 of 2016, 3026 of 2016 and 3027 of 2016. As the issues involved and the facts are similar in all these revision petitions, they are being decided together and Revision Petition No.3024 of 2016 is taken as the lead case.

2. Brief facts of the case giving rise to the revision petition are that the petitioner/ OP had developed a colony at Village Bindukhera, Kashipur Road, Rudarpur. The complainant booked a flat in the said colony on 17.6.2007 for sum of Rs.7,90,000/- and paid the booking amount of Rs.50,000/- and also paid certain amount on different dates. The complainant had paid a total amount of Rs.6,37,500/- to the opposite party. According to the complainant, the opposite party had promised to deliver the possession of the flat within a period of one year. The complainant had taken loan from HDFC bank, Lucknow for purchase of the flat. The complainant contacted the opposite party several times for delivering the possession of the flat, but the possession was not delivered. The complainant alongwith his associates met the District Magistrate, Udham Singh Nagar on 16.5.2011 and informed the above facts. The District Magistrate, Udham Singh Nagar handed over the inquiry of the matter to the SDM, Rudrapur, before whom, the Director of the petitioner-company had given a written

undertaking on 30.5.2011 that the possession of the flat would be delivered by 31.8.2011 and in failure thereof, the deposited amount would be refunded to the complainant together with interest, but still the possession of the flat was not delivered. Again on 2.9.2011, the Director of the petitioner -company had given an undertaking before the SDM, Rudrapur that the possession of the flat would be delivered to the complainant by 26.10.2011, but inspite of that, the possession of the flat was not delivered. Therefore, the consumer complaint was filed by the complainant before the District Forum.

3. The consumer complaint was contested by the petitioner /OP by filing written statement, wherein it was admitted that the complainant had booked a flat, but it was stated that the complainant has not complied with the terms and conditions of the contract and since the entire consideration was not paid by the complainant, therefore, there is violation of the terms and conditions of the contract on the part of the complainant In additional pleas, it was stated that the opposite party is ready to deliver the possession of the flat after completion of required formalities/conditions by the complainant.

4. The District Forum after considering the submissions of both the parties allowed the complaint vide its order dated 4.8.2016 as under:

"The complaint of the complainant against the opposite party is allowed and the opposite party is directed that he must make the payment of Rs.6,37,500/- within one month alongwith 18 per cent simple interest p.a. The interest would be payable from the date on which the principal amount was paid till the date the actual payment is made to him. He shall also pay Rs.5,000/- as litigation expenses."

5. Being aggrieved, OP/petitioner filed appeal against this order of the District Forum which was dismissed in limini by the State Commission vide the order dated 6.9.2016.

6. Hence, the revision petition.

7. Heard the learned counsel for the parties and perused record.

8. The learned counsel for the petitioner stated that the petitioner has not got opportunity to put forth the grounds taken in the appeal before the State Commission as the appeal has been dismissed in limini. The State Commission has not given any finding on the grounds taken in the appeal. The learned counsel mentioned that there was a tripartite agreement between the complainant, Bank and the OP. However, the complainant has not made the Bank a party in the original complaint and therefore, the OP did not get an opportunity of raising the issue of tripartite agreement before the District Forum. However, he has raised the issue of tripartite agreement in the memo of appeal filed before the State Commission, but the State Commission has not taken any cognizance of this tripartite agreement. This agreement was made because the complainant had paid only amount of about Rs.95,000/- from his pocket and the rest was

arranged by the bank as loan under this tripartite agreement. The District Forum has ordered refund of the whole amount to the complainant alongwith interest @ 18% per annum. This means that the complainant will be earning about 9% interest more than what he will be paying to the bank for repayment of loan. The process of consumer dispute resolution cannot be used for enrichment of the complainant. Moreover, under the tripartite agreement there is a responsibility cast on the OP for refunding the amount received from bank to bank in case the flat in question is not transferred to the complainant. All these aspects are to be seen in the matter. It has been argued that the judgment of the District Forum is a nullity as the complainant did not disclose the fact of tripartite agreement in his complaint and obtained order by playing fraud on the court. In this regard, the learned counsel referred to a judgment of Hon''ble Supreme Court passed in North Eastern Railway Adminstration, Gorakhpur vs. Bhagwan Das (D) by LRs (2008) 8 SCC 511 in which it has been held that :

"Judgemnt or decree of the first court or highest court obtained by playing fraud on Court is nullity and non est in eyes of law."

9. On the other hand, learned counsel for the complainant/respondent stated that so far as the Bank loan is concerned, complainant is repaying the bank loan on his own and the loan is on the complainant himself. In such situation, the tripartite agreement is of no consequence in the present revision petition and this Commission has not allowed the tripartite agreement filed by the petitioner to be taken on record. It was also stated by the learned counsel for the complainant/respondent that this plea of tripartite agreement was never taken by the petitioner before the District Forum or the State Commission. Thus, any argument in respect of tripartite agreement is not tenable at this stage.

10. I have given a thoughtful consideration to the arguments advanced by both the parties and have thoroughly examined the material on record. There is no doubt that the flat was booked by the complainant and loan has also been taken by the complainant to finance the flat. Copy of tripartite agreement was not filed before the District Forum by any of the parties. Therefore, the whole amount paid to the petitioner has been treated as having been paid by the complainant. From the order of the State Commission, it is clear that when the complaint was lodged before the SDM concerned, the Director of the OP had given a statement that the possession will be handed over by 26.10.2011 and in case the possession is not delivered, the deposited amount shall be refunded with interest. Now the petitioner/OP wants to go back on this commitment and it does not want to fulfil the commitment made before the SDM. It is also true that neither the complainant nor the OP have raised the issue of tripartite agreement before the District Forum, though the learned counsel for the petitioner has stated that this issue was raised before the State Commission, in the appeal, however the memo of appeal has not been filed before this Commission. So it is difficult to verify this fact. The surprising thing is that there is no mention of this issue in any of the grounds taken in the revision petition. It seems that the issue

of tripartite agreement has been raised only to delay the payment of the deposited amount. There is no denying the fact that the delay has occurred in handing over the possession and that the Director of the OP has already given an assurance before the SDM to refund the deposited amount with interest if the possession is not handed over by 26.10.2011. Thus, the OP is liable to refund the deposited amount alongwith interest. Now, the only question remains about the rate of interest. In this regard, I find some merit in the averments of the learned counsel for the petitioner that proceedings under the Consumer Protection Act, 1986 are not for enrichment of any party and in the present case the refund of the amount has been ordered @ 18% per annum whereas the loan taken by the complainant was at a lessor rate of interest. So complainant cannot make any excess money out of these proceedings. Moreover, 18% is not the correct trend of awards for refund of deposited amount. Keeping this in view, I deem it appropriate to order that the simple interest @ 13% per annum should be paid by the OP/petitioner on the deposited amount instead of 18% per annum as ordered by the fora below.

11. Based on the above discussion, petitioner/OP is directed to refund the deposited amount to the complainant as ordered by the fora below alongwith interest @ 13% per annum instead of 18% per annum as ordered by the District Forum. Except for the change in the rate of interest, no other interference in the orders passed by the fora below is called for.

12. Accordingly, the Revision Petitions No.3024/2016, 3025/2016, 3026/2016 and 3027/2017 stand disposed of. No order as to cost for these revision petitions.