

(2017) 03 NCDRC CK 0088

In the National Consumer Disputes Redressal Commission

Case No : 715 of 2016

M/S. SKY ROCK CITY WELFARE SOCIETY & ANR. Vs RANJIT KAUR VIRK

Date of Decision : 25-03-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 19](#),
[Section 21\(a\)\(ii\)](#) - Appeals - Jurisdiction of the National
Commission

Citation : 2017 2 CPR 463

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

Advocate : Hittan Nehra

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 03.05.2016, passed by the Punjab State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in consumer complaint No. 299/2015, filed by the present respondent, vide which, the said complaint was allowed and the following order was passed:- "8. Accordingly, the complaint is allowed and following directions are issued to the opposite parties:-

- i) to refund the amount of Rs.12,60,000, along with interest at the rate of 8% per annum from the date of the payment of the respective amounts till the date of payment;
- ii) to pay Rs.1,00,000/-, as compensation for the mental stress and harassment suffered by the complainant; and
- iii) to pay Rs.11,000/-, as litigation expenses.

The opposite parties are directed to comply with this order within 30 days of the receipt of certified copy of the same."

2. It was stated that the appellants/OPs allured the complainant for purchasing the residential plot in their project through various advertisements and publicity done by their staff. The complainant opted to purchase a plot of area about 250 sq. yards @10,000/- per sq. yard for a total amount of 25,00,000/- and paid a

sum of 12,60,000/- to the OPs as 50% amount of sale price, alongwith the membership fees. A share certificate dated 11.1.2012 was also issued to her. As per the terms and conditions of the payment plan, the possession of the plot was to be handed over within two years from the date of registration, which was 10.06.2011. The complainant came to know that the required approvals, i.e., registration/licence/CLU etc. for the completion of the project had not been received by the OPs, although they were demanding payment of the remaining amount alongwith interest vide their letter No. 1641 dated 26.09.2013. On visiting the office of the complainant and also the site of the project, the complainant discovered that the development work had not even commenced on the project. The complainant stated that as per clause IV of the terms and conditions of the allotment, the amount deposited was to be refunded with prevailing interest after one year from the date of registration. However, the OPs amended the said clause without knowledge of the complainant, saying that the refund shall be made with prevailing interest after three years from the date of registration/requisition. Alleging deficiency in service on the part of the OPs, the complainant filed the consumer complaint dated 16.11.2015, seeking directions to the OPs to refund the amount of 12,60,000/- deposited by her alongwith interest @24% p.a.. She also demanded a compensation of 8 lakhs for mental harassment and 55,000/- as cost of litigation.

3. The OPs did not appear before the State Commission despite service and hence, they were proceeded against exparte. The State Commission after taking into account the averments on record observed that the complainant had made a request vide letter dated 12.06.2012 for refund of the amount paid by her. The consumer complaint had been filed after three years of making of the said request and hence, she was entitled to get refund of the amount deposited by her alongwith interest, and also entitled for compensation. The State Commission passed the impugned order giving directions as stated above, asking the OPs to refund the amount of 12,60,000/- deposited by the complainant alongwith interest @8% p.a. from the date of payment and also a sum of 1 lakh as compensation for mental harassment etc. and 11,000/- as cost of litigation. Being aggrieved against the order of the State Commission, the OP is before this Commission by way of the present First Appeal.

4. During hearing, it was argued by the learned counsel for the appellants that the appellant society was a welfare society, duly registered under the Societies Registration Act, 1860 and it was working on "no profit, no loss" basis. The society had obtained the certificate of registration, CLU, NOC and letter of intent dated 23.09.2013 for the said project. They had also deposited the external development charges with the concerned authority. The complainant had become a member of the society and duly accepted the terms and conditions. However, she filed the consumer complaint in question against them, in which the State Commission had erroneously proceeded against them exparte. Moreover, the letter dated 12.06.2012 stated to have been sent by the complainant was not in the record of the society, neither any receipt for the same had been issued. The

learned counsel stated that the order under appeal should be set aside, being bad in the eyes of law.

5. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

6. It is made out from record that the complainant became a member of the said society, when she deposited the membership fee of 10,000/- as per receipt dated 10.06.2011. In the terms and conditions placed on record alongwith the memorandum of appeal, by the appellant themselves, it has been stated in Condition No. 4 that if the applicant does not want to continue even after paying some instalments, he will be refunded the entire amount paid with interest @8% p.a. after three years from the date of requisition. The State Commission have observed in their order that the complainant had sent a letter dated 12.06.2012 to the appellant/OP, seeking refund of the amount. The consumer complaint in question, has been filed more than three years after the said letter. The State Commission, therefore, concluded that under the terms and conditions, the appellant/OP were liable to refund the amount in question, alongwith interest @8% p.a. and also to pay 1 lakh as compensation for mental stress and harassment and 11,000/- as litigation cost.

7. Further, as per condition No. 5 of the said terms and conditions, the possession of the plot was to be handed over physically not later than two years of registration/requisition. The date of registration has been stated to be 11.01.2012 but the possession of the property has not been handed over within two years from the said date.

8. The matter has been examined already by this Commission in a number of similar cases decided from time to time. The learned counsel for the appellant has placed on record a copy of order dated 15.09.2016 passed by this Commission in "M/s. Sky Rock City Welfare Society (Regd.) vs. Kanta Devi" [FA No. 985/2015, decided on 15.09.2016]. A perusal of the said order indicates that the complainant was entitled to the refund of the amount only after three years of the date of registration/requisition. It was observed that the date of registration in the said case was 23.08.2014 and hence, refund could be allowed only after 22.08.2017. The order of the State Commission directing the refund on an earlier date was, therefore, set aside.

9. In another case, "Romesh Garg Vs. M/s. Sky Rock City Welfare Society" [FA No. 560/2015] , a view was taken that refund could be allowed only after the period of three years was over, i.e., after 05.01.2017. In the present case, however, the State Commission have observed that the complainant proved on record that the letter dated 12.06.2012 had been sent by her to the OPs. The consumer complaint was filed after the expiry of three years of making of that request and hence, she was entitled to the refund of the amount.

10. It is clear, therefore, that in the instant case, the OPs were liable to refund the amount as per the terms and conditions of the agreement between the

appellants and the complainant. There is no illegality, irregularity or jurisdictional error in the orders passed by the State Commission, therefore and the same is upheld. This first appeal being without any merit is ordered to be dismissed in limine. There shall be no order as to costs.