

(2016) 09 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

Case No : 985 of 2015

M/S. SKYROCK CITY WELFARE SOCIETY

APPELLANT

Vs

KANTA DEVI

RESPONDENT

Date of Decision : 15-09-2016

Acts Referred:

Citation : 2016 4 CPR 245

Hon'ble Judges : B.C. Gupta

Advocate : Hittan Nehra, N.S. Jagdeva

Final Decision : Appeal Allowed

Judgement

1. In this first appeal, the appellant has challenged the order passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh (hereinafter referred to as the "State Commission") on 1.10.2015 in Consumer Complaint No.181 of 2014, Kanta Devi vs. Sky Rock City Welfare Society, vide which, the said complaint was allowed and the OP-Society was directed to refund a sum of Rs.19,68,000/- alongwith interest @ 8% per annum from the date of deposit till payment and also to pay Rs.1,00,000/- as compensation for mental harassment and Rs.11,000/- as cost of litigation.

2. Briefly stated, the facts of the case are that the respondent/complainant filed a complaint before the State Commission, saying that she became a member of the appellant /opposite party, Sky Rock City Welfare Society and made an application on 1.7.2010, alongwith payment of Rs.10,000/-, whereupon she was allotted a share certificate of the Society, and her membership no. was 3210. The complainant booked one 200 sq. yard plot with OP-Society to be allotted @ Rs.11,300/- per sq. mtr and the total price quoted was Rs.22,60,000/-. The physical possession of the plot was to be given to her within a period of two years from the date of registration. She was also given an option to seek refund of the amount paid by her alongwith interest after one year from registration, if she was not interested to continue with the scheme. The complainant paid an amount of Rs.19,68,000/- as 75% of the total value and the remaining amount

was payable at the time of handing over the possession. However, the OP failed to hand over the possession within the time promised, whereupon she sent a legal notice dated 23.8.2014 upon the OPs for refund of her money. The complainant also stated that the refund should be made alongwith 15% interest on the amount of deposit, beyond a period of two years of such deposit and a sum of Rs.1 lakh should be paid as compensation against mental harassment and Rs.33,000/- as cost of litigation.

3. Vide impugned order, the State Commission ordered refund as stated in the paragraph above. Being aggrieved against this order, the OP-Society is before this Commission by way of the present first appeal.

4. During hearing before me, the learned counsel for the Society stated that the counsel for the Society could not appear before the State Commission on the date of hearing, because the lawyers at Chandigarh were on strike on that date. According to the learned counsel, the President of the Society appeared in person on that date, but his attendance was not marked, because he was not carrying the necessary identification document. The learned counsel stated that the same Bench of the State Commission had passed an order on 3.8.2015 in First Appeal No.147 of 2015 before them, Pankaj Mahajan Vs. Sky Rock City Cooperative House Building Society, by which, it was held that the refund could be made only after a period of three years from the date of registration. The impugned order passed by the State Commission was therefore, contrary to the order passed in F.A. No.147 of 2015. In the present case, the date of registration was 23.8.2014 and hence, the refund could be allowed only after 22.8.2017.

5. In reply, the learned counsel for the respondent/complainant stated that there was no justification on the part of the counsel for the Society for not being present before the State Commission on that day. There was no strike of lawyers at Chandigarh on that day. The learned counsel further stated that the documents containing the terms and conditions which says that refund could be allowed only after three years of the date of requisition had not been made available to them. Moreover, the terms and conditions could not be changed at the sweet will of the OP.

6. In reply, the learned counsel for the appellant stated that the documents containing the said terms and conditions had already been supplied to the complainant and her signatures had also been obtained, which was clear from a copy of the document already placed on record.

7. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

8. The main point for consideration in the matter is whether the refund could be allowed only after three years of the date of registration or such refund could be made earlier also. The case of the respondent is that the revised terms and conditions were not made available to her. A perusal of the material on record indicates that the appellants have produced on record a copy of the document,

carrying the terms and conditions, upon which the signatures of the respondent Kanta Devi are also there. It has been stated in Condition no.4 of this document that if the applicant did not wish to continue even after paying some instalments, he/she will be refunded the entire amount paid with 8% interest per annum after three years from the date of requisition. The respondent had taken the plea that relevant terms and conditions, once stated, could not be altered at a later stage. It is felt however, that since the Society consists of a group of members including the respondent, such Society could not be debarred from taking decisions as per the wishes of such members by following the procedure laid down. The status of the Society is not that of a builder upon whom an obligation is cast to proceed in terms of the terms and conditions of the allotment. It may further be stated that the State Commission, vide their own order passed in a similar order on 3.8.2015 in F.A. No.147/2015, Pankaj Mahajan vs. M/s. Sky Rock City Cooperative House Building Society, observed that as per the agreement, the complainant was entitled to the refund of the amount only after three years of the date of requisition. The State Commission held that the complaint in question was pre-mature, because the said period of three years had still not been crossed.

9. In the light of the facts stated above, there does not seem to be any justification on the part of the State Commission to take an absolute contrary view in the present case from their own order passed in a similar case. The order of the State Commission is therefore, not valid in the eyes of law and the same is ordered to be set aside. The present appeal is therefore, allowed and consequently, the consumer complaint stands dismissed with no order as to costs.