
(2017) 08 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

Case No : 2305 of 2012

OFFICER IN-CHARGE, BHARAT HOUSING CO-OP. SOC. LTD.

APPELLANT

Vs

CHANDRA SHARMA & ANR.

RESPONDENT

Date of Decision : 17-08-2017

Acts Referred:

Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2017 4 CPR 1

Hon'ble Judges : Rekha Gupta

Advocate : PAWAN KUMAR RAY, Chandra Sharma

Judgement

1. The present revision petition has been filed against the judgment dated 22.11.2011 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal ("the State Commission") in First Appeal nos. 2148 of 2009, 1581 and 2325 of 2010.

2. The facts of the case as per the respondent no.1/ complainant are that the petitioner/ opposite party allotted plots in "Vasant Vihar Yojana to its members in which plot no. 6/ 9 was allotted to respondent no. 1 after payment of Rs.1,42,040 on 13.06.2002. According to respondent no. 1, petitioner went on delaying the execution of registration of sale deed on the plea that the development of the colony was to be done by respondent no. 2/ OP no. 2 - Ujjain Development Authority (UDA) and they were trying to get the development done and as soon as it was completed the sale deed would be registered. According to respondent no. 1 no information was given regarding the allotment of plots from 2007 onwards. Therefore, the respondent no. 1 sent notice through her advocate which was not replied by the petitioner. With these averments the respondent no. 1 filed a complaint before the District Forum and prayed for an order against the opposite party for executing the registered sale deed in favour of the respondent no. 1 in plot no. 6/ 9 in Vasant Vihar Ujjain and for award of any other costs.

3. The petitioner/ opposite party no.3 and no. 1 jointly submitted their reply

accepting that plot no. 6/ 9 was allotted to the respondent no. 1 and an amount of Rs.1,35,000/- was deposited. They have averred that respondent no. 1 was asked several times to deposit the development charges but she did not deposit the same. According to OP no. 1 in the absence of payment of development charges, respondent no. 2 - UDA who was the owner of allotted plots was not ready to execute the lease deed at any cost. Petitioner denied any deficiency in service on its part and prayed for dismissing of the complaint.

4. Respondent no. 2/ OP no. 2 - UDA by filing a separate reply denied the facts stated in the complaint and stated that he had no concern with the deposit of money, if it was ever made. According to respondent no. 2 - UDA, respondent no. 1/ complainant was required to deposit the development charges with him and according to the agreement, a total of 77 plots were to be allotted to "Vasant Vihar Yojana". But the society did not deposit the development charges in time even then on request of Society the lease deed of plots was executed in favour of the allottees in proportion to the development charges deposited on behalf of those members. According to the respondent no.2 lease deed in favour of 59 allottees out of the 77 had been executed. Respondent no. 2 had shown a balance of Rs.21,45,734/- against the petitioner Society and stated that 15 plots out of the 18 had been seized through Tehsildar against the liability of the petitioner Society and these seized plots have not been released to respondent no. 2 - UDA. According to respondent no. 2 there was no agreement between him and the respondent no. 1 regarding the plots. It was also stated that if any mistake had been committed by respondent no. 1, respondent no. 2 cannot be held liable for it. With these averments respondent no. 2 requested that complaint against them may be dismissed.

5. The District Consumer Disputes Redressal Forum, Ujjain ("the District Forum") vide its order dated 26.09.2009 while allowing the complaint gave the following order: " 1. The opposite party no. 1 is directed to return to the complainant the deposited amount of Rs.1,35,000/- together within 10% per annum interest on that amount from 13.06.2002;

2. The opposite party no. 1 should pay Rs.1,000/- to the complainant towards complaint cost".

6. Aggrieved by the order of the District Forum, the respondent no. 1/ complainant filed an appeal no. 2148 of 2009 before the State Commission. The State Commission in their order dated 22.11.2011 while disposing of the appeal observed as under: " It is not disputed that in so far as the case of Smt Chandra Sharma and Bhagwan Das is concerned, the development charges have not been deposited so far.

Learned counsel for UDA has very frankly admitted that lease deeds have not been executed in favour of the complainant - members because they have not deposited the development charges. According to him if the development charges are deposited, the lease deed will be executed immediately thereafter.

We therefore, dispose of these appeals by directing the opposite parties - Bharat Housing Co-operative Society and UDA to accept the development charges, if paid within two weeks from today, and execute the lease deed in favour of the members/ complainants. The appeals are thus, disposed of".

7. Hence, the present revision petition.

8. I have heard the learned counsel for the petitioner and respondent no.1 who is present in person. Learned counsel for the petitioner states that the State Commission has erred in directing the petitioner to accept the development charges and execute the lease deed as she had not deposited the full amount in time. The complainant had deposited only Rs.1,35,500/- in the year 2002. No other point was urged.

9. The respondent no. 1 who was present in person contended that she is willing to abide by the order of the District Forum and is willing to pay the development charges as has been worked out by the petitioner and prayed that the lease deed should be executed in her name and the plot be handed over to her.

10. It is seen from the order of the State Commission that the learned counsel for the Ujjain Development Authority, i.e., respondent on. 2 had frankly admitted that the lease deed had not been executed in favour of the complainants/ members because she had not deposited the development charges. He also conceded that when the complainant deposit the development charges, the lease deed would be executed immediately. After the undertaking given by the UDA before the State Commission, where the counsel for the petitioner was also present and where no objections was raised the petitioner cannot raise objections now. Further, the respondent is a senior citizen and has been waiting for the plot since 2002 and is willing to pay the demanded development charges.

11. In view of the discussion above, I find no jurisdictional error or material irregularity in the impugned order which may call for interference in exercise of powers under section 21 (b) of the Consumer Protection Act, 1986. Revision petition is, therefore, dismissed with no order as to costs.