**(2013) 04 NCDRC CK 0027**

**In the National Consumer Disputes Redressal Commission**

PANKAJ JAIN APPELLANT

Vs

ANSAL HOUSING AND CONSTRUCTION LTD. RESPONDENT

**Date of Decision :** 10-04-2013

**Acts Referred:**

**Citation :** 2013 2 CPJ 465

**Hon'ble Judges :** ASHOK BHAN J.

## Judgement

1. APPELLANT /Complainant has filed this Appeal against the judgment and order dated 15.1.2008 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, ''the State Commission'') in Complaint Case No. C -349/1999 whereby the State Commission partly allowing the complaint has directed the Respondent -Builder to pay a lump sum compensation of Rs. 50,000 to the Appellant towards mental agony and harassment suffered by him. Rs. 10,000 were awards as costs of litigation. Facts:

On 12.10.1997, Complainant/Appellant came to know that the Respondent Builder is selling beautiful dwelling units after constructing it, in a well developed and Meerut Development Authority approved colony, named as Suryodaya Vihar, Shastri Nagar, Meerut, Uttar Pradesh. He approached the Respondent -Builder and was shown the outer structure of a dwelling unit/house under construction bearing No. DI -27. Respondent -Builder was initially planning to sell the units as Duplex Units but since the sales were not picking up even after the lapse of seven years of starting the construction of the colony, they offered to sell the unit bearing No. DI -27 as an independent unit without staircase and roof over the staircase area. Appellant booked the Dwelling Unit bearing No. DI -27 with the Respondent -Builder for a sale consideration of Rs. 5,08,690. and paid a sum of Rs. 50,000 as booking amount. On 15.4.1998, Appellant also paid Rs. 4,12,000 and Rs. 46,690 through two cheques to the Respondent builder towards the balance sale consideration. At the time of construction of dwelling unit, Appellant noticed some structural and construction defects in the unit. On pointing out the said defects, Respondent -Builder promised the Appellant that the defects would be set right. Further, on the assurance given by the Respondent -Builder that the Sale Deed would be registered by 24.4.1998 and the possession of the unit would be handed over on 30.4.1998 after removal of the defects in the unit, Appellant submitted the blank stamp papers of Rs. 51,000 for execution of sale deed and paid a sum of Rs. 10,000 towards incidental charges for execution and registration of the Sale Deed to the Respondent on 20.4.1998. Respondent did not remove the defects in the unit. The sale deed was executed on 22.4.1998 by the Respondent in favour of the Appellant but the same was kept in abeyance for over one year by not submitting the Income Tax Clearance Certificate by the Respondent to the Registrar which was a mandatory requirement for registration of the execution of the sale deed. Appellant wrote letters dated 14.5.1998, 28.5.1998 and 3.7.1998 to the Respondent pointing out the defects and requesting it to remove the defects. He also visited the site on 27.5.1998 along with a qualified Architect who gave a report dated 28.5.1998 mentioning the defects in construction of the dwelling unit. The report of the Architect was submitted to the Respondent but it did not remove the defects. Complainant, being aggrieved, filed the complaint before the State Commission.

2. RESPONDENT -Builder, on being served, entered appearance and filed its written statement resisting the complaint, inter alia, on the grounds; that the defects pointed out by the Appellant to the official of the Respondent were duly shown to him at the time of booking and he was informed that these defects could not be removed; that the Respondent had removed the defects as pointed out by the Appellant during the course of various litigations pending before various Courts and now the unit is as per specifications and qualifications and quality which was assured by the Respondent to the Appellant. State Commission, after considering the facts, pleadings and evidence led by the parties, held that the Respondent -Builder was deficient in service firstly in not removing the defects in the unit when the possession was offered and secondly not getting the sale deed registered due to non -submission of the Income Tax Clearance Certificate and delay in actual handing over the possession of the unit. State Commission partly allowed the complaint and directed the Respondent -Builder to pay a lump sum compensation of Rs. 50,000 to the Appellant towards mental agony and harassment suffered by him. Rs. 10,000 were awards as costs of litigation. State Commission in its order observed as under:

In our view, aforesaid conspectus of facts and rival claims of the parties bring out the deficiency on the part of the OP on two scores. Firstly, that at the time of handing over the possession the defects were not removed and complainant was required to sign the possession letter without reserving his right of getting the defects removed. Secondly, that in spite of having executed the Sale Deed on 22nd April, 1998 its registration was delayed due to Income Tax Clearance Certificate by the OP which was finally registered on 15th April, 1999.

There are no documents on record to show the details of various defects and rectification thereof by the OP. Whenever any consumer enters into the agreement to sell or agrees to purchase a house from the builder or the persons engaged in the housing construction activities the minimum expectation of the consumer is to get the house in perfect habitable condition and if there are certain defects those defects need to be removed. If there are such defects that render the habitation impossible, those defects should always be removed immediately. It is pertinent to mention at this stage that the possession of the flat was handed over pursuant to the direction of this Commission on 6.6.2000.

Any shortcoming, imperfection or inadequacy in the performance of the obligations by the service provider or the builder in handing over the possession amounts deficiency in service. Possession of the flat was offered in the year 1999 and the complainant wanted to take possession under protest because of several defects in the flat but the OP insisted that he should take possession as it was.

3. RESPONDENT -Builder has accepted the order passed by the State Commission and did not file any appeal whereas the Appellant/Complainant has filed the present appeal seeking enhancement of the compensation.

4. WE have heard the learned Counsel for the parties at length. Learned Counsel appearing for the Appellant contends that the Respondent -Builder had admitted that there were certain defects in the dwelling unit which could not be rectified but despite its admission, the State Commission has not compensated the Appellant adequately; that the Appellant has submitted two reports of the Government Approved Civil Engineers indicating the nature of defects and cost of removing them but the State Commission did not consider the said reports; that the State Commission despite recording the finding that there was delay of 20 months in handing over the possession of the house after receiving the entire payment, erred in not granting any interest to the Appellant; that the Respondent has stated that defects pointed out by the Appellant had been removed during the course of various litigations pending in various Courts but it did not lead any evidence that the defects in fact had been removed. As against this, learned Counsel for the Respondent supports the order passed by the State Commission.

The facts are not in dispute before us. Appellant had been handed over the possession of the unit and the Sale Deed had also been executed in his favour. State Commission has awarded a compensation of Rs. 50,000 to the Appellant. Respondent -Builder has accepted the order of the State Commission and did not file any appeal. The only question remains in the present case is as to whether Appellant is entitled to enhancement of the compensation. We are of the considered view that Appellant is not entitled to any further amount of compensation. Appellant bought the dwelling unit after inspection and was informed about the defects before the booking of the unit. Even after knowing the defects, the Appellant agreed to buy the unit. In response to the notice issued by the Appellant Respondent in his reply has pointed out that defects in the dwelling unit were made known to him. It is not denied by the Appellant.

 

Certain defects pointed out by the Appellant which were not structural in nature, were removed by the Respondent. State Commission in its order recorded a finding that no documents were placed on record to show the details of the various defects and the rectification carried out by the Respondent. Since the Appellant had purchased the dwelling unit knowing about the defects, he cannot ask for compensation for removal of defects. State Commission without recording any finding about the specific defects alleged by the Appellant, has granted an over -all compensation of Rs. 50,000 which comes to 1/10th of the sale price. In the given facts and circumstances of the case, we are of the opinion that no case for enhancement of compensation is made out. Compensation awarded by the State Commission is adequate. For the reasons stated above, the Appeal filed by the Appellant/Complainant seeking enhancement of the compensation is dismissed.

 