(2016) 10 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

Case No : 2458 of 2016

RAJEEV AGRAWAL S/O. SHRI SURESH CHANDRA AGARWAL — APPELLANT

Vs

SAHARA PRIME CITY LTD. & ANR. — RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

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

Citation : (2016) 10 NCDRC CK 0003

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : Rajeev M. Roy, Suresh Chandra Agarwal

Final Decision : Petition Dismissed

Judgement

1. Revision Petition No. 21/2015 has been filed by a Real Estate Developer, viz. Sahara Prime City Ltd. (in short, "Sahara"), the sole Opposite Party in the Complaint, under Section 21(b) of the Consumer Protection Act, 1986 (in short, "the Act"), questioning the correctness and legality of the order dated 07.10.2014 passed by the State Consumer Disputes Redressal Commission, Rajasthan, Bench No.2, Jaipur, (in short, "the State Commission"), in First Appeal No. 521/2014. A cross Revision Petition (No.2458/2016) has been filed by the Complainant, against the aforesaid order,, inter-alia , praying for enhancement of the compensation from 3,00,000/- awarded by the State Commission to 30,00,000/-. Since both the Revision Petitions arise out of a common order, these are being disposed of by this common order.

2. In order to appreciate the controversy involved, a brief reference to the material facts would be necessary. These are: 2.1. Sometime in the year, 2004, Sahara launched a residential Scheme, christened as "Sahara Prime City Homes". On 31.12.2004, the Complainant applied for allotment of a "Type-B" Flat under the said Scheme by depositing an amount of 1,00,000/- as token advance. Vide letter dated 16.05.2005, while confirming the Booking, the Complainant was informed by Sahara that 10% of the Unit price was to be deposited in 24 equal

monthly instalments. The price of the Unit was fixed at 17,15,000/-. According to the Complainant, 5% of the cost of the flat was to be adjusted from the deposit already made by him and 85% of the balance amount was to be paid by him at the time of delivery of possession in the year 2007. On 03.06.2009, the Complainant received a letter from Sahara, in which a payment schedule of the balance amount of 85% was given and he was required to deposit monthly equated instalments of 40,493/- commencing from 01.07.2009, for 60 months. He was informed that thereafter, the possession of the flat would be delivered to him. Vide his letter dated 13.07.2009, the Complainant objected to the demand of 85% of the Unit price before delivery of possession of the Flat. While registering his protest to the said demand and pointing out that the possession of the Unit was expected to be delivered by the end of 2007, he made it clear to Sahara that though he had accepted the allotment, but he was not agreeable to the payments as demanded in the said letter. It was also stated that if no reply to the said letter was received, within a period of 20 days thereof, he will be free to resort to any action, available to him, to safeguard his interest.

2.2. Admittedly, there was no response to the said letter from Sahara. Instead, Sahara started issuing reminders to the Complainant, asking him to deposit the amounts demanded in the aforesaid letter, threatening that in the event of non-payment of the said amounts along with interest @ 15% p.a., by the due date, they will be free to exercise their option for cancellation of the Unit, allotted to him. It is not in dispute that as such there is no document on record to show that the allotment of the flat allotted was actually cancelled and intimation in that behalf was sent to the Complainant.

2.3. Faced with absolute silence on the part of Sahara and perhaps left with no other alternative, the Complainant filed the Complaint, sometime in the year 2011, inter alia , praying for a direction to Sahara to complete the construction of the allotted flat by the year 2012 and deliver possession thereof upon his payment of the balance 85% of the total consideration. In the alternative, it was prayed that if Sahara was unable to deliver possession of the flat, Sahara may be directed to refund the amount deposited by him, viz., 2,25,250/-, along with interest @ 24% p.a., from the date of deposit, till the date of realisation alongwith compensation of a sum of 8,00,000/-.

3. The Complaint was contested by Sahara on diverse grounds, including its maintainability on the ground that there was an Arbitration Agreement between the parties and that the Complainant was not a Consumer within the meaning of the Act.

4. Upon consideration of the material placed on record by the parties, the District Forum accepted the Complaint and directed Sahara to refund to the Complainant, a sum of 2,57,250/-, along with interest @ 9% p.a., from 03.06.2009, till realisation; compensation amounting to 20,000/- for causing financial, mental and physical torture to the Complainant, along with costs, quantified at 2,500/-.

5. Not being satisfied with the relief granted by the District Forum, the Complainant carried the matter in further Appeal to the State Commission, in which the impugned order has been passed. Accepting the Appeal, the State Commission has directed Sahara to handover possession of the flat to the Complainant on his paying the balance 85% of the amount due in terms of the letter of allotment dated 03.06.2009, or in the alternative, refund the amount deposited by the Complainant, along with interest @ 12% p.a., from the date of deposit, till realisation and further sums of 3,00,000/- and 11,000/- as compensation for mental agony and costs towards litigation respectively. Hence, the present Revision Petitions by both the parties. Sahara prays for setting aside of the impugned order, whereas Complainant has prayed for enhancement of compensation.

6. We have heard Learned Counsel for Sahara and the Complainant, who has addressed us in person.

7. In so far as the Revision Petition preferred by Sahara is concerned, the thrust of the arguments urged on their behalf is that since the Complainant was himself a defaulter, inasmuch as despite several demand notices, he had failed to pay the balance amounts, as demanded in terms of the letter of allotment dated 03.06.2009, the State Commission committed serious illegality in awarding a compensation of 3,00,000/- as also the interest @ 12% p.a. on the amounts deposited by the Complainant. It is also pointed out that in its letter dated 03.06.2009, forming part of the letter of allotment of even date, it was clearly mentioned that in case of non-payment of the instalments, after a maximum of three reminders, sent within a period of 45 days, the allotment shall be automatically cancelled, without any further intimation to the Complainant and therefore, Sahara was not obliged to formally cancel the allotment and communicate its decision to him. It is asserted that there was no deficiency on the part of Sahara in not delivering possession of the allotted flat.

8. Per contra , the plea of the Complainant is that since in the Advertisement, announcing the Scheme, it was stated that the possession of the flats shall be delivered sometime in the year, 2007, he was allured to book the flat. As regards the allegation of Sahara that non-payment of the instalments after three reminders, was to result in automatic cancellation of the allotment, it is asserted that on receipt of reminders, the Complainant had been responding to each one of such reminders, objecting to the illegal demands but with no response thereto on behalf of Sahara and as such there was no question of automatic cancellation of the flat.

9. Having bestowed our anxious consideration to the facts at hand, we are of the view that there is no merit in the Revision Petition. Assuming for the sake of argument that the stand of Sahara that the alleged defaults on the part of the Complainant in not depositing the instalments were to result in automatic cancellation of the flat was to be accepted, no material has been brought on record that on such defaults, Sahara had refunded the amounts deposited by the

Complainant on automatic cancellation. Besides, we are convinced that the concurrent finding of fact recorded by both the fora below to the effect that there was deficiency in service on the part of Sahara in not delivering the possession of the flat to the Complainant, within the stipulated time, is based on appraisal of the material on record and is not challenged on the ground of perversity. We do not find any jurisdictional error in the impugned decision, warranting interference in exercise of our revisional jurisdiction. It is pertinent to observe that, on a pointed query, Learned Counsel appearing for Sahara candidly admitted that he was not aware if the flat in question is still ready for delivery of possession, though, according to his instructions, the flat was resold after the allotment in favour of the Complainant stood automatically cancelled. In the background of the factual scenario, particularly when Sahara thought it advisable to maintain silence on Complainant''s letter dated 13.06.2009, making his position, regarding payment of the balance amounts very clear and the fact that it is doubtful whether the aforestated project was completed within the stipulated time, we do not find the compensation awarded by the State Commission, to be unreasonable, so as to warrant our interference.

10. Similarly, regard being had to the fact that Sahara had been demanding interest @ 15% p.a., on the amounts due from the Complainant, direction to them to pay interest @ 12% p.a., on the amount paid by the Complainant, almost a decade ago, cannot be said to be unreasonable. Consequently, the Revision Petition fails and is dismissed, accordingly.

11. Coming to the Revision Petition filed by the Complainant (RP 2458/2016), apart from the fact that it is barred by limitation, in as much as there is inordinate delay of almost 600 days in filing the same, for which no satisfactory explanation has been furnished, the Complainant having himself prayed for the alternative relief which has been granted, his prayer for delivery of possession cannot be entertained at this juncture. Consequently, the Revision Petition filed by the Complainant is also dismissed on the ground of delay as well as on merits.

12. In the final result, both the Revision Petitions are dismissed, leaving the parties to bear their own costs.

