
(2016) 09 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

Case No : 560 of 2015

ROMESH GARG S/O. SH. SIRI RAM

APPELLANT

Vs

M/S. SKYROCK CITY & ORS.

RESPONDENT

Date of Decision : 15-09-2016

Acts Referred:

Citation : (2016) 09 NCDRC CK 0048

Hon'ble Judges : B.C. Gupta

Advocate : Mohan Babu Agarwal, Punit Bali, Hittan Nehra

Judgement

1. This First Appeal no.560 of 2015 has been filed against the impugned order dated 29.4.2015, passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh (hereinafter referred to as the "State Commission") in Consumer Complaint No.51 of 2014, vide which, the said complaint was ordered to be dismissed.

2. Briefly stated, the facts of the case are that the respondent/opposite party, M/ s. Sky Rock City Welfare Society published an advertisement in the newspapers about the launch of their housing project in Sector-111-112, Mohali. The complainant purchased a residential plot, measuring 500 sq. yards in the said project with a total sale consideration of Rs.45,00,000/-. The complainant visited their authorized sale associates, namely, Karnal Properties and paid Rs.5,000/- towards membership fee of the Society vide receipt dated 6.6.2011. He also paid a sum of Rs.4.5 lakhs on 6.6.2011 as 10% of the total amount of the plot in question. The complainant was made to fill up the application form for membership on 12.6.2011 for the purchase of the said plot. Thereafter, the OPs paid advance amount as asked for by the OPs and he paid a sum of Rs.37,35,000/- in total. However, the OPs failed to issue him the allotment letter, or to provide the terms and conditions even after receiving 80% of the value of the plot. The complainant filed the consumer complaint in question, seeking refund of the amount of Rs.37,35,000/- alongwith interest @ 18% from the date of deposit till realization , besides Rs.5 lakhs as compensation for mental

harassment and Rs.5,500/- as cost of litigation.

3. The complaint was contested by the OPs, by filing a written statement before the State Commission, saying that this was a case of sale simpliciter of land and hence, there was no deficiency in service on the part of the OPs. The stand of the OPs is that as per the terms and conditions, the entire amount could be refunded with interest @ 8% per annum after three years from the date of requisition, which was 6.1.2014 in this case. It was also stated that the Society was in the process of making allotment of plots to eligible members, who had paid 90% of the money in total and that the development of the site was in progress. The OP further stated that the condition with regard to refund with interest was incorporated, as it was agreed to by all the members. All necessary papers and share certificates were handed over to the complainant on 9.4.2012. It was also stated that the complainant had paid a sum of Rs.33,75,000/- and refund could be made as per the terms and conditions only.

4. The State Commission after taking into account the contentions of the parties, dismissed the complaint being pre-mature and concluded that there was no deficiency in service on the part of the OPs on the date of complaint. Being aggrieved against that order, the complainant is before this Commission by way of the present first appeal.

5. During hearing before me, the learned counsel for the complainant/appellant has drawn attention to the terms and conditions listed at the back of the receipts obtained by the complainant from the OP, at the time of registration on 12.6.2011, in which it has been stated that if the applicant does not want to continue even after paying some instalments, he will be refunded the entire amount with prevailing interest after one year from the date of registration. The learned counsel has also drawn attention to some advertisement given by the Greater Mohali Area Development Authority (GMADA) as a public notice, in which it was stated that the said project had not been issued any licence for development as approved colony by GMADA and hence, no plot could be offered for sale in those colonies by the OP-Society. According to the learned counsel, the action of OP in inviting applications and receiving money for the plots, amounted to cheating the complainant. The learned counsel also stated that the OPs had no right to carry out any change in the terms and conditions at a later date.

6. Per contra, the learned counsel for the respondent/opposite party stated that in accordance with the terms and conditions, the refund could be allowed only after three years from the date of requisition, which in this case was 6.1.2014. He categorically stated that the OPs shall make payment of refund, after the said period of three years was over by 5.1.2017. The learned counsel emphasized that the complainant had no cause of action to file the present complaint. The learned counsel also stated that the OP-Society was not a builder, but was an organization, floated by some persons as Members, including the complainant.

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

8. It has been observed by the State Commission in the impugned order that the OP Society is a welfare society and the complainant is one of the members of the Society and the objective of the Society was to provide cheap infrastructure to its members. It had been stated clearly in the terms and conditions of the allotment that if an applicant does not want to continue even after paying some instalments, he/she will have refunded the entire amount paid with 8% interest per annum after three years from the date of requisition. It is clear therefore that refund could be allowed only after the said period of three years was over i.e. on 5.1.2017. The State Commission has also brought out that after floating the Society, a licence was granted by GMADA to develop the colony under the name and style of Sky Rock Society, subject to certain conditions. The State Commission has stated that the Society was not like a builder upon whom, an obligation had been cast to deliver the possession within the agreed time.

9. Further, the State Commission have already decided another similar matter in FA No.147/2015 on 3.8.2015, Pankaj Mahajan vs. M/s. Sky Rock City Cooperative House Building Society, in which the State Commission took the view that as per the agreement, the complainant was entitled to refund of the amount only after three years of the date of requisition. The facts and circumstances in the present case are also similar to the case already decided by the State Commission.

10. In view of the position explained above, I do not find any justification to differ with the well-reasoned order passed by the State Commission. The appeal is, therefore, without any merit and the same is ordered to be dismissed and the order passed by the State Commission upheld. There shall be no order as to costs.