

**(2017) 02 NCDRC CK 0081**

**In the National Consumer Disputes Redressal Commission**

**Case No : 439 of 2016**

SANJAY TIKU

APPELLANT

Vs

JANTA LAND PROMOTERS LTD.. & Antr.,

RESPONDENT

**Date of Decision : 16-02-2017**

**Acts Referred:**

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

**Citation : 2017 1 CPR 759**

**Hon'ble Judges : M. Shreesha**

**Advocate : M.K. Shah, Ms. Nimmi Sharma, S.K. Gupta**

## Judgement

1. Challenge in this Revision Petition under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act") is to the order dated 12.01.2016 passed by the State Consumer Disputes Redressal Commission, Chandigarh (for short "the State Commission") in First Appeal No.685 of 2015 preferred by the Opposite Party. By the impugned order, the State Commission allowed the Appeal and set aside the order of the District forum and consequently, dismissed the Complaint.

2. The facts material to the Complaint are that the Complainant intended to purchase an apartment and paid 10,00,000/- towards advance on 08.11.2013. He was informed that the payment can be made in two plans, namely, Down Payment Plan in which rebate of 7% was allowed on the Basic Sale Price and Construction Linked Payment Plan for which no rebate was allowed. The Complainant averred that the area of the apartment was 3012 sq.ft. @ 3700/- per sq. ft. and after the rebate of 7%, the total sale consideration was agreed at 1,03,64,292. As per the Down Payment Plan, 10% of the Basic Sale Price was to be deposited at the time of booking and he made the payment of 10,00,000/- vide cheque dated 08.11.2013. On 16.11.2013, the Complainant received a letter intimating that he was being allotted a 4-BHK Apartment No.C-703, measuring 3012 sq.ft. It was pleaded that the terms and conditions contained in Clause 2.2 of that allotment letter was completely contradictory to the Down

Payment Plan for which he had consented and the 7% rebate, which was offered, did not figure in the letter. It also included an excessive amount of service tax which he was not informed of. The Complainant pleaded that he had refused to accept that letter and only retained a photocopy of it for ready reference.

3. The Complainant stated that he had written a letter to the Opposite Party on 06.12.2013 informing that he had deposited 10,00,000/- as per the rebate promised to him under Down Payment Plan, for which he received a reply dated 11.03.2014, which was again contradictory to the letter dated 16.11.2013 and he was asked 85% of the purchase price within 30 days of the initial payment of 10,00,000/-. It was arbitrary to expect him to accept the allotment letter which was contradictory to the terms and conditions offered to him at the initial stage. The Complainant denies that the booking amount was 11,14,440/- and states that there was no objection raised by the Opposite Party when he had deposited the amount of 10,00,000/-. He had even got a loan approved from HDFC Bank for an amount of 75,00,000/- by paying processing fee of 42,135/-. When the Bank had demanded for the relevant documents in order to release the loan vide letter dated 29.05.2014, the Complainant approached the Opposite Party for procuring the said documents and he was informed that at least three months" time was needed to get the said documents prepared. While so, on 17.06.2014, the Opposite Party had cancelled the allotment by sending a letter through registered post and an amount of 1,28,397/- was refunded vide cheque dated 09.06.2014. It was subsequently pleaded by the complainant that non-payment of the amount cannot be made a ground for cancellation and he had opted for Down Payment Plan and the allotment letter which was sent to him was contradictory to the terms which was offered to him. Mentioning the same, he had replied to the cancellation letter dated 17.06.2014, vide an e-mail dated 01.07.2014 expressing that he was still interested in purchasing the apartment and that he had got approved loan from the Bank for the balance payment. The Opposite Party replied vide e-mail dated 08.07.2014 stating that the documents can be sent only after restoration of the cancellation, for which, the Complainant had to deposit the entire balance amount. The Complainant averred that the Opposite Party had arbitrarily retained 8,71,603/- on the basis of company policy which was never binding on him. Hence, the complaint seeking direction to the Opposite Party to refund the sum of 8,71,603/- and 42,135/- paid towards processing charges with interest, compensation and costs.

4. The Opposite Party filed their Written Version admitting that the Complainant had opted to purchase the apartment in their project and had deposited 10,00,000/- for which two payment Plans were put forth to him, namely, Down Payment Plan wherein a rebate was offered on the Basic Sale Price of the apartment. It was also admitted that the Complainant agreed for the Down Payment Plan and the total sale price was accepted at 1,03,64,292. The entire correspondence which the Complainant pleaded had taken place was also admitted. The Opposite Party averred that the offer was given to the Complainant was converted into contract by issuance of the allotment letter

dated 16.11.2013. The discount of 7% was offered only on the condition that the Complainant should deposit the balance 85% of the Basic Sale Price within 30 days instead of 75 days which was clearly mentioned in the letter dated 11.03.2014. As the Complainant failed to deposit the balance amount, the allotment was cancelled and as per the allotment letter dated 16.11.2013, in case of withdrawal from allotment within 90 days of the date of allotment, 10% of the sale price would be forfeited and it is only based on this condition that 8,71,603/- was deposited and the balance amount was refunded to the Complainant. As the Complainant was not ready to comply with the said conditions, Construction Linked Payment Plan was given to him which was based on the e-mails of the Complainants but the balance amount could be paid as per the Construction linked Payment Plan which evidences that he had withdrawn from his Down Payment Plan and hence, there is no deficiency in service on their part and seeks dismissal of the Complaint with costs.

5. Based on the evidence adduced, the District Forum allowed the Complaint directing the Opposite Party to refund the deposited amount less 1,28,397/- with interest @ 9% p.a. from 08.11.2013 together with compensation of 50,000/-. Aggrieved by the said order, the Opposite Party preferred Appeal before the State Commission which has allowed it as follows: "It was wrongly recorded by the District Forum that the opposite party had acknowledged the receipt of the original allotment letter. Neither the opposite party admitted that fact in the written reply nor it acknowledged the receipt of the original allotment letter in any of the letters, including the letter dated 11.03.2014. Even if it is assumed that such a letter was returned, even then, such a finding could not have been recorded by the District Forum as in the letter Ex.C-5, the complainant himself mentioned that the corrected letter incorporating the details, as mentioned in that letter, be issued and all those facts were made very clear and the conditions, as prayed for in that letter, were duly incorporated in the next letter dated 11.03.2014, Ex.C-6. The District Forum committed an illegality by recording a finding that the complainant was entitled to the refund of the total amount so deposited by him and that non-refund of that amount amounts to deficiency in service on the part of the opposite party".

6. Dissatisfied with the order of the State Commission, the Complainant preferred this Revision Petition.

7. It is an admitted fact that that the total sale consideration of the flat was 1,03,64,292 and that the Complainant had paid an advance of 10,00,000/- on 08.11.2013. The learned Counsel for the Complainant drew our attention to the offer made by the Opposite Party for flat No.703 wherein the total price was 1,11,44,450/- and after 7% discount it amounted to 7,80,108/-, the net cost i.e. the Basic Sale Price was arrived at 1,03,64,292. A brief perusal of the allotment letter shows Time Linked Payment Plan. Clause 2.2 reads as follows: 2.2 "The price of the 4 BHK apartment No.C-703 of 3012 sq. ft. has been calculated @ 3700/- per sq. ft. which works out to 1,11,44,400/-, out of which you have

already paid Rs.10,00,000/- (Principal Rs.9,64,227/- + Service Tax Rs.35,773/-) vide Receipt No.5504 dated 08.11.2013. Out of balance payment of Rs.1,01,80,173/- an amount of Rs.18,89,464/- (Principle Rs.18,21,873/- + Service Tax Rs.67,591/-) is to be paid by you upto 23.12.2013. Thereafter balance payment of Rs.83,58,300/- along with applicable service tax should be deposited as per the schedule given below: Clause 2.5, which is also relevant to the facts of this case, reads as follows: 2.5 Interest on delay payment shall be charged @ 10% p.a. for the delay of 1 st month from the due date and @ 12% p.a. for the 2 nd month of delay and @ 15% p.a. for the 3 rd month of delay and thereafter proceedings regarding cancellation of allotment of apartment shall be initiated after following the due process of law wherein the personal hearing shall be afforded to the allottee (s) and in case no satisfactory reply is received from the allottee(s) then after cancellation of allotment, the earnest money i.e. 10% sale consideration amount along with brokerage charges paid, if any, will be forfeited in favour of the company and balance will be refunded to the allottee(s) without any interest and allottee(s) will not have any other claim."

8. It is the case of the Complainant that vide letter dated 08.12.2013, he had written to the Opposite Party referring to the afore-noted Clause 6, 2.2 of the allotment letter and stated that during discussion, prior to issuance of the allotment letter, the Construction Linked Payment Plan was decided whereas in para 2.2 the details of Time Linked Payment Plan have been written. He, further, stated that service tax was charged in advance whereas it is to be paid on allotment against the proper invoice as per Government norms. The learned Counsel for the Petitioner argued that both these points were not acceptable to his Bank which was financing their housing loan and therefore, they are returning the allotment letter in original and requested the Opposite Party to issue the correct letter incorporating the change of Plan and the details mentioned in this letter.

9. While so, on 11.03.2014, the Opposite Party had written a letter to the Complainant admitting that a cheque of 10,00,000/- was received by them with a clear understanding that the next date of 85% of the basic sale price would be deposited for the Complainant to become entitled to Down Payment Plan, within 30 days of the date of booking. The Counsel for the Opposite Party argued that to obtain benefit of Down Payment Plan, the deposit is pre-conditional and there was no scope for further consideration. It was, further, stated that the allotment letter was issued to the Complainant as per the standard terms and conditions and no discrimination has been done. He drew our attention to Para (4) and 5 (c) of the letter dated 04.03.2014 which is relevant and reproduced as hereunder: In case you wish to avail the Construction Link Plan and not the Down Payment Plan as was initially desired by you at the time of booking, you need to make an upfront payment of approximately 50% of the Basic Sales Price (B.S.P.) so as to come at par with other customers who are on Construction Link Plan as per the actual construction status of the tower.

Service tax duly deducted by our company as per the statutory provisions of the law is given as under :-

1. In case you wish to avail the Construction Link Plan and not the Down Payment Plan as was initially desired by you at the time of booking, you need to make an upfront payment of approximately 50% of the Basic Sales Price (B.S.P.) so as to come at par with other customers who are on Construction Link Plan as per the actual construction status of the tower.

2. Service tax duly deducted by our company as per the statutory provisions of the law is given as under :-

Amount deposited 10,00,000/-

Principal 9,64,227/-

Service Tax 35,773/-

.....

1. In case you wish switch over to Construction Link Plan even at this stage, you are requested to deposit a payment of 57,78,929/- (55,72,200/- + Service Tax 2,06,729/-) which is 50% of B.S.P. less 10 lakhs already received), immediately to enable us to put you on the Construction Link Plan."

10. There was an exchange of emails between both the Complainant and the Opposite party regarding the terms of allotment with respect to the Down Payment Plan; payment of the amounts to be deposited; and finally the cancellation. Vide e-mail dated 08.01.2014, the Complainant intimated to the Opposite Party that he had returned the allotment letter and stated that they would not pay the next instalment until and unless the relevant corrections are made in the letter. This was in response to the e-mail demanding 80,89,464/- as the next instalment.

11. Counsel for the Opposite Party relied on the above-noted para (4) of the letter dated 11.03.2014 stating that the Complainant was offered a change of Payment Plan by making the requisite deposit but he did not choose to do so and his allotment was cancelled as he did not pay the balance installment despite repeated requests.

12. At the cost of repetition, it is seen from the record that the Complainant got approved a loan of 75,00,000/- on 25.05.2014 with the intention to purchase the flat and also paid the processing fee. The correspondence evidences that repeated efforts were made by the Complainant with respect to clarification on the terms of payment but instead received the cancellation letter dated 17.06.2014 by registered post, though the subject matter did not say cancellation of the allotment as the allotment agreement has never been entered into. The reason given for the cancellation was non-payment of the instalment amount relying on Clause 2.2 of the letter dated 16.11.2013. Vide e-mail dated 01.07.2014, the Complainant replied to the cancellation letter expressing that

the said cancellation was arbitrary and done on the wrong terms, for which the Opposite Party vide e-mail dated 08.07.2014 informing the Complainant that the documents requested could never be provided subject to restoration of the cancelled allotment after deposits of the due amount. The Complainant in his e-mail dated 08.07.2014 repeated that the formal allotment had not been made and that all the dues will be paid subsequent to the allotment and after release of the loan from the Bank, for which the Opposite Party immediately replied stating that once all formalities are completed, the allotment letter would be issued. This e-mail substantiates the stand of the Complainant that the allotment letter was still not formally issued as the terms were not acceptable to him and therefore, the contract was not concluded . Even on 21.07.2014, the Complainant sent an e-mail requesting for the list of formalities to be completed, for which, there was no reply.

13. It is not understood as to how the cancellation is valid as the Complainant has not agreed to the terms of the allotment letter and if the stand of the Opposite Party is that payment of 10,00,000/- and issuance of the letter by itself construes concluded contract, then the procedure stipulated under Clause 2.5 needs to be followed. The said Clause lays down that due process of law shall be followed before initiation of cancellation, wherein personal hearing shall be afforded to the allottee and in case no satisfactory reply is received cancellation shall be done, after which 10% of the sale consideration amount shall be forfeited. Keeping in view all the aforementioned submissions and admitted correspondence, it is held that the terms of allotment were never accepted by the Complainant and therefore it cannot be construed as a concluded contract on account of which the Opposite Party cannot forfeit 10% of the sale consideration amount and deduct the service tax. The act of the Opposite Party in deducting 8,71,603 out of 10,00,000/- which was deposited by the Complainant amounts to deficiency of service and therefore, this Revision Petition is allowed setting aside the order of the State commission and the Opposite Party is directed to refund Rs.8,71,603/- with interest @ 6% p.a. from 08.11.2013 to be paid within four weeks from the date of receipt of this order failing which the amount would attract interest @ 9% p.a. together with costs of 10,000/-. As interest has already been awarded by way of damages, I do not find it a fit case for further compensation.

14. The Revision Petition stands disposed of with the afore-mentioned directions.