
(2016) 10 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

Case No : 2781 of 2016

SARAJ KUMAR RAY CHAUDHURY S/O. MONI MOHAN ROY
CHOWDHURY

APPELLANT

Vs

SURESH KUMAR SHAW & ORS.

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Citation : (2016) 10 NCDRC CK 0011

Hon'ble Judges : V.K. Jain

Advocate : Sanjoy Kr. Ghosh, Rupali S. Ghosh

Final Decision : Petition Dismissed

Judgement

1. The complainants/respondents entered into an agreement with respondent No.3 - Sri Subhasis Ukil who is running the business under the name and style of M/s meek, on 7.7.2004, for the purchase of a covered parking space as described in Schedule "B" to the said agreement, for a total consideration of Rs.3,50,000/-. A sum of Rs.2,08,000/- paid to him and the balance amount of Rs.1,42,000/- was to be paid after completion and at the time of registration of the conveyance deed in their favour.

2. Subsequently, respondent No.3 offered to cancel the said agreement and also issued two cheques, one of Rs.2 lakhs and the other of Rs.1 lakh to the complainants. The said cheques, however, got dishonoured when presented to the bank. The complainants, the petitioner and respondent No.3 then entered into a second agreement dated 11.3.2013. The said agreement was executed by respondent No.3 not only on his behalf but also as the Attorney of the petitioner, on the strength of Power of Attorney dated 12.11.2004 executed in his favour. In the supplementary agreement dated 11.3.2013, the parties reiterated the terms and conditions of the earlier agreement dated 7.7.2004. However, the possession of the covered parking space was not delivered to the complainants. Being aggrieved, they approached the concerned District Forum by way of a complaint.

3. The complaints were opposed by the petitioner as well as by respondent No.3. The District Forum vide its order dated 28.11.2014 directed both the parties - the petitioner as well as respondent No.3 to execute and register the conveyance deed of the parking space and to deliver its possession to the complainants within one month from the date of the said order.

4. Being aggrieved from the order passed by the District Forum, the petitioner approached the concerned State Commission by way of an appeal. The developer, however, did not challenge the said order. The appeal filed by the petitioner having been dismissed, the petitioner is before this Commission by way of this revision petition.

5. It is contended by the learned counsel for the petitioner that the sale agreement dated 7.7.2004 having been executed earlier than the date on which the Power of Attorney in favour of respondent No.3 was executed by the petitioner, it is only the developer who is bound by the agreement between the parties and the petitioner was not bound by the said agreement. It is not in dispute that at the time of first agreement, Power of Attorney in favour of respondent No.3 was not in existence. Therefore, it can hardly be disputed that initially the petitioner was not bound by the agreement dated 7.7.2004. However, when the second agreement was executed on 11.3.2013, the petitioner was also a party to the said agreement though it was executed on his behalf by his Attorney Sri Subhasis Ukil the developer of the project. Having given a Power of Attorney to Sri Subhasis Ukil, the petitioner bound himself by the acts and deeds done by Sri Subhasis Ukil by virtue of the Power of Attorney executed in his favour. In fact the agreement dated 11.3.2013 is a tripartite agreement, the developer being the first party, the petitioner being the second party and the complainants being the third party to the said agreement. Some of the terms of the agreement dated 11.3.2013, read as under:- " AND WHEREAS the Purchasers had made a proposal to the Developer/Builder to purchase the covered space with parking of the newly constructed building situated at the Ground Floor measuring 575 Sq.ft. (five hundred seventy five sq.ft.) more or less at for the price of Rs.3,50,000/- (Rupees Three Lacs fifty Thousand only) fully described in the Schedule "B" written hereunder and the Developer accepted that proposal and a sale Agreement was made on 7.7.2004 between the Developer and purchasers. Out of the said consideration Rs.3,50,000/- the Purchasers time to time paid Rs.2,08,000/- to the Developer. It is mentioned here that the purchaser before on 7.7.2004 paid Rs.71,000/- and at the time of execution of the said agreement dated 7.7.2004, further paid Rs.70,000/- and thereafter paid Rs.21,000/- and Rs.21,000/- and Rs.15,000/- in total paid Rs.2,08,000/- to the developer.

AND WHEREAS the said Developer and the Purchasers cancel the said agreement dated 7.7.2004 and the Developer two cheque as refund of part amount. But those two cheques was dishonour and therefore the purchasers filed two cases being case No.C-4220/2010 and C-4221/2010 U/s 138 N.I. Act which is still

pending before the Ld. 8 th J.M. at Alipore.

AND WHEREAS the Developer and the Owners want to sale said schedule "B" property to the purchasers at the said consideration of Rs.3,50,000/- and therefore, the said agreement dated 7.7.2004 is alive and all the terms and condition of the said agreement dated 7.7.2004 is subsist and shall be binding upon all the parties herein. In addition with the said terms and conditions of the said agreement the owner, Developer and purchasers shall agree on the following terms and conditions.

NOW THIS AGREEMENT WITNESSETH as follows:-

1. That the Developer/Builder and owner have agreed to sell and the purchasers have agreed to purchase the cover parking space at the Ground floor measuring 575 Sq.ft. more or less fully described in the schedule "B" written hereunder at a consideration of Rs.3,50,000/- (Rupees Three Lac and fifty thousand) only.

4. That after payment or tender of aforesaid balance consideration of Rs.1,42,000/- (Rupees One Lac Forty Two Thousand) only by the purchasers to the Developer, the owner and Developer shall execute and register the final sale Deed in respect of the said space in favour of the purchasers within two months from the date of execution of this agreement."

It is thus evident that it is not only the developer but the owner as well who bound himself to sell the covered parking space to the complainants and to deliver possession of the said parking space and execute the requisite conveyance deed in favour of the complainants. That admittedly having not been done, the petitioner as well as the developer both shall be guilty of deficiency in rendering services to the complainants and consequently, the direction given to both of them to hand over possession of the parking space and execute its conveyance deed in favour of the complainants is fully justified.

6. It is contended by the learned counsel for the petitioner that in fact no parking space with the specifications mentioned in the agreement was got approved by the developer from the concerned authorities. Even if that be so, that would be a situation created by the developer himself. Being the principal in view of the Power of Attorney executed by him, the petitioner is also bound by the acts and deeds of the developer. Having sold a parking space with a particular specification to the complainants, it was obligatory for the developer to obtain the requisite sanction and construct a parking space with the said specifications. Having entered into a contractual obligation, the petitioner and the developer cannot be heard to say that they did not construct the parking space as per the specifications promised to the complainants and, therefore, they should be asked to perform their contractual obligation. It is for the petitioner and the developer to arrange the parking space as per the specifications agreed with the complainants, hand over its possession to them and execute the requisite conveyance deed in their favour.

7. The learned counsel for the petitioner states that the State Commission has exempted the complainants from paying the balance sale consideration of Rs.1,42,000/-, resulting in a situation where the property would be delivered and transferred without receiving the full sale consideration. On a perusal of the impugned order, I find that the State Commission has awarded a sum of Rs.10,000/- as cost and a sum of Rs.1,32,000/- as compensation to the complainants for the harassment and mental agony caused to them. It is that compensation and cost of litigation which is to be adjusted out of the balance sale consideration. Admittedly, the possession of the parking space was to be delivered to the complainants within two months of the agreement dated 11.3.2013. More than three years have since passed. In fact, the delay will be much more if one goes by the first agreement, i.e., the agreement dated 7.7.2004 executed between the complainants and the developer.

8. For the reasons stated hereinabove, I find no merit in this revision petition and same is accordingly dismissed with no order as to costs.