

(2017) 06 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

Case No : 610 of 2015

SHIVAJI GRUHA NIRMAN SAHAKARI SANSATHA MARYADIT
THROUGH ITS PRESIDENT

APPELLANT

Vs

HARISH SETHI & ANR.

RESPONDENT

Date of Decision : 14-06-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19, Section 21(a)(2) - Appeals - Jurisdiction of the National Commission

Citation : 2017 3 CPR 196

Hon'ble Judges : B.C. Gupta

Advocate : Akash Kakade, Praveen Mehndiratta, Girish A. Kunte

Final Decision : Appeal Dismissed

Judgement

1. This appeal has been filed under section 19, read with section 21(a)(ii) of the Consumer Protection Act, 1986 against the impugned order dated 07.05.2015, passed by the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Nagpur (hereinafter referred to as "the State Commission") in Consumer Complaint No. 14/40 (CC/08/11) filed by the present respondent no. 1 Harish Sethi, allowing the said complaint.

2. Briefly stated, the facts of the case are that the appellant/opposite party (OP-1) Shivaji Gruha Nirman Sahakari Sanstha Maryadit is a housing construction cooperative society, which floated a scheme for allotment/selling residential plots in the year 1973 at Binaki Layout, Taluka and District Nagpur. The complainant was allotted plot No. 58 in the said layout, being a member of the Society. He paid an amount of Rs.1440/- for the plot measuring 1800 sq.ft. and a sale-deed in respect of the said plot No. 58 was also executed in his favour. However, instead of delivering the possession of the plot to the complainant, the OP-1 demanded a sum of Rs.3651/- from her vide letter dated 24.09.2006 towards development charges etc., which was also paid by the complainant and a certificate dated 12.09.2007 was issued, saying that she was

a member of the society and plot No. 58 had been allotted to her. Since the possession of the same had not been delivered, the complainant approached the OP-2 Nagpur Improvement Trust, Nagpur to know the status of the plot, whereupon she was told that the said plot No. 58 was not available on the site. The complainant sent a legal notice dated 04.12.2008 to OP-1, but there was no response from them. Alleging deficiency in service on the part of OP-1, the complainant filed the consumer complaint in question, seeking physical possession of plot No. 58, or in the alternative, to make allotment of another plot of the same area at same cost, or to pay a sum of Rs.20 lakhs as value of the plot alongwith Rs.25 lakh as compensation for mental harassment and Rs.22,22,500/- on account of loss suffered by him. In total, a sum of Rs.67,22,500/- was claimed from OP-1 and in addition, interest @24% on the amount received by the society was also demanded.

3. In their written version, OP-1 admitted having allotted plot No. 58 to the complainant, receiving cost of Rs.1440/- and executing sale-deed on 19.12.1973 in her favour. The OP-1, however, stated that at that time, the land was under-developed and its layout plan had not been sanctioned by the competent authority. The plot was being shown in the proposed lay-out plan for the land, but in the revised approved plan, the said plot was not available due to alterations made by the Nagpur Improvement Trust. The OP-1 stated that they were ready to refund the cost of the plot deposited with them.

4. The Nagpur Improvement Trust also filed their written version, saying that as per their sanctioned plan, Plot No. 58 was not in existence.

5. The State Commission after considering the averments of the parties, passed the following order:-

"i. The OP No. 1 shall handover vacant physical possession of plot No. 58 to the complainant.

ii. If plot No. 58 is not in existence, then alternatively the OP No. 1 shall execute registered sale-deed of any other plot of same specification and same area in favour of the complainant and shall also handover physical possession of the same to the complainant within 30 days of receipt of copy of this order. The complainant shall bear expenses of the sale-deed.

iii. If any other plot of the same specification and same area is not available with the OP No. 1 then it shall pay price of the same to the complainant as per Government Ready Reckoner rate applicable on the date of complaint, i.e., on 26/06/2008 with interest @9% p.a. from the date of complaint till realisation of the said amount by the complainant.

iv. The OP No. 1 shall also pay to the complainant compensation of Rs.25,000/- towards mental harassment and cost of Rs.10,000/-

v. The complaint, as against, OP No. 2 NIT is dismissed."

6. Being aggrieved against the order of the State Commission, the OP Cooperative Society have challenged the same by way of the present First Appeal.

7. During hearing before us, the learned counsel for the appellant stated that they were prepared to return the amount deposited by the complainant with them and not the price as allowed by the State Commission on the basis of ready reckoner etc. The learned counsel argued that as per the description made in the sale deed itself, plot no. 58 with area of 1800 sq. ft. had been sold to the complainant and the possession was also handed over. It is also mentioned in the sale-deed that the petitioner member shall be bound by the alterations and changes made by the Nagpur Improvement Trust at the time of sanction of the plan. They were, therefore, not responsible in any manner to provide compensation to the complainant because of the alterations made by the Nagpur Improvement Trust at the time of sanction of the plan.

8. The learned counsel for the respondent/complainant has, however, drawn attention to a copy of the legal notice dated 04.02.2008 addressed to the appellant/OP, in which the entire facts of the case have been explained and also mentioned that at the time of the sale-deed on 19.12.1973, the total consideration of plot, i.e., Rs.1440/- was paid to the OP. Later on, development charges amounting to Rs.3651/- were also paid as demanded vide letter dated 24.09.2006. A certificate was given by the petitioner on 12.09.2007 that Plot No. 58 had been allotted to the complainant. In case, plot No. 58 was not available in the sanctioned plan, it amounted to cheating on the part of the OP with the complainant as they had executed a false sale-deed with them. The learned counsel argued that it was the duty of the appellant to provide an alternative plot, or to suitably compensate the complainant in accordance with the order passed by the State Commission.

9. In reply, the learned counsel for the appellant stated that the complainant should have claimed compensation from the Nagpur Improvement Trust as the plot No. 58 ceased to exist, because a public road was constructed on the area under the said plot.

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

11. A simple glance at the entire facts of the case makes it clear that as early as 1973, the opposite party which is a Cooperative Housing Society executed a sale-deed for plot No. 58 with the complainant after realising the full amount of consideration for the plot from her. Later on, in the year 2006, i.e., about 33 years after the said sale-deed, they demanded and received a further sum of Rs.3651/- from her as development charges. It is evident, therefore, that the OP Society had all these years, given an impression to the complainant that developed plot No. 58 shall be provided to her. The OP have taken the stand that they had provided the ownership rights of the land in question to the complainant in the year 1973 itself and if there were changes/alterations in the

same by the Improvement Trust, Nagpur, at the time of sanction of the plan, they were not concerned in any manner to ensure that the said plot in developed state was provided to the complainant. However, this stand of the OP is neither reasonable nor sustainable, as it was their duty to ensure that developed plot was provided to the complainant, as they had realised the development charges also from the complainant. It is evident from the facts of the case that this is not a case of "sale simplicitor" by which the ownership/title of a piece of land is transferred by one person to another. There is a positive commitment on the part of the appellant/OP to provide a developed plot to the complainant for which development charges have also been taken. In case, the OPs were having any doubt about the status of the said plot at the time of sanction of the plan, they should have brought the situation to the notice of the complainant at the earliest possible. There is justification, therefore, in the allegation made by the complainant in her legal notice that in the whole process, the complainant had been subjected to cheating/malpractice, as they were always given the impression that developed plot shall be handed over to her. Moreover, even if the Nagpur Improvement Trust had decided to construct a road on the portion of the land under Plot No. 58 and adjoining area, it was the bound duty of the OP to compensate the complainant properly by making arrangements to provide an alternative plot, or to provide compensation at the prevailing market rates. The stand taken by the appellant that they had no responsibility in the whole affair for compensating the complainant is not tenable, rather it amounts to unfair trade practice on their part, as they failed to present correct picture before the complainant all these years.

12. Based on the discussion above, this appeal is ordered to be dismissed being without merit. The impugned order passed by the State Commission gives directions to the OP to provide an alternative plot of same specifications and same area to the complainant, or in the alternative, to pay the price of the same as per Government ready reckoner applicable on the date of the complaint, i.e., 26.06.2008 alongwith interest @9% p.a. from the date of complaint till realisation. In addition they have awarded a compensation of Rs.25,000/- towards mental harassment and Rs.10,000/- towards cost. The order passed by the State Commission does not suffer from any illegality, irregularity or jurisdictional error, which may merit interference in the exercise of the appellate jurisdiction. The said order of the State Commission is, therefore, upheld and the appeal stands dismissed. There shall be no order as to costs.