
(2016) 03 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Case No : 174 of 2016

VINOGRAM SAHAKARI GRUH NIRMAN SANSTHA

APPELLANT

Vs

BALAJI GOVINDRAO GATHIBANDHE

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Consumer Protection Act, 1986, Section 24A - Limitation period

Citation : 2016 2 CPR 325

Hon'ble Judges : V.K. Jain, Dr. B.C. Gupta

Advocate : Kishor Lambat , Jai Thakur

Judgement

1. The complainant/respondent entered into an agreement with the petitioner to purchase a Plot No.26, admeasuring 1500 sq. ft., in Khasra No.72/1 in Mouza Besa of Nagpur for a total consideration of Rs.29100/-. A sum of Rs.7,750/- was paid as earnest money to the petitioner. According to the complainant/respondent, the balance amount was payable as per his convenience by 01.06.1997 and on receiving the balance amount, the petitioner was to execute the sale deed of the said plot in favour of the complainant. This is also the case of the respondent/complainant that the petitioner was unable to get the aforesaid land which at that time was meant for agricultural purpose converted into land for non-agricultural purpose and he assured him that the same would be done before executing the sale deed. The complainant made payments of Rs.6,000/- each to the petitioner on 30.06.1997 and 26.7.1997, for which receipts were issued to him. Thus, a total sum of Rs.19,750/- stood paid to the petitioner. When the complainant approached the petitioner for execution of the sale deed on receipt of the balance amount of Rs.9,350/-, the petitioner assured to execute the sale deed soon after getting the above referred land converted into non-agricultural land. The grievance of the complainant/respondent was that despite making repeated promises to him, the petitioner failed to execute the sale deed of the aforesaid plot in his favour. He therefore approached the concerned District Forum seeking the following relief:-

1. declare that non-applicant had committed deficiency in services and adopted unfair trade practice.

2. by accepting balance consideration of Rs.9,350/- from complainant, non-applicant should execute a sale deed and handover the possession of Plot No.26, admeasuring 1500 sq.ft., bearing P.H. No.38, Khasra No.72/1, in Mouza Besa.

3. If the non-applicant is unable to execute a sale deed and handover the possession of above mentioned plot, then, he must pay the amount equal to the market price of the said plot along with 18% interest on the said amount from the date of agreement to the complainant.

4. Direct the non-applicant to pay Rs.50,000/- towards physical and mental harassment as well as monetary loss, suffered by complainant, for not executing sale deed and handing over possession of plot mentioned in the agreement executed between the complainant and non-applicant.

5. Cost of complaint Rs.10,000/- to be paid by non-applicant to the complainant .

2. The complaint was resisted by the petitioner, who took a preliminary objection that it was barred by limitation prescribed under Section 24-A of the Consumer Protection Act. On merits, it was alleged that the complainant did not pay the balance amount and therefore the allotment made to him was cancelled.

3. The District Forum vide its order dated 19.05.2009 directed as under:- "2) Non-applicant is hereby ordered that after receiving remaining amount of Rs.9,350/- from the complainant he should execute sale deed and hand over possession.

OR

If the plot in dispute is not available with non-applicant, he should execute the sale deed and hand over possession of another plot in the same lay-out having same area.

OR

The non-applicant should pay to the complainant interest @ 9% p.a. on value of plot existing on 23/10/2008, as per government rate, till its realisation.

3) The non-applicant is hereby ordered to pay Rs.3,000/- to the complainant towards physical and mental harassment.

4) The non-applicant is hereby ordered to pay Rs.2,000/- to the complainant towards legal expenses."

4. Being aggrieved from the order passed by the District Forum, the petitioner approached the concerned State Commission by way of an appeal. Vide impugned order dated 07.10.2014, the State Commission dismissed the appeal filed by the petitioner. Being still dissatisfied, the petitioner is before us by way of this revision petition.

5. The first contention of the learned counsel for the petitioner is that having been filed on 23.10.2008, the complaint was hopelessly barred by limitation. In support of his contention, he relies upon the decision of the Hon"ble Supreme Court in State Bank of India vs. M/s. B.S. Agricultural Industries (I), {2009 (3) Civil LJ 160} . However, considering the decision of the Hon"ble Supreme Court in Meerut Development Authority Vs. Meerut Development Authority Vs. M.K. Gupta IV (2012) CPJ 12 holding that a buyer has a recurrent cause of action for filing a complaint due to non-delivery of possession of the plot, we find no merit in the aforesaid preliminary objection taken by the petitioner.

6. Coming to the merits of the case, it is not in dispute that the land in question was agricultural land and it was sold to the complainant. Since plots of specific size were sold by the petitioner and the said plots were meant for residential purpose, it can hardly be disputed that the petitioner was under an obligation to get the aforesaid agricultural land converted into land meant for residential purpose, before executing the sale deed of the individual plot in favour of the plot buyers. That having not been done, the complainant was not under an obligation to pay the balance amount to the petitioner till the aforesaid conversion was allowed by the competent authority.

7. Though the case of the petitioner is that the allotment made to the complainant was cancelled, there is no evidence of the petitioner having even sent any cancellation letter to the complainant. In the absence of such a letter, it would be difficult for us to accept that plea that the allotment made to the complainant had been cancelled by the petitioner.

8. The learned counsel for the petitioner submits that the plot agreed to be sold to the complainant has since been sold by the petitioner to a third party. He has placed on record a copy of the sale deed executed in favour of the aforesaid third party. The petitioner having already sold the plot in question, the only option available to it is to comply with the direction given by the District Forum, i.e., to pay to the complainant interest @ 9% p.a. on the value of the plot existing on 23.10.2008, as per government rate, till its realization. In the facts and circumstances of the case, we find no fault with the direction for payment of the value of the plot as per government rates as on 23.10.2008 when the complainant approached the concerned District Forum by way of a complaint. The learned counsel for the petitioner submits that the petitioner should be directed to pay value of the plot on the date on which the said plot was sold to a third party. However, considering that there is no evidence of the petitioner having intimated the alleged cancellation of plot to the complainant, we are unable to accept the said contention. Had the petitioner conveyed the alleged cancellation of plot to the complainant at the time the said plot was allegedly transferred to a third party, it would have been possible for the complainant to acquire another plot of land at the price prevailing at that time. Sine no such communication was sent to him, he kept on hoping that the plot which he had agreed to purchase from the petitioner would be made available to him.

Therefore, there is no reason why the petitioner should not pay to the complainant the market price of the plot as per the government rates, as on the date of filing of the complaint.

9. The learned counsel for the petitioner assailed the direction for the payment of interest to the complainant on the value of the plot as on 23.10.2008. We however find no merit in the contention. The petitioner ought to have either delivered the plot or given its market value to the complainant as soon as the complaint was filed. That having not been done, the petitioner must necessarily pay interest to the complainant. This is more so, considering the fact that there must have been further appreciation in the market price of the plot after 23.10.2008 when the complaint was filed.

10. It is lastly contented by the learned counsel for the petitioner that the petitioner should be permitted to adjust the balance amount which the complainant was to pay to it along with appropriate interest on that amount. We find the contention to be justified. If the complainant is getting market value of the plot as on the date of filing of the complaint, the petitioner shall be entitled to adjust the balance amount payable of Rs.9,350/-, which the complainant was required to pay to it along with interest on that amount @ 9% p.a. w.e.f. 01.07.97.

11. The revision petition stands disposed of in terms of the above referred order.