AFRON ROQUE ANTAO & 2 ORS. v. M/S. ECM BUILDERS & 4 ORS.

AFRON ROQUE ANTAO & 2 ORS.

…Appellant

M/S. ECM BUILDERS & 4 ORS.

…Respondent

Case No: REVISION PETITION NO. 606 OF 2016

Date of Judgement: 07 December 2023

Judges:

BINOY KUMAR
PRESIDING MEMBER

For Appellant: MR. KARAN MATHUR, ADVOCATE

For Respondent: None

Facts:

Complainants (Petitioners) filed a complaint against Opposite Parties (M/s ECM Builders) before the District Forum for possession of two flats and compensation. District Forum allowed the complaint and directed OPs to handover possession with compensation of Rs. 2 lakhs. OPs appealed before the State Commission against District Forum's order. State Commission partially allowed the appeal by setting aside District Forum's order and directing OPs to refund Rs. 10 lakhs paid by Complainants along with interest and costs. Aggrieved by the orders of District Forum and State Commission, Complainants have filed the present revision petition.

Court's Elaborate Opinions:

There are concurrent findings of District Forum and State Commission

on facts. Revisional jurisdiction should not be exercised to interfere with such concurrent findings. It is undisputed that despite payment of Rs. 10 lakhs by Complainants, OPs failed to offer possession of flats before selling it to third party. This amounts to deficiency in service. Orders of State Commission and District Forum do not suffer from any illegality, material irregularity or jurisdictional error warranting interference.

Arguments by Parties:

Petitioners:

Prayer was for possession of flats and compensation. Rs. 25,000 was to be paid at time of possession only. Now willing to opt for refund due to lapse of time.

Respondents:

Flats already sold to third party in 2015. Ready to refund amount but no deficiency of service as full payment was not made before possession offer.

Referred Laws and Sections:

Section 21(b) of Consumer Protection Act – Revisional jurisdiction of National Commission. Reliance placed on various Supreme Court judgments governing scope of revisional jurisdiction.

Case Laws Referred:

No case laws were referred in the order.

Download Court Copy https://dreamlaw.in/wp-content/uploads/2023/12/task-9.pdf

Full Text of Judgment:

1. Aggrieved by the concurrent findings and Orders passed by the District Consumer Disputes Redressal Forum, South Goa (for short, the District Forum) and the State Consumer Disputes Redressal Commission, Goa, Panaji (for short, the State Commission), the Complainants – Mr.

Afron Roque Antao & Ors. filed the present Revision Petition No. 606 of 2016 under Section 21(b) of the Consumer Protection Act,1986 (for short, the Act). The Complaint filed by the Complainants (Petitioners herein) before the District Forum was allowed and the Opposite Parties were directed to handover the possession of the two flats, completed in all respects with compensation of Rs.2,00,000/- plus cost of Rs. 5,000/-.

2. Aggrieved by this Order dated 31.07.2015 of the District Forum, the Opposite Parties –M/s ECM Builders filed Appeal before the State Commission, which, vide its Orderdated 08.01.2016, partially allowed the Appeal by setting aside and modifying the Order of the District Forum and directing the Opposite Parties to refund the amount of Rs. 10 lakh @ 9% per annum from 23.05.2015 along with cost of Rs. 10,000/- to the Complainants.

3. As the District Forum and the State Commission have comprehensively addressed the facts of the case, which led to filing of the Complaint and passing of the Orders, I donot find it relevant to reiterate the same, when the findings of both the fora are concurrent on facts.

4. I have heard the learned Counsel for the Petitioner and perused the record.

5. The learned Counsel for the Petitioner submitted that the prayer in the Complaint is for possession of the flats and alleged deficiency in service as no offer of possession was made and the amount of Rs. 25,000/- was to be paid only at the time of taking possession. He further submitted that in the course of litigation, the Respondent hadpaid the Petitioner Rs. 6 lakh. Now, after lapse of time, the Petitioners would opt for taking the refund.

6. After the hearing, the learned Counsel for the Petitioner has filed an amended memo of parties by way of an application being Diary No. 39582 dated 13.11.2023 for bringing the legal heirs on record as the Petitioner No. 1 and 2 have expired. The same is takenon record.

7. The learned counsel for the Respondents submitted that the Units have already beensold to a third party in the year 2015 and that he is

ready to refund the amount deposited though there has been no deficiency of service on the part of the Respondents as the Petitioner had to make the full and final payment before the offer of possession could be given. Both the District Forum and the State Commission have held deficiency of service on the part of the Respondents / Builder. It is a fact that out of the sale consideration of Rs. 10,25,000/-, the Petitioners have paid Rs. 10 lakh. However, no offer of possession was made. It is also a fact that Rs. 25,000/- was not paid by thePetitioners. While the litigation was going on before the District Forum, the Respondents had sold the flats to a third party. This is undoubtedly a clear case of deficiency of service.

8. The Orders of the State Commission and the District Forum do not suffer from any illegality, material irregularity and jurisdictional error. No new facts or issues on law have been raised, which have not already been considered by the two Commissions.

9. In view of the concurrent findings, I would like to cite the following Orders of the Hon'ble Supreme Court in this regard:
a. Rajiv Shukla v. Gold Rush Sales & Services Ltd., (2022) 9 SCC 31 decided on 08.09.2022, wherein it was held as under:
"In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order [Gold rush Sales and Services Ltd. v. Rajiv Shukla, 2016 SCC On Line NCDRC 702] the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21(b) of the Consumer Protection Act.
b. Narendran Sons v. National Insurance Co. Ltd., 2022 SCC OnLine SC 1760 decided on 07.03.2022, wherein it was held as under:
"The NCDRC could interfere with the order of the State Commission if it finds that the State Commission has exercised jurisdiction not vested in it by law or has failed to exercise its jurisdiction so vested, or has acted in exercise of its jurisdiction illegally or with material irregularity. However, the order of NCDRCdoes not show that any of the parameters contemplated under Section 21 of the Act were

satisfied by NCDRC to exercise its revisional jurisdiction to set aside the order passed by the State Commission. The NCDRC has exercised a jurisdiction examining the question of fact again as a court of appeal, which was not the jurisdiction vested in it”

c. Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. (2011) 11 SCC269 decided on 18.03.2011, wherein it was held as under:

“23. Also, it is to be noted that the revisional powers of the National Commission are derived from section 21(b) of the Act, under which the said power can be exercise only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the court below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should beinvoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken, by setting aside the concurrent findings of two fora.”

d. Lourdes Society Snehanjali Girls Hostel and Ors Vs. H & R Johnson (India) Ltd. and Ors. (2016 8 SCC 286) decided on 02.08.2016, wherein it was held as under:

“23. The National Commission has to exercise the jurisdiction vested in it onlyif the State Commission or the District Forum has failed to exercise their jurisdiction or exercised when the same was not vested in their or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reason”

e. Sunil Kumar Maity v. SBI, 2022 SCC On Line SC 77 decided on 21.01.2022 , wherein it was held as under:

“9. It is needless to say that the revisional jurisdiction of the

National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that theState Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling forthe report from the respondent-Bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required. …..”

10. In view of the aforesaid discussion, the present Revision Petition is disposed of by partly upholding the Orders of the District Forum and the State Commission, directing the Respondents to refund the Petitioner’s amount of Rs. 10 lakh deposited by the Petitioner along with interest to be calculated @ 9 % per annum from the date of filing of the Complaint, which is 10.08.2012 till realization within a period of six weeks of this Order, failing which the rate of interest shall stand enhanced to 12% per annum. The Respondents shall deduct the amount of Rs. 6 lakh already paid to the Petitioner. Further, the Respondent shall pay to the Petitioner an amount of Rs. 50,000/- as cost of litigation within a period ofsix weeks, failing which, it shall carry interest @ 9% per annum from the date of this Ordertill realization.