

ASHIS DEY V. KIRAN SANKAR DAS

1. ASHIS DEY

19/1/A. NAFAR CHANDRA DAS ROAD, BEHALA,

KOLKATA-700034

WEST BENGAL

.....Petitioner(s)

Versus

1. KIRAN SANKAR DAS

FLAT NO. D-2, TOP FLOOR, 10, DESHAPRIYA PARK ROAD,

KOLKATA-700026

WEST BENGAL

.....Respondent(s)

Case No: REVISION PETITION NO. 1184 OF 2016

Date of Judgement: 12 Jan 2023

Judges:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER

HON'BLE MR. SUBHASH CHANDRA, MEMBER

For the Petitioner : Mr Soumitra Chatterjee, Advocate

For the Respondent : Mr Ashok Kumar, Advocate

Facts:

Petitioner and Respondent had entered into a development agreement for a property in 1990. Full consideration of Rs. 7.25 lakhs paid by Respondent. Possession given but sale deed not registered by Petitioner who owned 3/8th share. Respondent filed complaint before District Commission seeking direction to execute sale deed. Complaint dismissed holding remedy lies in civil court. In appeal by Petitioner, State Commission set

aside District Commission order and directed Petitioner to execute sale deed and pay compensation/costs. Revision petition filed against State Commission order. During arguments, Petitioner submitted sale deed has been executed but costs not paid.

Court's Opinions:

Admittedly, there was a development agreement between parties regarding the property. Respondent purchased a flat and paid full consideration. Petitioner owned 3/8th share but did not register sale deed. Non-execution of sale deed amounts to deficiency in service. State Commission rightly allowed appeal filed by Petitioner. Since as per Petitioner's submission sale deed now executed, only issue surviving is of costs and compensation awarded by State Commission. In view of execution of sale deed, Petitioner should comply with State Commission's order to pay compensation and costs to Respondent.

Arguments:

Petitioner:

Order of State Commission directing execution of sale deed and payment of compensation/costs challenged in revision petition. During arguments, submitted sale deed has been executed but costs not paid.

Respondent:

Execution of sale deed was obligation of Petitioner which amounted to deficiency in service. Non-execution rightly held as deficiency by State Commission.

Orders & Directions:

Revision petition allowed partly. Petitioner directed to pay compensation of Rs. 40,000 and costs of Rs. 10,000 to Respondent within 8 weeks, failing which liable to pay interest @9%.

Sections and Cases Referred/Cited: None

Full Text of Judgment:

1. This revision petition filed under section 21 (B) of the Consumer Protection Act, 1986 (in short, the 'Act') assails the order in FA No. 833 of 2013 dated 24.04.2015 of the State Consumer Disputes Redressal Commission, West Bengal, Kolkata (in short, 'State Commission') dismissing the appeal against order dated 10.07.2013 passed by the District Consumer Disputes Redressal Commission, Kolkata (in short, the 'District Forum') in CC No. 91 of 2013.

2. The facts of the case, in brief, are that the petitioner in the instant petition (who was the opposite party before the District Forum) had entered into a Development Agreement (in short, the 'Agreement') in respect of property located at 10, Deshapriya Park Road, Tollygunge, Kolkata on 10.06.1990 with the respondent (who was the complainant before the lower fora). The Agreement was for a consideration of Rs.7,25,868/- which was paid in full. Possession of the property was delivered to the respondent/complainant but the registration of the sale deed was not done by the petitioner/opposite party. It is stated that out of 8 owners of the property, 3 owners had sold their share to the petitioner who was the developer and the remaining 5 owners had executed and registered the deed in favour of the complainant on 31.08.2005. It was submitted that the petitioner/opposite party being the owner to an extent of 3/8th share of the property was obliged to register the deed to that extent. Deficiency in service is alleged since the sale consideration had been received in full for the Agreement and the registration had not been done which he was under legal and contractual obligation to do.

3. The respondent/complainant had filed a consumer complaint before the District Forum seeking a direction to execute the sale deed. The District Forum dismissed the consumer complaint recording that:

"The deed of conveyance dated 31.08.2005 executed and registered by some of the original owners regarding 5/8th share of the flat in question does not bear the signature of the OP as confirming party. If the OP executes and registers 1/3 share of the property in question as prayed for by the complainant how he will become owner of 16 annas share. This forum cannot decide or declare the share and whether that deed dated 31.08.2005 is valid or not. The Forum also cannot pass any order for

rectification of deed, if any.

From the above discussion it appears that there is a complicated question of law and that cannot be decided in this Forum. The remedy lies before the ld. Civil Court.

In the above circumstances the case fails".

4. The District Forum also recorded that the opposite party/petitioner herein had failed to appear before it despite notice on 14.5.2013 and therefore he was placed ex parte. Liberty was granted to the respondent /complainant to approach a Civil Court in the matter.

5. Petitioner/opposite party filed an appeal before the State Commission against the order of the District Forum. The State Commission allowed the appeal vide the impugned order holding as under:

"We have heard the submission of the learned counsel for the Appellant/Complainant and perused the materials on record. Evidently, there was development agreement between all the Owners and the Developer followed by registered power of attorney and the OP/Developer purchased 3/8 share from the Owners. Since there was agreement for sale with the Developer, OP was under legal and contractual obligation to execute and register the deed in favour of the Complainant and non-execution of the deed was the deficiency in service. The Learned District Forum was not justified in dismissing the complaint.

The appeal is allowed. We set aside the impugned judgement and order. The complaint is allowed. The OP of the complaint is

directed to execute and register the deed of conveyance in respect of the flat in question in favour of the Complainant within 45 days from this date failing which the Complainant will be at liberty to get the deed executed and registered through the machinery of the Learned District Forum. The OP of the petition of complaint is also directed to pay compensation of Rs 40,000/- and litigation cost of Rs 10,000/- to the Complainant within 45 days from the date of this order failing which interest @ 9% per annum shall accrue from the date of default till realization".

6. We have heard the learned counsel for both the parties and given careful consideration to the material on record. During arguments it was submitted by the petitioner that the order of the State Commission of payment of compensation of Rs 40,000/- and litigation cost of Rs 10,000/- had not been complied with even though the sale deed had been executed.

7. It is evident from the record and arguments that there was a Development Agreement between the petitioner and the respondent with regard to the property in question. It is apparent that the respondent had purchased a flat in the said property from the petitioner. It is also not disputed that of the 8 owners of the property, 3 owners had sold their share to the petitioner and 5 had executed a deed in his favour. It was admitted by the petitioner that he had not executed the sale deed in the name of the respondent since the respondent had made extensive alterations/renovations to the flat purchased and that there were objections from the other co- owners. As admitted by the parties, this has now been done.

8. In view of the fact that the only surviving issue in this matter is that of payment of compensation of Rs.40,000/- and litigation cost of Rs.10,000/- awarded by the State Commission, in view of the admitted fact that the sale deed has been executed by the petitioner herein in the name of the respondent, it would be appropriate if the costs awarded by the State Commission are complied with.

9. This revision petition is, therefore, partly allowed and

disposed of with the directions that compensation of Rs.40,000/- awarded along with litigation cost of Rs.10,000/- to be paid by the petitioner/ opposite party to the respondent/ complainant within a period of eight weeks failing which the same shall be liable to be paid with 9% interest thereon till realisation.