

M/S. ANSAL HOUSING & CONSTRUCTION LTD. V. SHARDA RANI ARORA & ANR.

1. M/S. ANSAL HOUSING & CONSTRUCTION LTD.
15, UGF, Indrapraksh, 21, Barakhamba Road
New Delhi – 110001
Delhi

.....Petitioner(s)

Versus

1. SHARDA RANI ARORA & ANR.
R/O-11/4, GROUND FLOOR, NORTH PHASE
INDRA VIKAS COLONY
DR. MUKHERJEE NAGAR, DELHI-9
2. SH. VIKAS ARORA
R/O-11/4, GROUND FLOOR, NORTH PHASE
INDRA VIKAS COLONY
DR. MUKHERJEE NAGAR, DELHI-9

.....Respondent(s)

Case No: REVISION PETITION NO. 302 OF 2011

Date of Judgement: 12 Jan 2023

Judges:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA, MEMBER

For the Petitioner : Mr. Kapil Kher, Advocate
For the Respondent : Mr. Keshav Ahuja, Advocate
having Authority Letter from
Mr. Jinendra Jain, Advocate

Facts:

Respondents were allotted a 150 sq yd unit (CG-211) in petitioner's 'Tronica City' project in Ghaziabad for Rs. 5,06,415. By 2001, respondents had paid Rs. 2,91,283 towards sale consideration. No further payments made despite several demand notices by petitioner. Petitioner cancelled the allotment on 25.3.2006 due to default in payments. 20% earnest money deducted and balance refunded via cheque of Rs. 1,90,000 on 30.3.2006. Respondents filed a consumer complaint seeking recall of cancellation and restoration of allotment with compensation. District Forum ordered refund of paid amount minus refund already made, along with compensation of Rs 1 lakh for mental harassment and Rs 10,000 for litigation costs.

Court's Opinions:

District Forum order complied with fully by petitioner. Respondents were only "prospective allottees" until full payment made as per terms. Cancellation was after several notices and waiting 3 years. Petitioner acted with restraint. State Commission correctly held third party (allottee to whom unit sold) not made party so no order could be passed against it. Allowing appeal and enhanced compensation by State Commission when refund paid and allotment cancelled, not justified.

Arguments:

Petitioner:

Default in payments since 2000-2006 despite several notices. Allotment cancelled after due notices and time. District Forum order complied fully. Appeal before State Commission misconceived.

Respondents:

Petitioner wrongly sold allotted plot and made unlawful profits. Seeking compensation for the same.

Sections:

Section 21(b) Consumer Protection Act 1986 – Revisional

jurisdiction

Cases Referred/Cited:

Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd – SC 2011 – exercise of revisional jurisdiction in case of material irregularity

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Full Text of Judgment:

1. This Revision Petition under Section 21 (b) of the Consumer Protection Act, 1986 (in short, 'The Act') assails the order dated 25.10.2010 passed by State Consumer Disputes Redressal Commission, Delhi (in short, 'State Commission) in First Appeal No. 811 of 2009 arising out of the order dated 05.10.2009 of the District Consumer Disputes Redressal Forum, New Delhi (in short, 'District Forum) in Consumer Complaint No. 374 of 2006.

2. This order will also dispose of R.P. No. 2498 of 2011 filed against the same order by the respondent. As the facts are the same in both the cases, for the sake of convenience, the facts are taken from the present revision petition.

3. The brief facts of the case are that the respondents / complainants (hereinafter referred to as 'respondents') had been allotted Unit No. CG-211, measuring 150 sq. yds. in petitioner / opposite party's (hereinafter referred to as 'petitioner') project 'Tronica City', Ghaziabad for a sale consideration of Rs.5,06,415/- to be paid as per the construction linked plan vide agreement dated 27.05.1998. By 2001 the respondents had paid Rs.2,91,283/- towards the sale consideration. Thereafter, no payment was done despite issuance of several demand letters which the respondents has denied receiving. The petitioner after several notices cancelled the allotment on 25.03.2006 on grounds of default in payment and after taking earnest money of 20% return of

balance amount by way of cheque. Subsequently, on 30.03.2006, a cheque of Rs.1,90,000/- was sent to the respondents as full and final settlement as per the allotment letter. The respondents approached the District Forum, New Delhi which allowed the complaint and directed refund of the money paid along with interest and compensation for mental agony and harassment and litigation costs since the said plot had already been disposed of by the petitioner to a third party. This order was complied in full by the petitioner. The petitioner thereafter appealed to the State Commission, New Delhi. While noting that the third party to whom the sale had been affected had not been made a party to the proceedings and therefore no adverse order could be passed against it, awarded further compensation of Rs.1,20,000/- with 18% interest as claimed by the respondent. This revision petition impugned the order of the State Commission and prays for setting aside of the same.

4. The respondents filed a consumer complaint before the District Forum, New Delhi alleging deficiency in service and seeking recall of cancellation letter and restoration of allotment with compensation. On contest, wherein the petitioner contended that the said plot had since been sold and was not available, the District Forum ordered on 05.10.2009 as under:

1. OP will refund Rs.2,91,283/- minus Rs.1,90,000/- (if already paid) to the complainants.
2. On account of mental agony and harassment. OP will pay Rs.1,00,000/- (keeping in mind the interest for the 6 years) to the complainants as compensation.
3. OP will pay Rs.10,000/- to the complainants towards the cost of litigation. This order be complied within 30 days.

5. The respondents approached the State Commission, Delhi in appeal with the same prayer and sought compensation of Rs.1,20,000/- along with interest @ 18%. Both parties argued on similar lines as before the District Forum. The petitioner

submitted on affidavit that the Unit in question had been sold on 10.04.2006 to M/s M.G. Chamoli Pvt. Ltd. and that the cancellation would not be restored. The State Commission held that since it is not possible to dispossess M/s M.G. Chamoli Pvt. Ltd. as it is not a party to the proceedings and no order can be passed affecting its interest unless it is a party, the relief sought by the respondents that directions be issued to cancel the allotment, could not be considered. However, the State Commission allowed the appeal to the extent that:

“the OP Respondent will pay compensation of Rs.1,20,000/- as claimed by the complainant plus 18% interest from the date of filing of the complaint till the date of payment, as claimed by the appellant”.

6. This order is impugned by way of this revision petition by the petitioner who has stated that the order of District Forum has been complied with and that the sum of Rs.4,01,283/- comprising refund and compensation has already been paid to the respondents.

7. We have heard the learned counsels for both the parties and carefully considered the material on record.

8. The petitioner has argued that the allotment was cancelled on account of default in payment since no payments had been made by the respondents between 2000 to 2006 and that despite call notices dated 14.06.2000, 02.02.2001, 27.03.2001, 30.04.2001, 18.07.2001, 07.09.2001, 21.11.2001, 02.03.2003, 02.02.2006, no response had been received. It is argued that in view of the District Forum's order having been complied in full, the appeal before the State Commission was misconceived and the order of the State Commission was erroneous. On their part, the respondents submitted that the petitioner had wrongly sold the plot allotted to them and made unlawful profits through this sale. They, therefore, sought to be compensated for the same and therefore, justified the appeal before the State Commission which had been allowed.

9. From the foregoing, it is evident that the respondents were only “prospective allottees” of the said Unit until the full

sale consideration, as per the terms and conditions of the allotment, were complied with. The cancellation of the allotment was after several notices to the respondents as is apparent from the record and after having waited for nearly three years. The petitioner has acted with due restraint and after affording several opportunities to the respondents. It has also complied with the order of the District Forum in toto. Although the revisional jurisdiction of this Commission is limited in view of the Hon'ble Supreme Court in the case of Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., (2011) 11 SCC 269, revisional jurisdiction can be exercised in case of any material irregularity.

10. The finding of State Commission that M/s M.G. Chamoli Pvt. Ltd. have not been made a party to the proceedings and, therefore, no order can be passed against them, is significant. However, allowing the appeal and awarding enhanced compensation when the allotment stood cancelled and the refund and compensation had been paid in full by the petitioner is, however, not justifiable. For the reasons stated above, the revision petition is allowed. The order of the State Commission in First Appeal No. 811 of 2009 dated 25.10.2010 is set aside with no orders as to costs.

11. This order also disposes off revision petition no. 2498 of 2011 in the above terms.