

M/S. RELIABLE CONSTRUCTION & CO. v. BEGUM SAKINA KHATOON & ORS.

M/S. RELIABLE CONSTRUCTION & CO.

...Appellant

BEGUM SAKINA KHATOON & ORS.

...Respondent

Case No: REVISION PETITION NO. 628 OF 2020

Date of Judgement: 07 December 2023

Judges:

BINOY KUMAR

PRESIDING MEMBER

For Appellant: MR. KANAK BOSE, ADVOCATE

For Respondent: MR. KAWAL SINGH BHATIA, ADVOCATE

Facts:

Complainant entered into agreement with Petitioner builder in 2009 to purchase a 900 sqft flat for Rs. 12.5 lakhs. As per agreement, flat was to be delivered within 36 months. In December 2016, Complainant requested possession but Petitioner refused and asked for refund. Complainant alleges Petitioner sold her flat to third party at higher rate. Complainant filed complaint before District Forum seeking possession. District Forum partly allowed complaint and directed refund of Rs. 10 lakhs by builder. Complainant appealed to State Commission seeking possession.

Arguments by Parties Petitioner:

There were two agreements – one in 2005 which was cancelled and second

in 2009. Petitioner ready to comply with District Forum order and refund amount as flat sold to third party. Complainant is an investor, not a consumer.

Complainant:

Petitioner has not provided evidence of flat being sold to third party. 2009 agreement not cancelled. Sale to third party bogus, flat still available. Complainant wants possession.

Court's Elaborate Opinions:

Petitioner has not raised any new question of law or fact to warrant interference with lower forums orders. 2009 agreement between parties not cancelled. Builder shows deficiency by claiming flat sold during litigation. Complainant rightly seeking possession based on agreement. Lower forum orders allowing complaint are concurrent findings on same set of facts. As per SC decisions, revisional jurisdiction to be used only in case of patent illegality in orders.

Referred Laws and Sections:

Section 21(1)(b) of Consumer Protection Act : Power of revision of National Commission. Principles laid down in various SC decisions on scope of revisional jurisdiction.

Order:

Revision petition dismissed. State Commission order upheld with modification that builder will pay additional litigation cost of Rs 1 lakh to complainant.

Case Laws Referred:

No case laws were referred in the order.

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Court

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Full Text of Judgment:

1. Aggrieved by the Order passed by the State Consumer Disputes Redressal Commission, West Bengal (for short, the State Commission), the Opposite Party – M/s Reliable Construction & Co. / Petitioner/ Builder filed Revision Petition No. 628 of 2020 under Section 21(1)(b) of the Consumer Protection Act, 1986 (for short, the Act) against Begum Sakina and Ors./ Respondent / Complainant & Ors. The Complainant had filed a Complaint before the District Consumer Disputes Redressal Forum, Kolkata, Unit -II (for short, the District Forum) being Consumer Complaint No. 590 of 2016 before the District Forum which was partly allowed. The relevant portion of the Order dated 02.08.2017 is reproduced as under:- That the instant case be and the same is allowed on contest in part against OP-11 and dismissed against OPs 1 to 10. OP-11 is directed to refund an amount of Rs. 10 lakhs with interest @ 9% p.a. w.e.f. 06-04-2005 till compliance to the complainant within one month from the date of this order, apart from litigation cost Rs. 10,000/-

Failure to comply with the order will attract the provision of Execution as per C.P. Act at the instance of the complainant. The instant case is thus disposed of.

2. Aggrieved by the Order dated 02.08.2017 of the District Forum, the Complainant filed an Appeal before the State Commission, which, vide its Order dated 15.01.2020 allowed the Appeal *ex parte* against the Petitioner and modified the Order of the District Forum as under: "Thus we modify the order of the Ld. District Forum, Kolkata Unit-II to the following extent: The Appeal is allowed *ex parte* against all the Respondents/OPs. OP No. 11 is directed to hand over the flat as per schedule of the Agreement for Sale dated 11-02-2009 to the Complainant within 60 days from the date of this order. O.P./Respondent No. 11 is directed to execute and register the deed of conveyance of the flat in question in favour of the Complainant within 60 days from the date of this order and OPs/Respondents Nos. 1 to 10 shall also execute and register the deed of conveyance as confirming parties. The cost of registration will be borne by the Complainant."

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 find it unnecessary to reiterate the same in detail.

4. The brief facts of the case are that the Complainant entered into an Agreement of Sale(hereinafter referred to as 'the Agreement') with the Petitioner/ Developer on 11.02.2009 for purchase of a flat (hereinafter referred to as the 'Unit') measuring 900sq.ft. at premises no. 32, Abdul Halim Lane Taltala, Kolkata – 700016. The Complainant stated that the total consideration of the flat was Rs. 12,50,000 /- which she had paid. As per the Agreement, the Unit was to be delivered to the Complainant within 36 months from the date of the Agreement. The Complainant stated that on 15.12.2016, she met with the proprietor of the Petitioner and asked him to give possession of the Unit to her but he rejected her request and asked her to get refund of the deposited amount. The Complainant averred that the Petitioner was trying to sell the Unit of the Complainant to a third Party at much higher rate and that it has used her fund for its own purpose. Aggrieved by this, the Complainant filed a Complaint in the District Forum.

5. I have heard the learned Counsel for the parties and perused the record.

6. The learned Counsel for the Petitioner argued that that there are two Agreements for the purchase of the Unit. The first Agreement was executed on 06.04.2005. The Second Agreement was executed on 11.02.2009 after the Agreement dated 06.04.2005 was cancelled. He argued that the Petitioner is ready to comply with the refund Order of the District Forum as the Unit has already been sold to a third Party. He argued that the Complainant is not a Consumer but an investor.

7. The Learned Counsel of the Complainant/ Respondent argued that the Petitioner has not filed any documentary evidence before the District Forum and State Commission that the Unit has been sold. Further, the Agreement of 2009 has not been cancelled. The Sale Agreement with the third Party is bogus and fictitious. The Unit is still available. The Complainant wants possession.

8. After going through the Order of the State Commission and District Forum and the grounds raised in the present Petition, I am of the opinion that the Petitioner has reiterated its contentions which it had already raised before the State Commission and District Forum and no new question of law or facts have been raised here to warrant interference to the well-reasoned Orders of the State Commission and District Forum. Both have found deficiency of service on the part of the Builder. The Agreement of 2009 entered into between both the Parties has not been cancelled. The amount of Rs.12,50,000/- still lies with the Builder. This was the consideration to be paid by the Buyer for the Unit, which was paid. In the mean time, the Builder says that it has sold the Unit to a third party during the course of litigation. This is another major deficiency of service. The Complainant is seeking possession and has shown that the sale deed to a third party is bogus.

9. Both the Orders of the State Commission and District Forum are concurrent on allowing the Complaint. It is a well-established principle that this Commission has limited jurisdiction to interfere in the concurrent findings of the District Forum and State Commission except for any patent illegality, material irregularity or jurisdictional error. I do not see any such infirmity in the Orders of the two Commissions. 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 [Goldrush 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 On Line 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 NCDRC does 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 exercised 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 be invoked. 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 only if 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 acted 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 , where in 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 the State 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 for the 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 there requisite in-depth appraisal of the case that was required.”

10. In view of the aforesaid discussion, the Revision Petition is dismissed. The Order of the State Commission is partly upheld with modification that Petitioner shall also give Rs.1,00,000 /- to the Respondent/ Complainant as litigation cost apart from the other relief already granted by the State Commission and District Forum.