

M/S. SINGLA BUILDERS AND PROMOTERS LIMITED V. PAWAN KUMAR

1. M/S. SINGLA BUILDERS AND PROMOTERS LIMITED
THROUGH ITS DIRECTOR, SCO NO 146-147-148, SECTOR 43 B,
CHANDIGARH

.....Appellant(s)

Versus

1. PAWAN KUMAR
S/O. SHRI HANS RAJ, H NO 1219, SECOND FLOOR,
SECTOR 43 CHANDIGARH

.....Respondent(s)

Case No: FIRST APPEAL NO. 1930 OF 2018

Date of Judgement: 03 Jan 2023

Judges:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER

For the Appellant : Mr.Chetan Sharma, Advocate

For the Respondent : Mr.Anjum Kumar, Advocate

Facts

This is an appeal filed by M/s Singla Builders and Promoters Limited (Appellant) against the order dated 20.02.2018 passed by the State Consumer Disputes Redressal Commission, Punjab (State Commission) in Complaint No. 155 of 2017. The respondent, Mr. Pawan Kumar, had filed a complaint before the State Commission seeking refund of Rs. 22,98,100 paid by him to the appellant towards purchase of Flat No. 172/2 in the

appellant's project 'SBP Homes' along with interest and compensation due to delay in handing over possession. As per the Agreement to Sell dated 02.06.2011 between the parties, the appellant was required to handover possession of the flat by 31.03.2013. However, even as on the date of filing the complaint on 17.03.2017, possession was not handed over. In the complaint, the respondent had specifically sought refund of the paid amount along with interest and compensation. There was no prayer seeking possession. The State Commission, however, directed the appellant to handover possession to the respondent after the respondent deposits the balance amount, while also granting other reliefs regarding delay damages.

Appellant's Arguments

The appellant has challenged the State Commission's order only on the ground that the relief of possession granted was not at all prayed for by the respondent. It is submitted that the respondent had specifically sought only refund in the complaint as well as in the affidavit filed before the State Commission. The appellant has already deposited the principal amount before this Commission pursuant to stay order dated 01.11.2018. The appellant is ready to refund the entire amount along with interest @9% p.a. from due date of possession. The impugned order granting possession relief suffers from perversity and illegality warranting it to be set aside.

Respondent's Arguments

Though refund was sought in the complaint and affidavit, at the time of final arguments the willingness to take possession was expressed by the respondent. The impugned order granting possession was therefore as per such oral submissions made during arguments. The appellant in its written version had also not sought refund and rather made an offer of possession.

Court's Observations and Decision

1. Prayer clause in the complaint only seeks refund and no prayer for possession:

From the prayer clause in the complaint dated 17.03.2017, it is apparent respondent had approached the State Commission only for seeking refund of the deposited amount along with interest and compensation. There was no alternate prayer seeking possession in case refund is not granted.

2. No offer of possession by Appellant in written version:

The written version filed by the appellant before State Commission also does not contain any offer to handover possession to the respondent.

3. Affidavit by Respondent again seeking only refund:

The affidavit filed by the respondent with the complaint again reiterates seeking of refund of deposited amount only.

4. No application/affidavit by Respondent seeking possession:

There appears no written application or affidavit by which the respondent had changed his stand to seek possession instead of refund. Merely oral submissions without support of any instructions in black and white cannot form the basis for granting possession.

5. Impugned order suffers from infirmity and perversity:

In view of the above inconsistencies, the impugned order directing possession without any written proof of changed intention by respondent suffers from infirmity and perversity warranting interference.

Order

The impugned order is hereby set aside.

The appellant is directed to refund the entire deposited amount of Rs. 22,98,100 along with interest @9% p.a. from the due date of possession i.e. 31.03.2013 till date of payment.

Sections/Legal Provisions

The complaint was filed under provisions of the Consumer Protection Act, 1986 seeking relief on grounds of deficiency in service. The present appeal has been filed under Section 19 of the Consumer Protection Act read with National Consumer Disputes Redressal Commission Rules.

Cases Referred/Cited

No cases have been referred or cited in the order.

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Court

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Full Text of Judgment:

1.The present Appeal has been filed against the order of the State Commission dated 20.02.2018 in Complaint No. 155 of 2017 of State Commission Punjab, Chandigarh, whereby State Commission had directed the Appellant to hand over the possession of the subject property after the respondent / complainant depositing the balance payable amount along with other directions regarding delay in delivery of the possession.

2. The impugned order has been challenged by the Appellant solely on the ground that relief granted by the State Commission was not asked for by the respondent since in the complaint, complainant has asked for refund of the deposited money on account of delay in handing over of the possession and even in his affidavit, he had prayed for the refund of the deposited money along with interest. It is submitted that Appellant had already deposited the principal amount with the State Commission on 18.12.2018 pursuant to the order of this Commission dated 01.11.2018, whereby operation of the impugned order had been stayed. It is submitted that Appellant is ready to refund the entire amount along with interest @ 9% p.a. from the due date of delivery of possession till payment. It is submitted that impugned order suffers with perversity and illegality and, therefore liable to be set aside.

3. Counsel appearing on behalf of the complainant submits that

al-though in the complaint, complainant had asked for refund of its entire amount due to delay in delivery of possession and also in the affidavit he had asked for the refund yet at the time of final arguments, it had shown his inclination to take the possession of the subject flat and based on that, the impugned order had been passed. It is further submitted that Appellant in its written version had challenged the refund of the money deposited and had made offer of possession.

4. I have heard the arguments of the learned counsel for the parties and have gone through the record and also gone through the contents of the written version filed by the Appellant before the State Commission.

5. From the perusal of the contents of the written version, it is apparent that there is no offer of possession made on behalf of the Appellant. I have also gone through the prayer clause of the complainant, which is reproduced as under:

"It is, therefore, respectfully prayed that the complaint of the complainant may kindly be allowed and the opposite party be directed to refund the paid amount paid to the opposite party i.e. Rs.22,98,100/- (twenty two lacs ninety eight and one hundred only) and monthly assured return as opposite party failed to make the possession w.e.f. 01.04.2013 @ Rs.3/- per square feet which is Rs.2,60,640- till March 2017 along with interest @ 18% PA and other compensation claimed in the present complaint AND

Any other orders or directions to which this Hon'ble Commission may deem fit and proper may also be passed in favour of complainant, in the interest of justice."

6. From perusal of this prayer clause of the complainant, it is apparent that complainant has filed the complaint for refund of its deposited money on account of delay in handing over of the flat no. 172/2 called SBP Homes having area of 1810 sq. ft for which an agreement to sell dated 02.06.2011 was executed between the parties. It is also apparent that

till the date of filing of complaint 17.03.2017 and filing of the written version, there was no offer of possession and no completion certificate had been filed on behalf of the Appellant. In the affidavit filed by the complainant, he has again asked for the refund of its deposited money which is Rs.22,98,100/-. My attention is not drawn to any written application or affidavit of the complainant filed before the State Commission whereby the complainant had asked for possession of the house. In view of this, the order of the State Commission suffers with illegality and infirmity because it is based only on oral arguments of the learned counsels of the parties and oral submissions are not supported by any affidavit or any instructions from the complainant. The impugned order does not state that counsel for the complainant had made the said statement regarding possession on the instructions of the complainant that the complainant was ready to take the possession. At this stage, while I am dictating the order, counsel for the complainant agrees that there has no written request made by the complainant before the State Commission to show his intention to take the possession of the subject flat. It is also submitted by learned counsel that he has now learnt that subject flat has been sold and in this situation, it is prayed that impugned order be appropriately modified. It is also submitted that he has talked to the complainant on telephone and his client has given his consent that he is ready to take the refund along with interest @ 9% w.e.f. the due date of delivery till payment is made. In view of this submission of the learned counsel and in view of the above discussion, the impugned order is set aside.

7. The Appellant is directed to refund the entire amount of Rs.22,98,100/- to the respondent / complainant along with interest @ 9% p.a. from the due date of delivery i.e. 31.03.2013 till the date of payment.

8. With these directions, the present Appeal stands disposed of.