

MANAS KUMAR MAITY v. KALIPADA DAS & 3 ORS.

MANAS KUMAR MAITY

...Appellant

KALIPADA DAS & 3 ORS.

...Respondent

Case No: REVISION PETITION NO. 375 OF 2015

Date of Judgement: 24.08.2022

Judges:

DR. INDER JIT SINGH

PRESIDING MEMBER

For Appellant: MR. N.S. BISHT WITH
MR. NISHANT SINGH, ADVOCATES

For Respondent: MR. SANJOY KUMAR GHOSH WITH
MS. RUPALI GHOSH, ADVOCATES

Facts:

Petitioner Manas Kumar Maity entered into an agreement for purchase of a 650 sq.ft. self-contained flat on the 2nd floor for Rs. 9.55 lakhs from developer (Respondent 4) and land owners (Respondents 1-3).

Petitioner paid Rs. 9.12 lakhs to developer as per agreement along with Rs. 90,000 for extra work. Developer failed to deliver possession of the flat to petitioner and also did not execute sale deed despite repeated requests. Developer demanded balance payment for registration but did not register sale deed even after receiving the money. Petitioner received a letter from developer stating that Respondents 1-3 have forcibly occupied the flat, so developer expressed inability to give possession and offered another flat. Petitioner alleges the construction is unauthorized. Petitioner obtained a loan from Andhra Bank against the flat by depositing the registered agreement for sale.

Hence he filed a consumer complaint seeking possession, sale deed registration and compensation.

Court's Elaborate Opinions:

The District Forum allowed the complaint directing Respondents 1-4 to give possession within 15 days, execute sale deed within a month, and pay compensation of Rs. 10,000 to Petitioner for harassment. Respondents 1-3 appealed against District Forum order in State Commission. State Commission held that as per supplementary agreement between owners and developer, the flat was allotted to owners. So complainant is not entitled to get this flat. However, State Commission held there was deficiency in service by developer in entering sale agreement with Petitioner for a flat already allotted to owners. Directed developer to refund Rs. 9.12 lakhs paid by Petitioner along with compensation of Rs. 9 lakhs and litigation cost of Rs. 50,000. Set aside District Forum order. In Revision Petition, it is held that unregistered supplementary agreement cannot override registered sale agreement which binds Respondents 1-4. All Respondents are liable to fulfill obligations under registered agreement. State Commission order set aside. District Forum order upheld directing Respondents 1-4 jointly and severally to handover possession as per registered agreement within 3 months.

Arguments by Parties:

Petitioner's Arguments:

State Commission order is improper, without application of mind. Developer did not appeal District Forum order. Owners cannot obstruct possession due to their dispute with developer. Owners and developer trying to deprive complainant by collusion. Complainant paid substantial amount but possession not given. Owners have not substantiated their claim of possession. Appeal filed malafidely along with developer to deny complainant's claim.

Respondents 1-3 Arguments:

Revision petition on factual aspects not maintainable. No jurisdictional error in State Commission order. State Commission has given substantial justice by relief granted to Petitioner. So Revision Petition liable to be dismissed.

Sections:

Revision Petition under Section 21(a) of Consumer Protection Act 1986. Appeal in State Commission under Section 15 of Consumer Protection Act 1986. Complaint in District Forum under Section 12 of Consumer Protection Act 1986.

Cases Referred:

State Commission placed reliance on Supreme Court decision in Sanjay Goyal vs. Unitech Ltd. & Ors to hold that alternate accommodation cannot be provided without consent of buyer.

Referred Laws:

Key provisions of Consumer Protection Act 1986 relied upon regarding filing of Consumer Complaint, Appeal and Revision Petition.

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Court

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Full Text of Judgment:

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 21 (a) of Consumer Protection Act 1986, against the order dated 12.11.2014 of the State Consumer Disputes Redressal Commission, West Bengal (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 25/2013 in which order dated 08.11.2012 of District Consumer Disputes Redressal Forum, Alipore (hereinafter referred to as 'District Forum') in Consumer Complaint (CC) No, 222 of 2011 was challenged, inter alia praying for setting aside the order dated 12.11.2014 passed by the State Commission in FA/25/2013 and affirming the order dated 08.11.2012 passed by the District Forum in CC/222/2011.

2. While the Revision Petitioner (hereinafter also referred to as Complainant) was Respondent No.1 and the Respondents-1, 2 & 3 (hereinafter also referred to as OPs-2 to 4) were Appellants and Respondent No. 4 (hereinafter referred to as OP-1) was Respondent No.2 in the said FA/25/2013 before the State Commission, the Revision Petitioner was Complainant and Respondents were OPs before the

District Forum in the CC No. 222/2011. Notice was issued to the Respondents on 31.08.2015. Parties filed Written Arguments/Synopsis on 26.05.2023 (Petitioner) and 09.05.2023 (Respondents No.1 to 3) respectively.

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:

(i) The OP-1 is the developer and the OPs 2 to 4 are the land owners. There was a development agreement between the land owners and the developer followed by Power of Attorney. The complainant entered into an agreement for sale for the purchase of a self-contained flat on the second floor in the North Eastern side measuring an area of 650 sq.ft. approx. for a consideration of Rs.9,55,000/-. The complainant paid an amount of Rs.9,12,500/- and further sum of Rs.90,000/- only towards extra work. The OP-1 failed and neglected to deliver possession of the flat to the complainant. The complainant insisted on the OP-1 for delivery of possession. On 11.11.2010, OP-1 demanded the balance amount of consideration which was to be paid at the time of registration of the flat. The complainant agreed to pay the balance amount subject to delivery of possession of flat as well as registration of the deed of conveyance. OP-1 took Rs.32,000/- as cost of preparation of deed of conveyance and further Rs.26,320/- by A/c payee cheque dated 13.06.2011, but failed to register the deed of conveyance.

(ii) The complainant received a letter dated 06.08.2011 stating that the flat in question has been forcibly occupied by OPs 2 to 4 and expressed inability to deliver the possession of the flat and agreed to deliver possession of some other flat. The said flat is an unauthorized construction and not as per sanctioned plan. The complainant obtained loan from Andhra Bank, Haldia against deposit of registered Sales Agreement. Hence, the complainant filed the complaint before the District Forum.

4. Vide Order dated 08.11.2012, in the CC No. 222 of 2011 the District Forum has allowed the complaint and passed the following order:

“That the petition of complainant is allowed on contest against OPs

with a cost of Rs.5000/-. The OPs are directed to give possession of the flat in question to the complainant within 15 days from the date of communication of this order and execute and register the deed of conveyance within 15 days after delivering of possession i.e.within one month from this date, after receipt of the balance consideration money.

The OPs are also directed to pay a compensation of Rs10,000/- to the complainant for harassment and mental agony within one month from this day tailing which, the amount of s.15000/- shall carry on interest of 9% p.a till realization. The complainant is directed to pay the balance consideration money to the O.P-1 after taking delivery of possession and before the execution of the deed of conveyance.”

5. Aggrieved by the said Order dated 08.11.2012 of District Forum, Respondents-1 to 3 appealed in State Commission and the State Commission vide order dated 12.11.2014 in FANo. 25/2013 allowed the Appeal in part and passed the following order:

“The OP No.1 of the Complaint/Respondent No.2 herein is directed to refund the sum of Rs.9,12,000/- (Rupees nine lakh twelve thousand), to pay compensation of Rs. 9 lakh (Rupees nine lakh) and litigation cost of Rs.50,000/- (Rupees fifty thousand) to Complainant/Respondent within 45 days from this date failing which an interest @9% p.a. shall accrue on the entire amount from the date of default till realisation. The OP No.1 of the complaint/Respondent No.2 herein is further directed to deposit Rs.1,00,000/- (one lakh) with the SCWF, W.B. The other directions of the Learned District Forum are set aside. The impugned judgement is set aside and modified accordingly.”

6. Petitioner has challenged the said Order dated 12.11.2014 of the State Commission mainly on following grounds:

(i) The impugned order passed by the State Commission is not proper and not according to law. The State Commission passed the order without applying judicial mind. The State Commission erred in not considering that OP-1/developer did not file any appeal against the order by the District Forum. The State Commission erred in not considering that the owners cannot stand on the way of getting possession of the flat as per agreement for the dispute between the

owners and the developer.

(ii) The State Commission erred in not considering that owners cannot deny their obligation and responsibility regarding delivery of the possession of the flat as per agreement for sale and execution and registration of the said flat by the Developer and also by them in pursuance of the Development Agreement and the Power of Attorney executed by them in favour of OP-1/Developer. The State Commission erred in not considering that the owners and the developer in collusion with each other have been trying to deprive the complainant from getting the possession.

(iii) The State Commission erred in not considering that the complainant has been deprived from taking the possession in spite of making payment of Rs.9,12,500/- towards consideration and Rs.32,000/- as cost of preparation of the deed of conveyance and Rs.26,320/- towards other charges and Rs.90,000/- for extra work. The State Commission erred in not considering that the owners could not file any document to substantiate their claim regarding their possession and have filed the Appeal malafidely and with intention to make wrongful gain along with the developer by denying the genuine claim of the complainant.

7. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

7.1 Petitioner in addition to repeating what has been stated in para 6 under the grounds, has contended that the State Commission while passing the impugned judgment has mentioned in the memo of parties that the order passed by the District Forum has been challenged by the land owners in the present case and the same is contrary to the appeal annexed in the present case. The OP-4 produced a photocopy of the supplementary agreement, however, in the supplementary agreement no date is mentioned/written by the executor of the said agreement, in the absence of a date in the agreement, the State Commission has wrongly come to the conclusion that the supplementary agreement was executed on 16.06.2009. The State Commission has failed to appreciate the facts that the OP did not file a supplementary agreement before the District Forum and only photocopy has been presented in the State

Commission and contents of the said agreement are contrary to the case as stated in the supplementary agreement, it speaks about the agreement dated 10.02.2006, however no Agreement has been executed in the present case on 10.02.2006. It is also contended that the OP-2 to 4/Respondents -1 to 3 herein did not submit any Agreement dated 18.06.2009 before the District Forum at the time of filing their written statement and also failed to get the same registered from the Registrar/Sub-Registrar concerned. The Petitioner has obtained a loan from Andhra Bank, Haldia Branch, Kolkata on the basis of a registered Agreement to Sell executed by the Builder infavour of Petitioner/complainant. The Respondents 1 to 3 had executed Power of Attorney in favour of the OP-1/Builder and said Power of Attorney dated 12.02.2006 and 25.11.2009 had also been registered before the Sub-Registrar concerned. The District Forum rightly refused to rely upon the Agreement dated 18.06.2009.

7.2 On the other hand it is contended by Respondents -1 to 3 that this Commission has no jurisdiction to decide any factual aspect of the case because of the fact that ascan be adjudicated in revision which has been well established in Ruby Chandra(Dutta) Vs. United India Assurance Co. Ltd. passed by the Apex Court of India. Thereis no jurisdictional error in the order impugned order passed by the State Commission rather substantial justice has been given by the State Commission to the Petitioner forrelief and therefore the Revision is not maintainable and liable to be dismissed with cost.

8. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. Relevant extracts of the order ofthe State Commission are reproduced below:-

"We have heard the submission made by both sides and carefully examined the papers on record. As per development agreement the construction was to be completed within 18 months and 30% of the construction would be to the owners' allocation and 70% to the developer's allocation. As per clause 27 there was provision for further extension of 6 months' time for completion of the constructionwork and thereafter the developer shall have to pay compensation to the owners@Rs.20,000/- p.m. Subsequently, on 18/06/09

there was supplementary agreement between the land owners and the developer wherein it has clearly been mentioned that the flat in the second floor on the North Eastern side having a super built-up area of 650 sq.ft. would be allotted to the owners out of owners' allocation. Now it is the contention of the Complainant that he entered into an agreement dated 22/09/10 with the developer for purchase of the self same flat on the second floor in the North Eastern side measuring 650 sq.ft. It is the specific contention of the Appellants/Land Owners that they are already in possession of the flat in question in view of the supplementary agreement dated 18/06/09. The Learned District Forum also held that the OP Nos. 2 to 4 have taken possession of the same flat and the OP No.1 offered the Complainant an alternative flat, but the Complainant did not agree. In this connection we place reliance on the decision of the Hon'ble National Commission in the case of Sanjay Goyal vs. Unitech Ltd. & Ors. (supra) wherein it has clearly been held that change of flat without consent of Complainant is indicative of arbitrariness. It has clearly been averred in the petition of complaint that the Complainant has taken Bank loan on production of the agreement for sale and if the Complainant agreed for a changed flat it would create legal complication. The Complainant, under the circumstances, is at liberty to refuse or to accept the alternative flat. But it shows serious deficiency in service on the part of the developer. It further appears that in spite of entering into the supplementary agreement with the owners on 18/06/09, the developer entered into an agreement, subsequently, on 22/09/10 for the sale of the self-same flat out of owners' allocation. The Learned District Forum was justified in holding that unfair trade practice cannot continue. Under the circumstances, we are of the view that the Complainant is not entitled to get the flat in question, but he is to get adequate compensation for the harassment suffered by him due to the serious deficiency and unfair trade practice on the part of the developer. As regards the payment made by the Complainant the Learned District Forum held on perusal of the receipts filed that the Complainant paid Rs.9,12,000/- to the OP No.1. We, therefore, modify the impugned judgment as here under.

The Appeal is allowed in part. The OP No.1 of the Complaint/Respondent

No.2 herein is directed to refund the sum of Rs.9,12,000/- (Rupees nine lakh twelve thousand), to pay compensation of Rs.9 lakh (Rupees nine lakh) and litigation cost of Rs.50,000/- (Rupees fifty thousand) to the Complainant/Respondent within 45 days from this date failing which an interest @9% p.a. shall accrue on the entire amount from the date of default till realization. The OP No.1 of the complaint/Respondent No.2 herein is further directed to deposit Rs 1,00,000/- (one lakh) with the SCWF, W.B. The other directions of the Learned District Forum are set aside. The impugned judgment stands modified accordingly.”

9. In pursuance to order dated 10.08.2023, the respondent has filed affidavit along with copies of relevant documents on 25.08.2023. Respondents No.1 to 3, i.e. land-owners, who were OP-2 to 4 before the District Forum are parties to Agreement to Sale dated 22.09.2010. This agreement, which is a registered document, is signed by Respondent No.4 herein/OP-1 before the District Forum on his behalf as well as power of attorney of Respondents-1 to 3 herein. The existence of power of attorney, which is also a registered document and find mention in the agreement to sale itself, is not denied by Respondents No. 1 to 3. The supplementary agreement between Respondents 1 to 3 on one side and Respondent-4 on the other side is dated June 2009, with no date mentioned therein, is an un-registered document. The respondent claim it to have been signed on 18.06.2009 based on the date of purchase of the stamp paper. Respondents 1 to 3 themselves admit that Respondent No. 4 have done wrong doing and they are equally aggrieved by the wrongful action Respondent No. 4. Videtheir affidavit dated 22.08.2023, filed on 25.08.2023 before this Commission, Respondents 1 to 3 have filed a copy of the supplementary agreement dated June 2009, police complaint dated 02.08.2011 and revocation of power of attorney dated 03.08.2011. A perusal of the deed of revocation of power of attorney dated 03.08.2011, which is a registered document, shows that Respondents -1 & 2 have revoked the earlier power of attorney in favour of Sh.Nirupam Sarkar, the sole proprietor of Respondent No. 4 herein, which was executed on 24.09.2009. The relevant portion of this deed of revocation is reproduced below:-

“BE IT KNOWN TO ALL CONCERNED, WE (1) SRI KALIPADA DAS, son of Late Chittaranjan Das, by occupation-Business, 2) SMT. RAMA MINZ, wife of

Sri Biswanath Minz, by occupation Housewife, both by faith-Hindu, both are residing at 114A, Lake Gardens, Block-III, Flat No. 42, P.S. Jadavpur Kolkata-700 0945 by a Power executed on the day of 24th day of September, 2009 and registered in Book IV, C.D. Volume No. 4, Pages from 3633 to 3640, being No.01663 for the year 2009 registered in the office of A.D.S.R. Alipore appointed SRI NIRUPAMSARKAR, son of Sri Surendra Nath Sarkar, by faith-Hindu, by occupation-Business, residing at 57, Gangapuri Purba Putiary, P.S.Regent Park, Kolkata-700093, our lawful attorney and agent for us, in our names and on our behalf to do, execute and perform all acts, deeds and things, therein recited. And whereas for personal reasons and consideration it has become necessary and/or expedient to revoke the power. Now know we all that by this deed we cancel the said Power of Attorney thereby and absolutely and completely revoke, also all powers or authority thereby and thereunder given to him, either expressly or impliedly, to all intents and purposes provided that nothing herein contained shall render invalid or ineffective any act, deed or thing lawfully and bonafide done or caused to be done by the said Attorney under and by virtue of the Power given to him before the revocation thereof by these presents."

[emphasis supplied]

10. It is clear from the above deed of revocation that nothing contained in this deed has rendered invalid or ineffective any act, deed or thing lawfully and bonafidly done or caused to be done by the said attorney (respondent 4 herein) under and by virtue of the power given to him before the revocation thereof by Respondents 1 and 2 herein. Further, it is to be noted that while original power of attorney dated 24.09.2009 was signed by all the three land-owners, viz Respondents 1 to 3 herein, the revocation deed dated 03.08.2011 is signed by only two land-owners viz Respondents No. 1 & 2 herein. Reasons for 3rd land-owner viz Respondent No. 3 herein not signing the revocation deed dated 03.08.2011 are not known. Supplementary agreement dated June 2009 being an un-registered document and not to the knowledge of the petitioner herein cannot over-ride the registered agreement to sale dated 22.09.2010, which has in addition to binding Respondent No.4 herein, has bound the Respondents- 1 to 3 also through

their power of attorney Respondent No. 4. Hence, all the four Respondents/OPs are liable to fulfill their obligations as per agreement to sale dated 22.09.2010 and deliver the possession of the unit in question in accordance with the terms and conditions of this agreement. Hence, the State Commission went wrong in modifying the order of the District Forum with respect to giving possession of the flat in question to the complainant and ordering refund of Rs.9,12,000/- along with compensation of Rs.9,00,000/-and litigation costs of Rs.50,000/- etc. Therefore, we find a material irregularity in the order of the State Commission and hence the same is set aside. The District Forum has given a well-reasoned order and the same is upheld. Respondent No. 1 to 3 as well as Respondent No. 4 herein are jointly and severally held liable to fulfill their obligations under the registered agreement to sale dated 22.09.2010 and hand over the possession of flat in question to the petitioner herein/complainant. Respondents are granted a maximum of three months' time to implement the order of the District Forum with respect to delivery of possession, execution and registration of deed of conveyance etc. If any amount is payable by the petitioner herein to the respondents in accordance with the said agreement to sale dated 22.09.2010, it shall be paid by the petitioner within one month of receipt of intimation from the respondents. The Respondents/OPs shall convey the amount payable, if any, to the petitioner within two weeks from the date of this order, failing which, it will be presumed that no amount is payable by the petitioner and he will be entitled to possession of the flat in question with valid execution and registration of deed of conveyance, within two months from the date of this order.

11. The Revision Petition is disposed of accordingly. The pending IAs in the case, if any, also stand disposed off.