

UPPAL HOUSING PRIVATE LIMITED V. JASWANT SINGH ARORA & 2 ORS.

Uppal Housing Private Limited Vs. Jaswant Singh Arora & 2 Ors.

1. UPPAL HOUSING PRIVATE LIMITED
THROUGH MR. ABHISHEK SRIVASTAVA, HAVING ITS
REGD. OFFICE AT: FIRST FLOOR, EAST TOWER, NBCC
PLACE, LODHI ROAD, PRAGATI VIHAR,
NEW DELHI-10003

.....Appellant(s)

Versus

1. JASWANT SINGH ARORA & 2 ORS.
S/O. SHRI SUCHET SINGH, PRESIDENT OF HOUSE NO.
440, SECTOR-16,
PANCHKULA
HARYANA

2. RAHUL SINGH ARORA
S/O. SHRI JASWANT SINGH ARORA, RESIDENT OF
HOUSE NO. 440, SECTOR-16, PANCHKULA
HARYANA

3. NUMERO UNO CLOTHING LIMITED,
THROUGH ITS DIRECTORS, HAVING ITS CORPORATE
OFFICE AT: 568/1, PMW, COMPLEX, RAILWAY ROAD,
GURGAON-112001

.....Respondent(s)

Case No. : APPEAL EXECUTION NO. 110 OF 2021

Date of Judgement : 06 December 2023

Judges : JUSTICE RAM SURAT RAM MAURYA

BHARATKUMAR PANDYA, MEMBER

For Appellant : MR. PRABHAKAR TEWARI, ADVOCATE

For Respondent :

Facts:

- *Uppal Housing Pvt Ltd (Appellant) constructed a shopping mall in Chandigarh.*
- *Respondents 1&2 (Complainants) purchased a unit in the mall based on assurances by Appellant and Numero Uno Clothing Ltd (OP3) that OP3 will lease the unit.*
- *After purchase, OP3 backed out of leasing the unit causing loss to Complainants.*
- *Complainants filed consumer complaint against Appellant alleging deficiency in service.*
- *Parties settled the matter through a compromise deed dated 08.12.2009. As per terms, Appellant will pay Rs. 91,000 per month as compensation to Complainants till the unit is leased out, with further conditions on rent sharing.*
- *State Commission disposed of the complaint in terms of settlement.*
- *As Appellant failed to fulfill obligations under settlement, Complainants filed execution petition.*
- *State Commission directed Appellant to comply with execution order, against which this appeal is filed.*

Court's Opinions:

- *Court observed that if Appellant had any grievance against the compromise deed and resultant decree, it should have appropriately challenged it before attainment of finality.*

- *In execution proceedings, Appellant cannot challenge legality of the decree and is bound to satisfy the decree.*
- *Court held the appeal has no merit and is liable to be dismissed.*

Arguments: By Appellant:

- *Terms of settlement deed were one sided and unreasonable.*
- *State Commission ignored this and cannot force Appellant to pay compensation based on unreasonable terms.*

By Complainants:

- *Appellant cannot challenge compromise deed or resultant decree in execution proceedings. It is bound by the decree.*
- *Execution order only directs Appellant to comply with decree, which the appeal seeks to wrongly challenge.*

Sections & Laws:

- *The Consumer Protection Act, 1986*
- *Provisions related to execution of orders and settlement of disputes*



Download Court Copy

: <https://dreamlaw.in/wp-content/uploads/2023/12/task-29-nitishu.pdf>

Full text of Judgement :

1. Heard Mr. Prabhakar Tewari, Advocate, for the appellant and Mr. Raghav Sharma, Advocate for respondents-1 & 2.

2. The judgment debtor has filed above appeal against the order of State Consumer Disputes Redressal Commission, U.T. Chandigarh, dated 16.11.2021, whereby the executing court has directed the appellant (judgment debtor) to comply with the order under execution

within a period of one week, failing which coercive steps shall be taken against it.

3. Appellant- Uppal Housing Private Limited (opposite party-1) is a company incorporated under the Companies Act, 1956, having its registered office at NBCC Place, South Block, 5th Floor, Bhisham Pitamah Marg, Pragati Vihar, New Delhi-110003 and Opposite party-2 is a property dealer, having its office at SCO No.1, 1st Floor, Phase-V, Mohali. Respondents-1 & 2 (complainants) are father and son respectively. Appellant constructed a shopping mall and multiplex, namely, "Uppal's Central Mall" at 177-D, Industrial Area, Phase-1, Chandigarh. The complainants visited the office of opposite party-2 for purchasing a unit in the said mall, who took them to the local office of opposite party-1. Opposite party-1 advised the complainants to purchase unit F-9, measuring 999 sq. ft. for a consideration of Rs.13440/- per sq. ft., as opposite party-3 who runs a business of garments has already signed a letter of intent for lease of the said unit @ Rs.140/- sq. ft. per month, for a period of 9 years and also deposited Rs.559440/- as refundable security. On the misrepresentation and false assurance of opposite party-1, the complainants agreed to purchase the said unit for a consideration of Rs.13426560/-. Allotment letter dated 02.05.2007 was also issued to the complainants. After receiving 95% of the sale consideration,

opposite party-1 issued letter dated 04.05.2007 to the complainants stating that return of 6.5% per annum will be paid after 30 days from the letter at the end of each month till the date of possession. In the allotment letter, it was also indicated that the complainants will be given a notional possession whereas physical possession would be given to the tenant (OP-3) and the rent of Rs.140/- per sq. ft. per month would be payable from the date of the possession. On 05.05.2007, an agreement was executed between the complainants and OP-1. Non-refundable security amount of Rs.559440/- received by OP-1 from OP-3 was not given to the complainants and OP-1, vide letter dated 06.06.2008 demanded balance outstanding payment of Rs.671328/- from the complainants. OP-1 also sent reminder dated 28.06.2008 for payment of Rs.671328/-. OP-1 informed the complainants that first they are required to make balance payment and get the sale deed executed and thereafter they would be paid the security deposit of Rs.559440/-. The sale deed was executed on 07.10.2008. OP-3, vide letter dated 08.11.2008 intimated the complainants that OP-3 is not interested in taking the unit on rent and backing out of the agreement. Complainants sent letter dated 22.11.2008 to OP-1 to make good the loss suffered by them due to misrepresentation. Alleging deficiency in service and unfair trade practice, the complainants filed consumer complaint before the State Commission on 01.07.2009.

4. The parties settled the matter amicably vide settlement deed dated 08.12.2009 in the following terms: –

"1...

2. That during the pendency of the present complaint, it has been agreed that Opposite Party No.1 shall pay a sum of Rs.91000/- per month to the complainants as compensation. That the sum of Rs.91000/- per month w.e.f. 01.12.2009 shall be paid by opposite party No.1 to the complainants till the premises in question i.e. F-09, Central Mall, Industrial Area, Phase-I, Chandigarh is leased out to any tenant by Opposite Party No.1.

3. That if the complainants will get rent less than

Rs.139860/- p.m. then the loss shall be borne by the complainants and the Opposite Party No.1 in the ratio of 50:50.

4. That if the premises is leased out on a rent of Rs.139860/- or more than the complainants shall not claim anything from Opposite Party No.1.

5. That this agreement will continue and shall remain in force for a period of 9 years from the date of renting the premises by Opposite Party No.1.

6. That till the premises is leased out to any tenant the complainants shall not be liable to pay the maintenance charges as the premises is lying vacant.

7. ..."

5. The complainants and opposite party-1 made statement before the State Commission that they had settled the matter vide settlement deed dated 08.12.2009 and the State Commission, vide order dated 08.01.2010 disposed of the complaint in terms of the settlement. As the opposite party-1 failed to fulfil its obligation under the settlement agreement, the complainant filed execution application No.134/2020 and the State Commission, vide order dated 16.11.2021 directed the judgment debtor (appellant herein) to comply with the order under execution within a period of one week, failing which coercive steps shall be taken against them. Aggrieved by the order dated 16.11.2021, the judgment debtor has filed the above appeal execution.

6. Counsel for the appellant submitted that the State Commission while passing the impugned order ignored the fact that the terms of the settlement deed were one side and unreasonable. The State Commission cannot force the appellant to pay compensation in terms of an unreasonable agreement. In the entire appeal, the appellant has challenged the legality of the compromise deed dated 08.12.2009, on the basis of which decree dated 08.01.2010 was passed, which has attained finality. If the appellant had any grievance against the

compromise deed on the basis of which decree was passed, it could have challenged it or cancelled it at an appropriate time. In the execution proceedings or in the appeal execution, the appellant is not permitted to challenge the legality of the decree and the appellant is bound to satisfy the decree. The executing Court has directed the appellant (judgment debtor) to comply with the order under execution. The appeal execution has no merit and is liable to be dismissed.

ORDER

In view of the aforesaid discussion, appeal execution is accordingly dismissed.

-END-