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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Mar-06-2013

Judge : The Honourable Mr. R. Lakshminarasimha Rao, Member & the Honourable Mr. Thota Ashok Kumar, Member

Appeal No. : F.A.Nos. 700 of 2012 Against E.A.No.88 of 2009 In C.C.No.24 of 2007 District Forum-I Hyderabad & F.A.No.128 of 2013 Against E.A.No.88 of 2009 In C.C.No. 24 of 2007

Appellant : Dasari Janardhan and Another

Respondent : M/S Narne Estates Pvt Ltd., Rep. by Its General Manager and Another

Judgement :

Oral Order: (R. Lakshminarasimha Rao, Honble Member)

1. Both appeals are filed against the order of the District Forum in E.A.No. 88 of 2009. Hence, the appeals are being disposed of by common order. For the sake of felicity of expression, the parties are referred to, as they are referred in the complaint.

2. The District Forum allowed the complaint in C.C.No. 24 of 2007 on 12.09.2007 directing the opposite party to restore the allotment of the plot; collect development charges from the complainant with proportionate interest @12 % p.a. thereon for the delayed period from the date of demand till payment and directed the complainant to return the cheque to the opposite party.

3. It appears the opposite party has not preferred appeal against the order of the District Forum. The opposite party has not complied with the order of the District Forum whereon the complainant filed application under Section 27 of the Consumer Protection Act in seeking for punishment of the opposite party which was dismissed by the District Forum by the following order:

Amount not deposited though posted under caption dismissal. The complainant is not willing to deposit the amount though ordered by the Forum. Hence, E.A. is dismissed.

4. The complainant filed appeal in F.A.No.1069 of 2010 which was allowed by this Commission holding that the complainant had complied with the order of the District Forum and the opposite party was required to comply with the order. The order of the District Forum was set aside and the matter was remitted back to the District Forum. On the matter being remitted back to it, the District Forum passed the following order:

In the result, the order of this Forum dt.12.09.2007 has become final. The complainant complied partly, so directed to comply fully by paying the balance of development charges with interest. Further, the opposite party is directed to comply fully(restoration of plot as directed above) within one month, failing which punishable with a fine of Rs.10,000/-(Rupees Ten thousand).

5. Both appeals are directed against the aforementioned order. The complainant contends that as per the order dated 12.09.2007 of the District Forum, he paid the amount and the opposite party failed to restore the allotment of plot and there was no delay in payment of the amount to the opposite party as he paid 38 installments.

6. The opposite party has contended that the District Forum has not considered its contention and passed the order without verifying the facts. It is contended that the opposite party had given consent to register alternate plot subject to payment of balance amount towards development charges. It is contended that the District Forum ought not to have directed the complainant to adhere to the order dated 12.09.2007.

7. The complainant has filed written arguments.

8. The point for consideration is whether the order of the District Forum suffers from mis-appreciation of facts or law?

9. Admittedly, the order dated 12.09.2007 of the District Forum became final. The District Forum held that the complainant deposited Rs.70,776/- on 28.01.2010 towards development charges of Rs.37,500/- and interest accrued on it excluding registration charges and the opposite party can withdraw the amount towards part payment of development charges with effect from 1998 and it held the complainant still to pay balance development charges with interest.

10. The complainant pursuing the matter in person submitted that he had paid the entire amount due and he is not due any further amount. He has submitted that the District Forum erroneously held that he has complied the order partly and that he has to pay balance development charges with interest. He has referred to the Brochure and allotment letter. He has submitted that he paid Rs.37,500/- on 24.06.1999 towards total cost of the plot by availing 40% discount and payment of development charges in the written arguments is referred to as under:

a) July,1999 to August 2003 is the installments period of 50 months for the plot cost @ 1000/- per month.

b) September 2003 to October 2006 is the installments period of 38 months for the development charges @ 1,000/- per month.

11. Thus, he submitted that there was no delay caused in payment of development charges and he need not pay any interest where the development charges are not due. He has stated that he submitted cheque for Rs.83,000/- in compliance of the

order of the District Forum and later deposited an amount of Rs.70,776/-. At page 3 of the order the District Forum has observed that :

On 18.03.2010 the docket order reads as As per the original calculation memo dt.29.10.2007 sent by the complainant to the opposite party, the complainant agreed to pay Rs.37,500/- towards development charges plus interest thereon being Rs.37,500/- towards development charges plus interest thereon being Rs.37,500/- and registration charges of Rs.8,000/- the total being Rs.83,000/-. But he deposited only Rs.70,776/- on 11.12.2009. so he has yet to deposit Rs.4,224/- towards development charges and interest and he has to bear the registration charges at the time of registration. For depositing the said amount time is granted till 31.03.2010.

12. This Commission referred to calculation memo filed by the complainant in the order dated 15.07.2011 as follows:

According to the calculation memo filed by him, the appellant has to pay Rs.37,500/- towards development charges and the equal sum towards interest @ 12% per annum from June 1999 to October 2007 which comes to Rs.75,000/- and the interest @ 12% per annum on Rs.75,000/- for the delayed period i.e., from November 2007 to November 2009 is Rs.18,000/-, a total of Rs.93,000/- and deducting therefrom the amount of Rs.70,776/- deposited by the appellant on 11.12.2009, the balance amount payable by the appellant as on 11.12.2009 would be Rs.22,224/- and a sum of Rs.4,223/- is added as interest on the amount of Rs.22,224/- from December 2009 to June 2011, the total amount to be paid by the appellant as on 30.6.2011 is Rs.26,447/- . .

13. The opposite party has filed application, praying for modification of this Commissions order dated 15.07.2011 in F.A.No. 1069 of 2010 as to grant interest on delayed payment and the application was dismissed.

14. A careful perusal of the amount paid by the complainant and the observation made by this Commission as to calculation memo filed by the complainant and the dismissal of the application, it becomes clear that the complainant has complied with his part of the direction and it is for the opposite party which has to restore the

allotment of plot. This Commission has issued specific direction in FANO.1069 of 2010 that the opposite party should restore the allotment of plot. In fact, the District Forum in its order dated 12.09.2007 made it condition precedent for the opposite party to restore allotment of plot which the opposite party failed to comply with.

15. The opposite party contends that it could not restore allotment of plot since it has sold the plot to third party five years ago. The complainant submits that the opposite party cannot sell the plot during pendency of the complaint before the District Forum and in such case he seeks for refund of the amount paid by him and imposition of penalty to the opposite party to the tune of Rs.10,00,000/- for gross violation of the order of the District Forum and for wasting the time of the District Forum and this Commission by suppressing the fact of sale of the plot to third party.

16. The opposite party has not adduced evidence to show that the plot was sold to third party. The opposite party has not stated the name of the person to whom the plot was sold and on which date as also through which registered sale deed the sale transaction was made in respect of the plot bearing number 21 at Sector V, Block Za, East City, Bibinagar. The scope of execution is limited and the District Forum or this Commission cannot go behind the order.

17. The opposite party has not stated about the alleged sale of the plot during pendency of the appeal, F.A.No.1069 of 2010 or at the time it filed the application seeking for modification of the order passed in the appeal. The opposite party has not established with convincing evidence that it has sold the allotted plot the third party. The opposite party has failed to comply with the order of the District Forum and that of this Commission without any valid reason. The opposite party, in the circumstances is liable to undergo imprisonment for a period of three months or till taking steps for restoration of allotment of plot bearing number 21 in favour of the complainant whichever is earlier. Accordingly, the order of the District Forum is liable to be modified.

18. In the result, the appeal, F.A.No. 700 of 2012 is allowed modifying the order of the District Forum. The opposite party is sentenced to three months imprisonment or till it restores the allotment of plot bearing number 21 Sector V, Block Za, East

City, Bibinagar in favour of the complainant whichever is earlier. Consequently, the appeal, F.ANo.128 of 2012 is dismissed. The costs of the proceedings quantified at Rs.2,000/-. Time for compliance four weeks.

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