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Court : West Bengal State Consumer Disputes Redressal Commission SCDRC
Kolkata

Decided On : Feb-06-2013

Judge : Kalidas Mukherjee, President & the Honourable Mrs. Mridula Roy,
Member

Appeal No. : S.C. Case No. FA/136 of 2012 (Arisen out of Order dt. 5.3.12 of
DCDRF, Howrah in Complaint Case No. HDF 47 of 2011)

Appellant : Robln Das

Respondent : Tirthanu Roy and Another

Judgement :

Mridula Roy, LD. Member

1. The instant Appeal is directed against an order dt. 5.3.2012 passed by Ld. District Consumer Disputes Redressal Forum, Howrah, in Complaint Case No. HDF 47 of 2011 allowing the same on contest with cost directing the Ops to execute and register the deed of conveyance in favour of the complainant within one month from the date of the said order, entitling the complainant to get compensation to the tune of Rs. 30,000/- for mental harassment and agony, further entitling the complainant to get Rs. 30,000/- for enhanced price of registration and to get Rs. 10,000/- towards litigation cost.

2. Being aggrieved by that order the OP/Developer has preferred the instant Appeal.
3. The case of the complainant before the District Forum is that he entered into a tripartite agreement dt. 14.2.2003 with the OP/Developer and the OP/Landowners for purchasing a flat with lift facility at a consideration of Rs. 8,40,000/-. Accordingly, the complainant paid the amount of consideration in full to the OP/Developer and possession of the said flat was delivered to the complainant on 6.3.2003 but without installation of the lift. The complainant requested the OP/Developer on several occasions and finally by a letter dt. 7.2.06 for installation of the lift, but the Developer turned a deaf ear to the request.
4. The possession of the said flat was handed over to the complainant on 6.3.03, but the registration of the deed of conveyance in favour of the complainant was yet to be done. The complainant requested the OP/Developer by a letter dt. 3.11.10 for execution and registration of the deed of conveyance in respect of the said flat in his favour. The OP/Developer agreed to do that by virtue of an unregistered power of attorney executed by and between the landowners and the Developer. The complainant served a legal notice dt. 27.1.2011 upon the OP/Developer asking him to obtain registered power of attorney. In reply, by a letter dt. 5.2.11 the OP/Developer asked the complainant to send a photocopy of the draft Deed, but kept mum on the issue of unregistered power of attorney. In the letter dt. 5.2.11 regarding the point of lift, the OP/Developer also stated that the installation of lift and maintaining the same were concern of the firm which has been entrusted to that effect.
5. The complainant served another legal notice dt. 25.3.2011 upon the OP/Developer along with the Draft Deed for approval of the same. The OP/Developer approved the same, vide letter dt. 16.4.2011 with N.O.C. but without mentioning anything regarding unregistered power of attorney. Subsequently, the complainant served another legal notice dt. 18.5.2011, but no reply was received.
6. Having received no positive response from the end of the OP/Developer regarding installation of lift as well as procurement of registered power of attorney

the complainant had no other alternative but to file the complaint case before the District Forum. In his petition of complaint the complainant prayed for directions upon the Ops to execute and register the deed of conveyance, to pay Rs. 5,000/- per month till the date of registration of the deed of conveyance, to pay Rs. 50,000/- towards compensation, to pay Rs. 50,000/- towards enhanced price of registration and stamp duty and to pay Rs. 50,000/- towards litigation cost.

7. The OP/Developer contested the case by filing written objection stating inter alia that a tripartite agreement was executed on 14.2.2003 and as per the terms of agreement the OP/Developer agreed to arrange for execution and registration of the deed of conveyance. There was other provision also by which the complainant could get the flat registered in his favour, either through the vendor or through court. The OP/Developer had been willing to execute and register the deed of conveyance, but the complainant was not ready for the same.

8. Regarding the point of lift facility, the OP/Developer stated that he engaged a contractor for installation of lift and made payment to the contractor in full. Thus he discharged his responsibility. Therefore, he had no deficiency in providing service. Accordingly, he prayed for rejection of the petition of complaint.

9. It is evident from the record that a tripartite agreement was executed on 14.2.2003 between the complainant and the Developer for purchasing a flat wherein the landowners remained as vendors. According to that agreement, the consideration was paid to the OP/Developer. There is no dispute regarding payment of consideration. Accordingly, the flat was handed over to the complainant. Thereafter, according to the agreement, the Ops were to execute and register the deed of conveyance in favour of the complainant. But the OP/Developer did not do the same on the plea that there were other two alternatives in the agreement for execution and registration of the deed of conveyance. The Developer also stated that he was willing for registration of the flat in favour of the complainant, but the complainant was not ready for the same. No document was forthcoming in support of this contention made by the Developer.

10. Further, as per agreement, the lift facility was to be provided in the building where the flat in question was situated. The Developer stated that he engaged a contractor for installation of lift and he also made payment for that. It is contended that he had no liability in this respect. But we are unable to accept this contention.

11. Having heard both sides and on perusal of the papers on record we are inclined to modify the impugned judgement.

12. The Ops of the complaint case are directed to execute and register the deed of conveyance in favour of the complainant within 45 days from this date.

13. The Ops of the complaint case are directed to pay compensation of Rs. 25,000/- and litigation cost of Rs. 5,000/- to the complainant within 45 days from this date, failing which the amounts will carry interest @ 9% per annum till realization. The Ops are directed to complete the lift facility within 45 days from this date.

14. The impugned judgement stands modified to the extent stated above.

15. The Appeal is disposed of accordingly.

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