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Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Nov-10-2009

Judge : Sri K. Satyanand, Presiding Member &Amp; Sri R. Lakshminarsimha Rao, Member

Appeal No. : F.A.No. 855 OF 2007 AGAINST C.C.No.185 OF 2006 DISTRICT FORUM-II KRISHNA AT VIJAYAWADA

Appellant : The Executive Engineer and Another

Respondent : Smt Ghanta Nagalalitha

Advocate for Pet/Ap. : Counsel for the appellant: Sri D. Ranganath Kumar, Counsel for the respondent: Sri G. Narasimha Rao

Judgement :

Oral Order (Sri R. Lakshminarsimha Rao, Member)

The appeal is filed under Section 15 of the Consumer Protection Act seeking to set aside the impugned order passed against the opposite party in C.C.No.185 of 2006 by the District Forum, Krishna II at Vijayawada.

The respondent filed complaint stating that he purchased flat in Phase II in Block No.57, Flat No.2 on 19-08-2002 from the original allottee, Kothuri Padma Raju. On 30-11-2004 the respondent had submitted to the appellant an application along

with relevant documents for execution of the registered sale deed. On 2-12-2004 the respondent had requested the appellant to execute the sale deed. On 16-12-2004 the appellant got published notice calling for objection for third party transfer In favour of the respondent. The appellant had not executed the registered sale deed in favour of the respondent. Delay in execution of the sale deed was attributed to the appellant on the premise that they have demanded the respondent to submit irrelevant documents. On 25-11-2005 the appellants had demanded the respondent to pay an amount of Rs.23,555/- towards the fee for transfer of the title in the flat.

The respondents filed the complaint from which the impugned order is originated that the appellant did not take any steps after the publication of the notice for transfer of his interest in the flat even though the respondent had submitted application on 2-12-2004 and only after revising the transfer fee for two times the appellant had issued notice to the respondent with a demand to pay an amount of Rs.23,555/-which act made the respondent to have got issued legal notice dated 15-05-2005 through her counsel that the appellant had executed sale deeds immediately after the publication of the notice in respect of the flats adjacent to the flat in question and as such the respondent had expressed her willingness to pay the transfer fee prevailing as on the date of her application but not the revised fee.

The respondent filed written version admitting that Flat NO.B-57/E 2 MIG under Phase NO.1 at Bhavanipuram Vijaywada was originally allotted to Sri K.Padmaraju under 30% hire purchase instalments vide proceedings No.A5/9440/MIG/79 code No.818 dated 26.8.1984 and has concluded lease cum sale agreement by taking over possession on 21.2.1985. He had paid 48 instalments with penal interest on 22.11.2004. Thereafter one G.Nagalitha W/o Venakta Ramana Rao submitted an application along with agreement of sale indemnity bond, photo forms on 4.12.2006 and requested to register the said flat in her favour as per the third party procedure. The respondent contended that what all stated by the appellant in the complaint regarding delay in transferring the flat is not correct. The respondent had taken every possible step to transfer the allotment in favour of third party G.Lalitha. The delay is due to non-payment of transfer fee of 7% by the third party. On this 7% of fees 4% of amount is being collected by A.P. Housing Board

towards transfer fee and the remaining 3% is being paid by third party directly to the Sub-Registrar concerned.

The process of the third party would be concluded after thorough verification of concerned officers of A.E.O., and E.E. Vijayawada in conformity with signature and the genuinity of third party as was in LCS, agreement. The respondent had taken steps for registration of flats situated in the same locality after paper notification. The appellant has not paid transfer fees. The original allottee himself is a tenant to housing board. Before registering the flat in his name he cannot sub-let sale or any other transaction as per APHB Act 1956. The third party who has purchased the said flat is illegal against the rules and regulations of the Housing Board. Hence, prayed for dismissal of the complaint.

The District Forum has allowed the complaint holding that the appellant could collect the transfer fee prevailing as on 31-12-2004 and pay punitive damages of Rs.5,000/- to the respondent.

The appellant has filed the appeal contending that their plea that the respondent was not ready to pay the transfer fee was not considered by the District Forum.

The point for consideration is whether the respondent is liable to pay revised transfer fee to the appellant?

The respondent had entered into agreement to purchase the flat in question from the allottee. The respondent had submitted her application along with agreement of sale, indemnity bond, photo form etc., and on 17-12-2004 the appellant had issued notification which was published in Andhra Jyothi, inviting objection if any, from the public for transfer of the property in favour of the respondent. Any transfer of the flat by the allottee in favour of the respondent is subject to the terms and conditions of the agreement of sale executed by the allottee in favour of the appellant. The appellant has contended that the respondent had not come forward to pay the 7% transfer fee whereas the respondent submitted that the appellant had not taken any steps after publication of the notice in the daily news paper.

Regulation 27 (ii) was amended to facilitate the allottee to opt for execution of the sale deed by the appellant in favour of his wife or son or daughter or any third party of his choice. It reads as follows:

In regulation 27, for sub-regulation (ii) the following shall be substituted namely:-

(ii) In case the allottee so wishes by submitting a written application, prior to execution of the conveyance deed, the house or plot shall be transferred in the name of Husband or Wife or Son or Daughter as the case may be.

(iii) In case the allottee has transferred the flat or plot or house to a third party through a sale agreement, either on white paper or stamp paper signed by the allottee, the same will be transferred t the purchase after levying transfer fee from the transferee at 7% of the present market value of the plot or flat or house as the case may be.

Therefore it is not in dispute that the appellant is entitled to collect 7% towards transfer deed of which 3% would be remitted in the account of the concerned registration and stamp department and the balance 4% of the stamp duty on the cost price fixed is payable to the appellant/housing board.

The respondent has contended that it is the appellant who had to take steps for collection of 7% of stamp duty and execute registered sale deed in her favour. The appellant had submitted that the respondent had not come forward to pay the 7% of transfer fee and as such they could not execute the registered sale deed in her favour. On 30.11.2004 the respondent has submitted her application along with relevant document for transfer of the flat in her name and the same is evident from the legal notice which also reveals that the respondent had submitted a letter on 2.12.2004 requesting for transfer of the flat in her name. on 16.12.2004 a notice was published in Andhra Jyothi daily by the appellant inviting the general public to send objections if any for transfer of the flat in favour of respondent.

The appellant had issued letter dated 25.11.2005 with a request to the respondent to pay 7% transfer fees amounting to Rs.23,555/- in respect of the flat MIG Block No. 57 Flat No.2 at Bhavanipuram Vijayawada. The respondent got issued legal

notice dated 15.5.2006 that the transfer fees as on 2.12.2004 was Rs.18,775/- which the respondent was ready to pay but the appellant had not proceeded to execute the sale deed and as such the demand for Rs.23,555/- after an year is not reasonable and justifiable. The appellant had issued letter dated 18.5.2006 in reply to the legal notice issued on behalf of the respondent that the respondent had submitted sale agreement, indemnity bond and deed of relinquishment of rights on 2.12.2004 and in the notice published in the daily news paper it was mentioned that the respondent had to pay the transfer fees. Therefore, it was sought to be contended that it was the duty of the respondent to pay the transfer fees for processing of the registration.

A perusal of the published notice which was issued by the appellant does not disclose any statement in regard to the payment of transfer fees by the respondent or any of the third parties those are mentioned at column no.4 therein. In the absence of any notice as to the amount payable by the respondent, it is not expected that the respondent can pay such and such amount as was claimed by the appellant only through their letter dated 25.11.2005 subsequent to the publication of the notice. The appellant had not established that it was bought to the knowledge of the respondent that she had to pay an amount of Rs.18,775/- immediately after publication of the notice. The respondent was kept in dark till the notice dated 25.11.2005 which was issued by the appellant with a demand for Rs.23,555/- which was the amount revised in the course of time. In the same manner the appellant had revised the amount of Rs.23,555/- and demanded an amount of Rs. 32,472/-.

In view of the matter, we do not find any reason to set aside the impugned order. The appellant cannot gain at the risk of the respondent by keeping themselves silent without issuing any notice nor demanding any amount under the caption of transfer deed and coming forward to execute the sale deed after an year of the publication of the notice by demanding revised amount towards the transfer fees. In the circumstances, the appeal fails.

In the result, the appeal is dismissed. No costs.

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