

Gurbux Singh Vs. Skipper Construction Company (P.) Ltd.

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Feb-14-1994

Judge : R.N. Mittal, President; the Honourable Ms. Justice S. Brar Member & the Honourable Ms. Justice Dr. a.N. Saxena, Member

Appeal No. : Case No. C-200 of 1993

Appellant : Gurbux Singh

Respondent : Skipper Construction Company (P.) Ltd.

Judgement :

R.N. Mittal, President:

1. Briefly the facts are that the respondent is carrying on the business of construction of flats. They advertised in leading newspapers that they were giving flats at Bau Makkhan Singh House, Jhandewalan Tower on concessional rates i.e. @ Rs. 900/- per sq. feet, to retired defence personnel in order to help them to have regular income source. They offered the commercial space of 100 sq. feet only to such persons. It was alleged by them that the market rate of the space was Rs. 1,600/- per sq. feet. The applicant was required to pay an amount of Rs. 10,000/- in the first instance and the balance amount in easy instalments linked with the construction.

2. The Complainant, it is pleaded, attracted by the advertisement applied for a flat and deposited a total amount of Rs. 45,000/-as detailed below:

S.No.	Amount	Date of Deposit	Receipt No.
1.	Rs. 10,000/-	15.12.91	Form No. 04923
2.	Rs. 25,000/-	25.1.92.	Receipt No. 9231
3.	Rs. 10,000/-	1.2.92	Receipt No. 9953
	Rs. 45,000/-		

The respondent further gave similar advertisement in the newspapers for other 100 flats and said that it was the last and final offer and open upto 7.1.92. In the earlier advertisement they had alleged that the offer was open only upto 15.12.91.

3. He received a telegram in April, 92 from the respondent to deposit further amount of Rs. 10,000/-. The Complainant did not deposit the amount and requested the respondent to cancel his booking and refund his amount of Rs. 45,000/-. However, the respondent has the amount till date. He also received a letter on 26.5.92 that his booking could not be cancelled and in case he was not interested in the flat he could dispose it of in the open market. He again requested the respondent to refund the amount but no heed was paid to his request. Consequently he filed a complaint claiming the refund of Rs. 45,000/- and damages of Rs. 60,000/-. He further claimed interest @ 24% p.a. on his deposit upto the date of filing the complaint.

4. The complaint has been contested by the respondent. They, inter alia pleaded that the Complainant had written to the respondent, that on account on his financial constraint he was unable to pay the future instalments and requested for cancellation of the allotment It is stated by them that they are facing trouble at the hands of DDA and a litigation is pending in the Courts of law between them and the DDA. They had paid more than Rs. 15 crores to them towards the cost of the land against a bid of Rs. 9.82 crores, but the DDA was insisting upon further

payment and have taken possession of the land with the constructions raised thereon upto 15 floors. Therefore, it is stated, there is no deficiency in service.

5. The first question that arises for determination is, whether the Complainant is entitled to refund of the amount deposited by him with the respondent for purchasing a flat. The facts as emerge from the pleadings and documents filed by parties are that the respondent was delivered possession of the land on which the flats were to be constructed by the DDA subject to their payment of the instalments. The respondent failed to pay the instalments and, therefore, the possession of the land was resumed by the DDA alongwith the unfinished construction raised thereon.

6. It is well settled that in the case of sale of immovable property time is not of the essence of the contract. Therefore, even if the Complainant had not paid the instalment in time, the respondent could not forfeit the amount unless time was of the essence of the contract. Moreover even the flats were not completed by them. It is also relevant to mention that they further demanded an amount of Rs. 10,000/- vide telegram dated April 1992 from the Complainant and informed him that if he failed to do so, he would be liable to pay interest on that amount. From the aforesaid telegram also it is evident that time was not of the essence of the contract. Even after receipt of the letter dated 11.5.92 by the respondent they again sent two telegrams in May 92 (Annexure F and Annexure G) asking him to pay Rs. 25,000/- immediately. In Annexure G they again said that in case of nonpayment of instalment interest would be charged from him. That further shows that the time was not of the contract and that the contract between the parties continued. The respondent, however, was unable to build the flat and even now they are not in a position to deliver possession of the same.

7. It is also relevant to highlight that the possession of the unfinished building and the plot has been taken by the DDA as the respondent has not paid the instalments of the flat. Thus the respondent is unable to fulfill their part of the contract. In view of the aforesaid circumstances the letter 11.5.92 of the complainant that he was in financial difficulty and not in a position to pay the instalment lose all significance.

After taking into consideration all the aforesaid circumstances we are of the view that the complainant is entitled to take refund of his amount.

8. The second question which arises is, whether the respondent is liable to pay interest on the said amount. The respondent has taken benefit of that amount and the complainant has been deprived of its use. Consequently, they are liable to pay interest to the complainant on that amount. Taking into consideration the facts and circumstances of the case we grant interest @ 18% p.a. to the complainant.

The last question that arises for determination is, whether the complainant is entitled to a damages as claimed by him. In view of the facts and circumstances of the case and high rate of interest granted to the complainant we are not inclined to grant any damages to the complainant.

9. For the aforesaid reasons we partly accept the complaint of the complainant with costs and direct the respondent to pay Rs. 45,000/- with interest @ 18% p.a. from the dates of deposits till the date of payment within a period of three months failing which action shall be taken against them under Section 27 of the Consumer Protection Act. Costs Rs. 1500/-.

Complaint allowed with costs.

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