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Court : West Bengal State Consumer Disputes Redressal Commission SCDRC Kolkata

Decided On : Mar-25-2014

Judge : The Honourable Mr. Kalidas Mukherjee President, the Honourable Mrs. Mridula Roy Member & the Honourable Mr. Tarapada Gangopadhyay

Appeal No. : S.C. Case No. FA/1005 of 2012 (Arising Out of order dated 03.10.2012 of Consumer Case No. 411 of 2012 of D.C.D.R.F., Kolkata, Unit - I)

Appellant : Nisith Chakraborty and Another

Respondent : M/S. Dras Construction, Represented by their Partners and Another

Judgement :

Mridula Roy, Member.

The instant appeal is directed against the order being No.02 dated 03.10.2012 passed by Ld District Consumer Dispute Redressal Forum, Kolkata Unit-1 in case number C.C.12/411 rejecting the same giving liberty to agitate the issue before appropriate forum on self same cause of action holding that the subject-matter of the case is not within the purview of the C. P. Act, 1986.

Being aggrieved by that order the complainant has preferred the instant appeal. Complainants case, in brief is that their father was a tenant under the land owners

in respect of a portion of the premises No.121, Harish Mukherjee Road,Kolkata-700026, P.S. Bhawanipore.

However, the land owners decided to erect a multistoried building in the said premises and entered into two Agreements for Development with the Opposite parties on 08.07.2003 and 17.07.2003 and asked the said tenant to vacate the rented portion on assurance that after completion of the construction project he would get an accommodation therein .An agreement was executed on 28.12.2003 by the Complainants and the Opposite Parties wherein the land owners put their respective signatures as confirming parties. Accordingly, the tenant vacated his portion. As per terms of the Agreement dated 28.12.2003 it was agreed by the parties that the Complainants would get a self contained flat at top floor measuring 1160 sq.ft. super built up area @ not exceeding Rs.700/- per sq.ft. apart from one flat on the top floor of 800sq.ft. and a chamber of 200 sq.ft. and a car parking space at ground floor at free of cost together with undividable proportionate share of land. The Complainants have also stated that on 28.03.2006 and 19.05.2006 they have paid Rs.5,00,000/- in total to the O.P. Developers towards first instalment of the agreed consideration amount. However, after completion of the top floor flats the Complainants requested the O.P. Developers verbally as well as in writing to deliver the possession of their flat to them but the O.Ps. turned a deaf ear to that. Subsequently, the Complainants received an Advocates notice on 20.07.2012 whereby the O.Ps. demanded Rs. 1,700/- per sq.ft. instead of Rs, 700/- per sq.ft.in utter violation of the terms of Agreement dated 28.12.2003. In reply, the Complainants served an Advocates notice upon the O.Ps. asking them to execute and register the Deed of Conveyance in respect of the scheduled flat in favour of them. But all were in vain. Hence the Complainants filed the case praying for directions upon the O.Ps.to obtain Completion Certificate from the competent authority, to deliver possession and to execute and register Deed of Conveyance in respect of the scheduled flat in favour of them as per terms of the Agreement dated 28.12.2003.

In course of hearing of the appeal Ld. Advocate for the appellants has submitted that there is no valid reason for dismissal of the case since the land owners as well as the Developer agreed to deliver the flat to the Complainants in lieu of their

rented portion. In support of his contentions Ld. Advocate for the appellants cited decision of the Honble reported in

In course of hearing Ld. Advocate for the Respondents has submitted that the deceased father of the Complainants/Appellants is survived by four sons and two daughters out of whom two sons other than the Complainants / Appellants have put their signatures as confirming party in the tripartite agreement dated 28.12.2003. Ld. Advocate for the Respondents has further submitted that the Complainants / Appellants got possession of the flat in 2007 but since then never approached the Respondents for registration of the Deed of Conveyance. Ld. Advocate for the Respondents has expressed the willingness of the Respondents to execute and register the Deed of Conveyance in favour of the Appellants if they pay @ Rs.1,700/-per sq.ft. for the property in question.

Having heard both sides and on perusal of the record it appears that it has been stated in para No. 1 of the petition of complaint that Nihar Chakraborty, since deceased was the original tenant in respect of the premises No. 121, Harish Mukherjee Road, Kolkata “ 700 026, P.S. Bhawanipur in respect of eight rooms, one drawing cum dining room, one kitchen, two toilets and varandas and one office cum chamber in first ground floor and roof since 1943 and after the death of Late Nihar Chakraborty his heirs including both Complainants lived in the above premises till date. Thereafter, there was development agreement between the owner and the developer. The Complainants agreed to surrender their tenancy. Since there are other heirs of the deceased Nihar Chakraborty, they ought to have been impleaded as proforma O.Ps in the instant case.

As regards, the consumer and service provider relationship we are of the considered view that since the tenancy was surrendered and the payment was made towards consideration, the case is maintainable as consumer complaint.

In view of that, we are of opinion that it is a fit case for remand.

In the result, the appeal succeeds.

Hence ordered, that the instant appeal is allowed on contest without cost. The impugned judgement is set aside. The case is sent back on remand to the Learned District Forum below with a direction to adjudicate the same as expeditiously as possible in accordance with the law.

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