

Subhrajit Das Vs. Vindya Project Pvt. Ltd. and Others

Subhrajit Das Vs. Vindya Project Pvt. Ltd. and Others

SooperKanoon Citation : sooperkanoon.com/1148603

Court : West Bengal State Consumer Disputes Redressal Commission SCDRC
Kolkata

Decided On : Jan-30-2014

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

Appeal No. : S.C. Case No.CC/86 of 2009

Appellant : Subhrajit Das

Respondent : Vindya Project Pvt. Ltd. and Others

Judgement :

Kalidas Mukherjee, President.

This a complaint case wherein the Complainant has stated that he entered into an agreement with the developers, that is, the OP No.1 and 2 for purchase of a flat being no.2B, 2nd floor, Block-II measuring 1132 sq. ft. at 91/9, Bosepukur Road, Ward No.91, KMC, Kolkata, P.S. Kasba, District-South 24-Parganas. The agreement was executed on 21/07/05 by the developers through its Director, Sri Ravi Sankar Agarwal (OP) and also by the land owners, OP Nos.4 to 8 through their constituted attorney, the OP No.2. The total consideration money for the flat and car parking space was fixed at Rs.14,01,800/- out of which the Complainant paid advance amount of Rs.1,67,933/-. Under the said agreement the promoters (OP Nos.1 and 2) received advance amount of Rs.12,61,933/- out of the total

consideration of Rs.14,01,800/- in respect of the flat and car parking space. In addition the Director, Sri Ravi Sankar Agarwal received Rs.50,000/- through cheque and Rs.2,46,000/- in cash for doing additional works and also received Rs.5,660/- as fees for Advocate aggregating to Rs.3,01,660/-. The promoters, therefore, received total amount of Rs.15,63,593/- with a promise and assurance that they would complete the concerned flat in all respects as per agreement for sale and would give possession of the flat as well as car parking area to the Complainant followed by registration of the sale deed after obtaining completion certificate. The OP No.2 met the Complainant at his residence in Kasba on 23/09/07 and disclosed that the flat of the Complainant was locked by the O.C., Kasba P.S. as the request of the land owners without any order from the Court. The Complainant met the O.C., Kasba P.S. at his office on 23/09/07 and requested him to handover the key so that the Complainant could take possession of the flat and car parking space on the basis of the letter dated 10/05/07 issued by the promoters (OP No.1 and 2), but the O.C., Kasba P.S. refused to do so. OP No.2 informed the Complainant over phone that he was unable to obtain completion certificate from KMC as the land owners instituted a Civil Suit bearing no.TS 52 of 2007 for injunction against the promoters/developers in the Court of 5th Civil Judge (Senior Division), Alipore and obtained the order of injunction on 28/09/07 restraining the promoter from giving possession of any flat of the building to any purchaser till the disposal of the suit. Under such circumstances, the Complainant demanded refund of the money paid by him. The OP No.2 disclosed that they filed an appeal bearing no.FMAT 2841 of 2007 in the Honble High Court, Calcutta against the order of injunction dated 28/09/07 passed by Ld. Civil Judge, Alipore and also filed one writ petition being no.1131/2007 against the police action in respect of unauthorized locking of four flats by the O.C., Kasba P.S. The Complainant made an application being no.CAN 9069/2007 for adding him party in the appeal bearing no.FMAT 2841/2007 filed by the promoters and the Complainant also filed a separate appeal being no.FMAT 2944/2007 against the order of injunction dated 28/09/07. The Honble Court disposed of the appeal bearing no.FMAT 2944/2007, CAN 9069/2007 and CAN 1/2009 by an order dated 05/02/09 by granting liberty to the Complainant to take legal steps against the promoters and land owners and that the order passed by the Civil Court in T.S.

No.52/2007 by the Ld. Civil Judge would not prevent the Complainant from taking such legal steps against the promoters and land owners for getting relief. The Complainant by legal notice dated 25/03/09 asked the OP Nos.1 to 8 to carry out their obligations under the agreement for sale, but neither possession of the flat was delivered nor the sale deed was registered. For the said reasons, the Complainant filed the petition of complaint praying for order directing the OP Nos.1 to 8 to pay compensation, refund of the advance money with interest and costs totalling to Rs.29,12,305/- as described in Schedule-B of the complaint.

W.V. has been filed by OP Nos.4 to 8 denying all the material allegations raised by the Complainant. It has been stated that the transaction between the Complainant and the developer was not within the knowledge of the land owners. The OP No.1 with the malafide intention to deprive the land owners was trying to transfer the owners share to the third party. Because of such malafide intention on the part of the OP No.1 the land owners were compelled to file one Civil Suit bearing No.TS 52 of 2007 for declaration and injunction. An order of injunction was passed by the Ld. Court. The flat and car parking space which are subject matter of this case are in possession and enjoyment of the land owners being their absolute property and the same were received by the land owners towards their part of consideration for the said land. The owners allocation have been delivered by the developers to the owners. The land owners never made any request to the O.C., Kasba P.S. as alleged in the complaint. The land owners are not liable to pay compensation. There was no deficiency in service on the part of the land owners.

The OP No.3 filed a separate W.V. contending, inter alia, that there is no cause of action against the OP No.3 who had no role to play regarding delivery of the possession of the flat and the car parking space to the Complainant.

The OP Nos.1 and 2 have filed a W.V. denying all the material allegations raised in the complaint. It has been stated that pursuant to the order of injunction passed by the Ld. Civil Judge (Senior Division), Alipore in TS No.52 of 2007 the OP No.1 and 2 were restrained from handing over possession and transferring the flats to any third party until and unless the OP Nos.4 to 8 were given their allocation in the new building. In FMA No.137 of 2008 the Honble High Court, Calcutta vide order

dated 30/09/08 was pleased to direct the parties to maintain status quo with regard to possession in the new building and the said appeal is still pending. The OP Nos.1 and 2 are not in a position to deal with the property in any manner in view of the orders passed by the Ld. Civil Judge as well as the Honble High Court, Calcutta.

The Learned Counsel for the Complainant/Purchaser has submitted that if the developer is unable to develop flat, necessary direction may be made for refund of the amount paid by the Complainant with compensation and interest at contractual rate as per the agreement for sale. It is submitted that the contractual rate of interest is 24% p.a. It is contended that the developer could not produce the completion certificate. It is submitted that the developer has not come with clean hands and there was suppression of material facts and the conduct of the developer was for unjust gain and there was collusion between the developer and land owners. It is submitted that the flat was to be delivered as per the agreement by 14/05/07. It is contended that the land owners filed a Civil Suit wherein an order of injunction was passed against the developer and the purchasers were not impleaded in that suit. It is submitted that the Civil Suit was collusive in nature. It is contended that police got possession of the flat on the plea of breach of peace. It is submitted that the Complainant paid Rs.15,63,593/-. It is submitted that the Complainant/Purchaser filed a Miscellaneous Application bearing no.456 of 2013 praying for direction upon the OPs for handing over the vacant possession and other reliefs. This Miscellaneous Application was also heard along with the complaint case.

The Learned Counsel for the developer, that is, OP Nos.1 and 2 has submitted that there was no deficiency in service on the part of the developer and the developer received the sum of Rs.12,61,933/- from the Complainant. It is submitted that the possession letter was given to the Complainant to the effect that the flat was ready. It is submitted that the developer asked the Complainant to pay the balance amount of consideration money. It is submitted that the developer deposited necessary amount of money with the Electricity Authority for having electric connection. It is submitted that a writ petition bearing no.1131/2007 was filed before the Honble High Court, Calcutta wherein it was submitted that the

police was in possession of the flat in question. It is contended that the building completion certificate was obtained wherein it was mentioned that the building was fit for use. It is submitted that there was no deficiency in service on the part of the developer and the developer is ready to refund the money with contractual amount of interest as per Clause-19 of the agreement.

The Learned Counsel for the land owners being OP Nos.4 to 8 has submitted that the subject flat is in the possession of the land owners and it is not correct to say that police has taken possession of the flat in question. It is submitted that the subject flat is in possession of the land owners being within the owners allocation. It is contended that on 09/09/08 the developer delivered possession to the land owner, but completion certificate were not delivered. It is submitted that the land owners filed consumer complaint bearing no.CC 78 of 2010 in respect of subject flat 2B being one within the owners allocation and the complaint case was allowed. It is submitted that the FA No.387/2012 was dismissed and the Revision Petition before the Hon'ble National Commission was also dismissed followed by the dismissal of the SLP before the Hon'ble Apex Court. It is contended that a submission was made before the Hon'ble High Court, Calcutta by the State of West Bengal that police had put lock and key in the flat. It is submitted that the Police Authority did not state in the W.V. that they took possession of the flat.

We have heard the submission made by both sides.

It appears that in the First Appeal bearing no.524 of 2012 the Hon'ble National Commission was pleased to remit back the case to this Commission with the direction to decide it afresh on merits in accordance with law.

Admittedly, the possession of the flat was not delivered by the developers/OP Nos.1 and 2 to the Complainant. As regards the possession it is the contention of the land owners that they are in possession of the disputed flat and they have denied the contention of the Complainant that police took possession of the flat. The contention of the developer is that the disputed flat is in the possession of the police. In this connection the Learned Counsel for the land owner has submitted that it was submitted by the State of West Bengal in the Writ Petition before the Hon'ble High Court, Calcutta that police had put the disputed flat under lock and

key. It is contended by the Learned Counsel for the land owners that they are in possession of the disputed flat pursuant to the dismissal of the FA 387/2012 followed by the dismissal of the Revision Petition before the Hon'ble National Commission and dismissal of the SLP by the Hon'ble Apex Court. It is, therefore, clear that the possession of the subject flat is a disputed question of fact. Under such circumstances, we are of the considered view that the Complainant is entitled to get refund of the money he had paid to the developer/OP No.2 with the contractual rate of interest, that is, 24% p.a. as stipulated in the Para-19 of the agreement for sale. In this connection the Learned Counsel for the developer has drawn our attention to Annexure-A to the written objection on behalf of OP Nos.1 and 2 against the Miscellaneous Application bearing no.456 of 2013. By filing MA 456/2013 the Complainant has prayed for a direction upon Respondent Nos.1 and 2 to deliver vacant and peaceful possession of the flat in question and car parking space and completion certificate in favour of the Complainant. Annexure-A is the letter dated 20/09/07 written by the Complainant wherein it has been admitted that the Complainant paid Rs.12,61,933/- to the developer towards the total consideration money of Rs.14,01,800/-. It is, therefore, an admitted fact that the Complainant paid Rs.12,61,933/- to the developer, that is, OP No.2. The Complainant is now entitled to get refund of that sum with interest of 24% p.a. from the date of filing of the petition of complaint.

The petition of complaint is allowed in part. The OP Nos.1 and 2 are directed to refund the sum of Rs.12,61,933/- to the Complainant with interest @ 24% p.a. from the date of filing of the complaint and also the litigation cost of Rs.10,000/- to the Complainant within 45 days from the date of passing this order failing which further interest @ 9% p.a. shall accrue on the aforesaid total amount till realisation. The Miscellaneous Application No.456/2013 is also disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com