

Kuldeep Kumar Sharma Vs. Omaxe Chandigarh Extension Developers Pvt. Ltd. Through Managing Director and Another

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Court : Union Territory Consumer Disputes Redressal Commission SCDRC UT Chandigarh

Decided On : Jan-27-2014

Judge : The Honourable Justice Sham Sunder (Retd.), President & the Honourable Mr. Dev Raj, Member

Appeal No. : Consumer Complaint No. 61 of 2013

Appellant : Kuldeep Kumar Sharma

Respondent : Omaxe Chandigarh Extension Developers Pvt. Ltd. Through Managing Director and Another

Judgement :

Sh. Dev Raj, Member:

1. The facts, in brief, are that the complainant applied for residential independent floor in Silver Birch situated in Township Project named as Omaxe Chandigarh Extension, Mullanpur, S.A.S. Nagar, Punjab and was allotted Apartment No.OSBC/Type-A/SF/535M, having super area measuring approximately 1150 sq.ft. It was stated that the total cost of the unit was Rs.28,78,000/- and payment was to be made, as per the Construction Linked Plan, progressively, which was required to be intimated by the Opposite Parties. It was further stated that first

installment of Rs.2,50,000/- was paid by the complainant to the Opposite Parties on 04.08.2010. It was further stated that, on inquiry by the complainant from the office of the Opposite Parties, with regard to the schedule of payment, he was told that the information would be sent by post. It was further stated that on inquiry, he was informed that, the next installment was due, and he deposited a sum of Rs.2,73,000/- on 24.11.2010 (Annexure C-2). It was further stated that the complainant did not receive the intimation, regarding future payments, even thereafter and payment of another installment amounting to Rs.2,75,000/- was made on 13.06.2011 (Annexure C-3). It was further stated that, as the complainant was not receiving intimation, he recorded protest at Chandigarh office of the Opposite Parties, on intimation, vide letter (Annexure C-4). It was further stated that even thereafter, the complainant did not receive intimation regarding further installments, and when he approached the Opposite Parties on 22.02.2012, to his utter shock, and surprise, he was informed that the allotment of Apartment No.OSBC/Type-A/SF/535M had been cancelled, on account of default of payment, and the same could be revoked on payment of revocation charges, amounting to Rs.1,50,000/- alongwith penal interest, amounting to Rs.1,31,000/-. It was further stated that the complainant was coerced into giving an undertaking (Annexure C-5). It was further stated that no intimation regarding cancellation was sent to the complainant. It was further stated that despite numerous requests for revoking the cancellation, the Opposite Parties, did not pay any heed to the same and, therefore, the complainant served a legal notice, on 22.03.2012, upon the Opposite Parties, and the same was also not responded to. It was further stated that the last payment was made by the complainant in June 2011 and, in February 2012, he came to know that his allotment had been cancelled in November 2011 itself. It was further stated that there were other persons who had applied for a dwelling unit alongwith the complainant and they were allotted the same. It was further stated that even such other similarly situated persons, had not received any intimation, regarding the payment of installments and when they made enquiries at the office of Opposite Parties, they were informed that their payment was not yet due. It was further stated that till date, the complainant has deposited Rs.7,98,000/- against the total agreed consideration of Rs.28,78,000/- and the Opposite parties are trying to seek unjust enrichment by seeking both payments of

revocation of cancellation charges, alongwith penal interest, amounting to Rs.1,50,000/- and Rs.1,31,000/- respectively. It was further stated that the aforesaid acts of the Opposite Parties, amounted to deficiency, in rendering service and indulgence into unfair trade practice. When the grievance of the complainants was not redressed, left with no alternative, a complaint under Section 17 of the Consumer Protection Act, 1986 (hereinafter to be called as the 'Act' only), was filed, seeking the relief that the Opposite Parties be directed to set aside the cancellation of allotment and forfeiture of the booking amount; set aside the condition of imposition of revocation of cancellation charges alongwith penal interest amounting to Rs.1,50,000/- and Rs.1,31,000/- respectively; or in the alternative, to refund Rs.7,98,000/- alongwith interest @18% per annum; pay Rs.50,000/- as compensation, for mental agony, and physical harassment besides Rs.22,000/- as costs of litigation.

2. The Opposite Parties, in their written statement, filed by way of affidavit of Sh. Harsh Bhargav, their authorized representative, took up certain preliminary objections, to the effect, that since the complainant had deposited Rs.7,98,000/- only, with regard to the property, which was less than Rs.20 lacs, therefore, this Commission did not have the requisite pecuniary jurisdiction, to entertain and try the complaint; that no cause of action accrued, in favour of the complainant, and that he (complainant) was not a consumer as he purchased the property only for the purpose of investment, as he is a resident of Khanna. On merits, it was stated that the allotment in favour of the complainant was made on 4.2.2011 and he was required to pay the installments within time, as per the Construction Linked Plan opted by him. It was further stated that the success of the project depends upon the timely payment of installments by the allottees and the complainant like allottees, who failed to pay the installments in time, led to delayed completion of the project. It was further stated that the complainant was time and again informed by the Opposite Parties, to pay the installments, but he was always negligent in paying the same. It was further stated that several reminders from time to time, were sent to the complainant, to make the payment of due installments. It was further stated that after waiting for six months, of the default, in making payments, by the complainant, the Opposite Parties cancelled the allotment on 2.11.2011. It was further stated that not only this, the complainant was sent two copies of

Buyers Agreement on 27.4.2011, through courier but he even failed to send the signed copy back to the Opposite Parties. It was further stated that the complainant was very well aware of the schedule of payment, right from the very beginning. It was further stated that the complainant concealed the material facts, in the case, and he had made payments towards the property, in dispute, through one Paramjit Sharma. It was further stated that the said Paramjit Sharma, on behalf of the complainant, approached the Opposite Parties on 22.2.2012, and made a request, for revocation of cancellation, and also undertook and admitted that payments could not be made, as they were out of Punjab, and requested for change of payment plan to down payment plan. It was further stated that despite due intimations, the complainant failed to make the payment in time and, accordingly, the cancellation was made. It was further stated that Annexure C-4 in possession of the complainant itself showed receipt of intimation letters. It was further stated that the protest, as alleged, on the said letter, seemed to have been manipulated for the purpose of this case and no such protest was ever intimated to the Opposite Parties. It was further stated that the complainant himself failed to adhere to the agreed terms and, therefore, was not entitled to any relief. It was further stated that neither there was any deficiency, in rendering service, on the part of the Opposite Parties, nor did they indulge into unfair trade practice. The remaining averments, were denied, being wrong.

3. The complainant, in support of his case, submitted his own affidavit, by way of evidence, alongwith which, a number of documents were attached.

4. The Opposite Parties, in support of their case, submitted only the written statement by way of affidavit of Sh. Harsh Bhargav, their authorized representative, by way of evidence, alongwith which, a number of documents were attached.

5. The complainant filed replication, wherein he reiterated all the averments, contained in the complaint, and repudiated the same, contained in the written version of the Opposite Parties.

6. We have heard the Counsel for the parties, and, have gone through the evidence and record of the case, carefully.

7. The Counsel for the complainant, submitted that the complainant applied for the allotment of residential independent floor in Omaxe Chandigarh Extension, Mullanpur on 04.08.2010 and paid Rs.2,50,000/-(Annexure C-1). It was further submitted that another installment in the sum of Rs.2,73,000/- was deposited on 24.11.2010 (Exhibit C-2). It was further submitted that thereafter, third installment, which was to be deposited by 13.04.2011, was, in fact, deposited on 13.06.2011. It was further submitted that the complainant opted for Plan-B i.e. Construction Linked Payment Plan. It was also submitted that intimation dated 16.04.2011 (Exhibit C-4) was not received and the same was received in the office of Opposite Party on 26.05.2011. It was further submitted that in February 2012, when the complainant approached the Opposite Parties, after about six months, he was informed that the allotment stood cancelled on 22.02.2012 (Exhibit C-5). It was further submitted that the Opposite Parties could not cancel the allotment, since they did not inform the complainant nor could they charge any penalty/interest. It was further submitted that legal notice dated 22.03.2012 was sent, to which, the Opposite Parties did not send any reply. It was further submitted that notices (Exhibits R-2 to R-10) purported to have been sent by the Opposite Parties were not received by the complainant.

8. The Counsel for the Opposite Parties, submitted that the payment of Rs.2,50,000/- was made by one Sh. Paramjit Sharma, as is evident, from Annexure R-15. It was further submitted that, as per Annexure R-16, which is letter dated 22.2.2012, addressed to the Opposite Parties, signed by Sh. Paramjit Sharma for Sh. Kuldeep Sharma, the Opposite Parties were requested to revoke the said unit as the communications could not be received as he (complainant) was out of Punjab. The Counsel, therefore, submitted that the contention of the complainant that he did not receive the notices, for deposit of installments, is not correct. Various communications were sent by the Opposite Parties through registered/speed post. It was further submitted that as per Paras 5 and 6 of basic terms and conditions of the application form for allotment, in the event of breach of any of the terms and conditions of allotment, by the applicant/allottee, allotment could be cancelled at the discretion of the Company and the earnest money together with any interest on installment due, but unpaid and interest on delayed payment shall stand forfeited. It was further submitted that there was no clause for

revocation.

9. Admittedly, the complainant vide his application form (Annexure R-1) applied to the Opposite Parties, for the allotment of an independent floor by paying initial amount of Rs.2,50,000/- vide cheque No.590766 dated 2.8.2010. The total sale consideration of the unit was Rs.27,50,000.00 + Rs.68,000.00 + Rs.40,000.00 + Rs.20,000.00 on account of power back-up installation cost, club charges, and Interest Free Maintenance Security (IFMS). The following payments were made by the complainant:-

Sr. No.	Description	Date of payment	Amount Due (Rs.)	ST Due	Amount Paid (Rs.)
1.	At the time of booking	4.8.2010	2,50,000.00	6,437.00	2,56,437.00
2.	At the time of allotment/within 45 days of booking.	24.11.2010	2,72,499.05	7,016.85	2,79,515.90
3.	Commencement of construction	13.6.2011	2,61,249.53	6,727.18	2,62,046.60
		Total amount =			Rs.798000.00 (approx.)

10. The core question, which arises for consideration, is, as to whether, there was any breach of the terms and conditions, vis--vis default, in making the payment of installments due, by the complainant and whether the Opposite Parties could forfeit Rs.5,22,499.00 being 20% of basic sale price. As per the Construction Linked Payment Plan, two installments on completion of plinth level and on casting of ground floor roof + 50% additional charges became due on 22.6.2011 and 29.8.2011 respectively and subsequent installment became due on 28.9.2011 on account of casting of first floor roof + 50% additional charges and, as such, the complainant was in arrears of Rs.9,42,439.95 Ps including interest due. Definitely, there was default, in making payment of subsequent installments, by the complainant.

11. As admitted by the complainant himself, in letter dated 22.2.2012 (Annexure R-16), the communications sent by the Opposite Parties, for depositing of installments, were not received by him, as he was out of Punjab. Thus, the Opposite Parties, duly informed the complainant, about the due date of payment of installments and when the complainant did not deposit the same, notices dated 19.9.2011 and 10.10.2011 for depositing the amount of Rs.9,17,517/- alongwith interest of Rs.34,009/- were issued and finally, the allotment was cancelled vide letter dated 2.11.2011 (Annexure R-11) forfeiting the amount of Rs.5,22,499/-. In the cancellation letter, aforesaid, the Opposite Parties submitted that failure of the complainant in depositing the amount caused financial loss to the Company. As is evident from the details given in Para 9 above, the complainant deposited a total amount of Rs.7,98,000/- out of which, an amount of Rs.5,22,499/- was forfeited by the Opposite Parties, due to breach of the terms and conditions by the complainant.

12. As per Clause 5 of the basic terms and conditions (Page 35 of the file), the amount paid with the application and in installments as the case may be, to the extent of 20% of sale consideration of the Independent Floor shall collectively constitute the earnest money. Further as per Clause 5, in the event of breach of any of the terms and conditions of allotment, by the applicant/allottee, the allotment would be cancelled at the discretion of the Company and the aforesaid earnest money together with any interest on installments due, but unpaid and interest on delayed payments was to be forfeited.

13. According to Clause 5, the applicant/allottee agreed that the amount paid, with the application form, and, in installments, as the case may be, to the extent of 20% of the sale consideration of the residential plot, shall, collectively constitute the earnest money. The word used in Clause 5 of the basic terms and conditions of the application form, was applicant/allottee. Similarly, in Clauses 3 and 8, the word applicant/allottee was used. In some of the Clauses, contained in the basic terms and conditions of the application form, word applicant was only used. The Opposite Parties have produced in evidence Annexure R-1, which is the application form alongwith the basic terms and conditions. The complainant on page of 1 of basic terms and conditions (exhibit R-1) has signed as applicant only

and page containing terms and conditions from Sr.No.15 to 31 is not signed by the complainant. Thus liability for breach/violation of such conditions, cannot be fastened upon the complainant. Had the word allottee only been used, in the aforesaid Clauses of the basic terms and conditions of the application form, the matter would have been different. Allotment/Buyers Agreement was not executed, in the absence of which the complainant can not be said to have acquired the status of an allottee. Though the Opposite Parties have claimed that Buyers Agreement was sent to the complainant on 27.4.2011 (Annexure R-13) but the same has not been produced along with R-13. Since, the complainant by booking the residential unit, was an applicant, when the same (booking) was cancelled, the Opposite Party, could forfeit 20% of earnest money and not 20% of the sale consideration of the plot.

14. In the instant case, the Opposite Parties, while cancelling the allotment vide letter dated 2.11.2011 (Annexure R-11), forfeited an amount of Rs.5,22,499/- deposited as booking amount, by the complainant. In our considered opinion, since buyers agreement was not executed, the Opposite Parties, could deduct 20% of the booking amount of Rs.5,22,499/-, which comes to Rs.1,04,500/-. The complainant is, thus, entitled to refund of Rs.6,93,500 i.e. (Rs.7,98,000 - Rs.1,04,500). To this extent, the Opposite Parties were deficient in rendering service.

15. No other point, was urged, by the Counsel for the parties.

16. For the reasons recorded above, the complaint is partly accepted with no order as to costs, and, the Opposite Parties are directed to pay Rs.6,93,500/- i.e. (Rs.7,98,000 - Rs.1,04,500), to the complainant, within a period of 45 days, from the date of receipt of a certified copy of this order, on completing the formalities by him, as mentioned in Clause 6 of the basic terms and conditions.

17. Certified copies of this order, be sent to the parties, free of charge.

18. The file be consigned to Record Room, after completion.