

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1954 OF 2019

(Against the Order dated 16/08/2019 in Complaint No. 287/2017 of the State Commission
West Bengal)

1. M/S. T.C. ENTERPRISE & ANR.

A SOLE PROPRIETORSHIP CONCERN, RESIDENT OF
15/1B, KALI CHARAN SETT LANE, P.S. SINTHEE,
KOLKATA-700030
WEST BENGAL

2. SRI TAPASH CHATTERJEE

S/O LATE BIMAL CHANDRA CHATTERJEE, 15/1B, KALI
CHARAN SETT LANE, P.S.SINTHEE,
KOLKATA-700 030.
WEST BENGAL

3. INDRANIL GOSWAMI

SON OF LATE NIRMAL KUMAR GOSWAMI, 7, SAGAR
DUTTA GHAT ROAD, P.O. KAMARHATI, P.S.BELGHARIA,
KOLKATA-700 058,
WEST BENGAL

.....Appellant(s)

Versus

1. HARIDAS CHAKRABORTY (SINDE DECEASED) HIS
LEGAL HEIRS & 2 ORS.

PAULABI BHATTACHARJEE, W/O SRI MITHUN
BHATTACHARJEE NABAGRAM "C" BLOCK, LOKNATH
PLACE, P.O.BARABAHERA, P.S. UTTARPA, RESIDING AT
: NABAGRAM, "C" BLOCK, LOKNATH PLACE, P.O.
BARABAHERA, P.S. UTTARPARA,
HOOGHLY-712246
WEST BENGAL

2. INDRANIL GOSWAMI

SON OF LATE NIRMAL KUMAR GOSWAMI, 7, SAGAR
DUTTA GHAT ROAD, P.O. KAMARHATI, P.S.BELGHARIA,
KOLKATA-700058
WEST BENGAL

3. MRS.BANANI CHAKRABORTY,

W/O LATE SHRI HARIDAS CHAKRABORTY, RESIDING
AT: NABAGRAM "C" BLOCK,LOKNATH PLACE, P.O.
BARABAHERA, P.S. UTTARPARA,
HOOGHLY-712246,
WEST BENGAL

4. R-1 LEGAL HEIRS, SRABANTI CHAKRABORTY

NABAGRAM "C" BLOCK, LOKNATH PLACE,P.O.
BARABAHERA, P.S. UTTARPARA, DIST. HOOGHLY,
WEST BENGAL-712246

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER
HON'BLE MR. ROHIT KUMAR SINGH, MEMBER**

FOR THE APPELLANT : MR. NIRANJAN LAHIRI, ADVOCATE WITH
MR.C.B.SINHA, ADVOCATE
FOR THE RESPONDENT : MS. MADHUMEET KAPOOR, ADVOCATE FOR R-T & 2
ALONGWITH LRS OF RESPONDENT (IN PERSON)
NEMO FOR R-3

Dated : 25 September 2024

ORDER

PER MR. ROHIT KUMAR SINGH

1. The present appeal has been filed under Section 51 of the Consumer Protection Act, 2019, arising out of the final Judgment and Order dated 16.08.2019 passed by the State Consumer Disputes Redressal Commission, West Bengal in Complaint Case No. 287 of 2017 wherein the State Commission allowed the Complaint against Opposite Party No. 1 and 2 (Appellants herein).
2. Brief facts of the case are as follows: The Respondents/Original Complainant Nos. 1 and 2 in need of a residential accommodation entered into and executed an "agreement of sale" dated 07.09.2014 for purchase of a flat. The respondents purchased Flat No. A on the 1st floor in a G+3 storied building situated at premises No. 44/C, Mahendra Chandra Garden Road, P.S. Dum, Kolkata-700030. The respondents got possession of the flat after the execution of conveyance deed dated 03.02.2017. They asserted that the appellants had received the complete payment of Rs. 35 Lakhs at the time of execution of the conveyance deed. The complainants alleged that time and again they had requested the opposite party No. 1 & 2 to complete the construction and to handover the flat in question but to no avail. The complainants maintained that it was agreed the service tax liability would always rest with the developer and that the consideration amount already included all costs, including service tax, for the flat.
3. The Appellants/Opposite party (OP) is a sole proprietorship concern engaged in construction business. The appellants asserted that money receipt of Rs. 16,00,000 by three cheques and that the last payment of Rs 1,12,000 and a sum of Rs. 87,500 remained due out of the total consideration money of Rs. 35 lakhs. The OP Nos. 1 and 2 served a legal notice dated 17.03.2017 to the Respondents. The appellant asserts that the dispute is purely civil in nature as the possession had already been delivered. The OPs asserted that they had completed the construction of the flat within the stipulated period, but due to non payment of the consideration money, cost of extra decoration and service tax, the possession of the flat could not be delivered. The opposite party claims that the complainants borrowed additional funds from them to address financial difficulties caused by demonetization and to complete the registration of the Sale Deed. However, this loan has not yet been repaid and remains outstanding.

4. The learned State Consumer Disputes Redressal Commission vide its order dated 16.08.2019 allowed the complaint against OP Nos. 1 & 2 and dismissed against OP No. 3 with the following directions:

“i) The Opposite party Nos. 1 and 2 are jointly and severally directed to handover the possession of the flat as mentioned in the Deed of Conveyance dated 03.02.2017 in favor of complainants within 60 days after obtaining Completion Certificate from the South Dum Dum Municipality;

ii) The Opposite party No. 1 and 2 are directed to pay compensation of Rs. 1,00,000/- in favor of the complainants;

iii) The opposite party Nos. 1 and 2 are directed to pay Rs. 10,000/- to the complainants as costs of litigation;

iv) The above payments must be paid within 30 days from date, in default, the amount shall carry interest @9% p.a. from date till its realization.”

5. Being aggrieved by the impugned order passed by the Ld. State Commission, the Appellant No. 1 & 2 have filed this present appeal no. 1954 of 2019 seeking to:

“i) Admit the present appeal

ii) Call for the trial court records;

iii) Set aside the impugned order dated 16.08.2019 passed by the Hon'ble State Consumer Dispute Redressal Commission, West Bengal in CC No. 287 of 2017;

iv) Stay the impugned order dated 16.08.2019 passed in CC No. 287 of 2019 by the Hon'ble State Consumer Dispute Redressal Commission, West Bengal;

v) Award the cost of litigation to the present Appellant; and

vi) Pass such other and further order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of this present case.”

6. In the grounds of the instant appeal, the Appellants have mainly contended as follows:

A. That the State Commission erred in law by imposing compensation of Rs. 1,00,000/- and also Cost of Rs. 10,000/- to the Complainant/Respondent without assigning any reason whatsoever.

B. That because the State Commission had erred in finding that the delivery of possession of the subject flat had not been made over due to non obtaining Completion Certificate from competent authority is without any basis inasmuch as the Appellant/Opposite

Party had already obtained the Completion/Possession Certificate dated 31.03.2017 from competent authority.

- C. That the State Commission erred in not holding that the Complainants/Respondents are not “Consumers” within the meaning of Section 2(1)(d) of Consumer Protection Act 1986 after compliance of delivery of possession and registration of Conveyance Deed as per Agreement dated 07.09.2014 as admitted in Complaint Petition, and consequently only the Civil Court is competent to adjudicate the dispute in accordance with law.

7. Upon notice of the memo of appeal, the Respondent/Original Complainant filed their reply. While appreciating the Order of the Ld. State Commission, they prayed for dismissal of the appeal as being without merit. The respondents relied upon the Judgment of the Hon’ble Supreme Court “***Bharathi Knitting Company vs. DHL Worldwide Express Courier Division, AIR 1996 SC 2508***” wherein It was observed that when a person signs any document which contains certain contractual terms, the parties are bound by such contracts and, it is for the aggrieved party to establish exception in a suit.

8. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsel for both the parties.

9. In the present case, it is undisputed that in 2014, OP No. 2, the owner of OP No. 1 construction company, and the respondents entered into an agreement for the sale of an apartment measuring approximately 1300 square feet, as Flat No. A in the first floor of the aforementioned building, for a total consideration of Rs. 35,00,000/-. The appellants’ conveyance deed, dated 03.02.2017, makes it abundantly clear that they executed the sale transaction in the complainants’ favour upon receiving the full consideration amount. This is further supported by the memo of consideration included in the conveyance deed.

10. With regard to the delivery of possession of the flat in question, it has come to the light that the Appellants/OP had obtained Occupancy Certificate dated 17.02.2014. Ld. Advocate for OP Nos. 1 & 2 submitted that due to non payment of item No.8 to the memo of consideration i.e. Rs.87,500/- and non-payment of service tax they could not hand over the possession to the complainants. Since the possession of the said flat has not been handed over to the respondents, the Respondents would certainly fall within the definition of “Consumers”.

11. As to whether the amount of Rs.87,500/- as alleged by OP 1 & 2 had been paid by the complainants or not, in the memo of consideration it has been recorded that the amount of Rs.87,500/- is paid by the complainants in cash and the OP No. 2 has acknowledged the same by putting his signature with the seal on the bottom of memo of consideration of Deed of Conveyance. In ***Bharathi Knitting Company (Supra)***, the Hon'ble Apex Court has observed that a person who signs a document containing certain contractual terms is normally bound by them even though he is ignorant of their precise legal effect. Therefore, when no contradictory evidence is forthcoming, keeping in view the authority referred above, it cannot be held that the OP has not received the said amount. In the case of “***Dahiben v.***

Arvindbhai Kalyanji Bhanushali 2020 SCC OnLine SC 562” it was held by the Supreme Court that non payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground.

12. On behalf of OP Nos. 1 & 2 another allegation has been made regarding non payment of Service Tax. In this regard, inviting our attention to Clause 40 to the agreement for sale, Ld. Advocate for the OP Nos. 1 & 2 has submitted that as per the said terms the complainants are under obligation to pay service tax at the prevailing rate on total consideration money but they did not pay the same. Clause 40 of the agreement for sale provides:-

“40. SERVICE TAXES: The purchaser of the flat shall have to pay service tax at the prevailing rate of the total consideration money and shall be deposited to the competent authority prior to registration of the flat in accordance with the law.”

The above clause makes it clear that the complainants were under obligation to pay the service taxes prior to registration and execution of the sale deed. There is no document whatsoever that the OP Nos. 1 & 2 have ever raised any claim calling upon the complainants/purchasers to make payment of service tax. Therefore, when the registration has already been executed, in accordance with the Clause 40 of the agreement for sale, the OP Nos. 1 & 2 have no authority to claim service tax from the complainants.

13. In view of the discussion above, we do not find any merit in the present appeal and the same is dismissed. Consequently, the impugned order passed by the State Commission is upheld.

14. Both parties to bear their own costs of litigation.

15. All pending Applications, if any, stand disposed off accordingly.

.....J
SUDIP AHLUWALIA
PRESIDING MEMBER

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ROHIT KUMAR SINGH
MEMBER