

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 293 OF 2019**

(Against the Order dated 15/01/2019 in Complaint No. 145/2016 of the State Commission  
West Bengal)

1. EKKORI DAS

S/O. LATE HRISHIKESH DAS, RESIDING AT HATTOLA  
(NEAR FISH MARKET) P.O. & P.S. BOLPUR  
BIRBHUM 731234

.....Appellant(s)

Versus

1. SODIPTO CHATTERJEE & 2 ORS.

S/O. LATE KALI DAS CHATTERJEE, RESIDING AT 15-A,  
EARLE STREET  
KOLKATA 700 026

2. TARUN KUMAR RAY CHAUDHURY

S/O. LATE HARADHAN ROY CHOUDHURY, F-8/5,  
LABONY ESTATE , SALT LAKE  
KOLKATA 700 064

3. TRIPUTI CONSTRUCTION COMPANY

SRI SUBRATA DAS, S/O. LATE RAMCHAND DAS, 10,  
PAIKPARA ROW, 2 FLOOR, P.S. TALA  
KOLKATA 700 037

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER  
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT : MR. PAWAN KUMAR RAY, ADVOCATE WITH  
MR. SUROJIT BANERJEE, ADVOCATE

FOR THE RESPONDENT : MR. SANJOY KUMAR GHOSH, ADVOCATE FOR  
R 1 AND R 2  
MS. RUPALI S GHOSH, ADVOCATE FOR R 3

**Dated : 08 April 2024**

**ORDER**

**PER SUBHASH CHANDRA**

This Appeal has been filed by the Appellant, Opposite Party No.1 before the State Commission in the original Complaint, challenging the order dated 15.01.2019 of the State Consumer Disputes Redressal Commission, West Bengal (for short "the State Commission") in Complaint No.145 of 2016 filed by the Complainants, Respondent No.1 and 2 herein. By the impugned order, the State Commission allowed the Complaint and directed the Opposite parties to execute and register the Deed of Conveyance on receipt of the balance consideration, if any, with the cost of such registration to be borne by the complainants.

Legal Representatives of the Appellants are on record as Appellants No.1 to 6 – for convenience, all of them are collectively referred to as Appellant.

2. In brief, the facts of the case are that the late Appellant whose heirs are on record was the land owner of a plot of land measuring approximately 10 cottah 8 chhitak 22 sq. ft. at Mouza Bathgora within the limits of Bolpur Municipality, District Birbhum. Respondent No.3 was the Developer having a proprietorship firm carrying on its business from the address at 10 Paikpara Road, Tala, Kolkata – 700 037. The Appellant expressed his intention to construct one multistoried building over the land and accordingly approached Respondent No.3, entered into a Development Agreement dated 15.08.2010 for construction of a G+2 storied building and executed a registered Power of Attorney in favour of Respondent No.3. The Complainant intended to purchase one residential flat at Bolpur and approached the Respondent No.3/Developer in the year 2012 and entered into an Agreement for Sale dated 27.09.2012 with the Opposite Parties for purchasing one residential flat on the 1<sup>st</sup> floor (north west corner), measuring approximately 680 sq. ft. super built up area, together with proportionate share and interest of ownership in the land of the G + 2 storied building at holding no. 93, Simanta Pally of Bolpur Municipality along with right to use the common area and common facilities as available in the said building consisting of two bed rooms, kitchen, toilets along with garage of 120 sq. ft. in the front portion of the ground floor for a total consideration of ₹7,25,000/- for the flat and ₹1,20,000/- for the garage. Complainant No.1 paid total amount of ₹9,67,000/- on different dates to the Respondent No.3 Developer as per demand including ₹1,22,000/- towards additional work. Possession of the flat to the Complainant No.1 was delivered by Respondent No.3 Developer vide letter dated 02.04.2014 which was duly received. Complainant is currently residing in this flat.

3. Complainant No.2 entered into an Agreement for Sale dated 26.04.2013 with the Opposite Parties for purchasing one residential flat on the 1<sup>st</sup> floor, south eastern side, measuring about 482 sq. ft. super built up area consisting of one bed room, dining, kitchen, toilet and balcony along with the right to keep one motor cycle in the open car parking space for a total consideration of ₹6,99,000/-, together with proportionate share of interest or ownership in the land at holding no.93, Simanta Pally, Bolpur along with the right to use the common areas and common facilities. Complainant No.2 further entered into an Agreement dated 04.07.2014 with the OPs for purchasing one residential flat consisting of three bed rooms, dining, kitchen, toilet and balcony for a total consideration of ₹11,30,000/- and the total consideration of two flats being ₹18,29,000/- in the ground floor, south east side, measuring about 950 sq. ft. super built up area with proportionate share or interest and ownership in land at 93, Simanta Pally, Bolpur with right to use common areas and common facilities. Complainant was issued two separate possession letters dated 10.08.2013 and 15.07.2014 for the 1<sup>st</sup> floor and ground floor flat in his favour for payment of ₹15,30,000/-. Complainant states that he was ready and willing to pay the balance consideration of ₹2,99,000/- at the time of execution of the deed of conveyance by the OPs. The Complainant requested for execution of a deed of conveyance vide letter dated 29.09.2014 but the Appellant did not comply with the same and intimated vide letter dated 29.09.2014 that due to non-compliance of Development Agreement executed between the owner and the Developer, the Development Agreement had been cancelled. Respondent No.3 Developer instituted a Civil Suit against the owner before the Civil Court at Bolpur and the Appellant expressed his inability to execute and register the deed of conveyance in a pending litigation.

Subsequently, Complainants sent a letter to the OPs on 23.02.2015 requesting for execution of the deed of conveyance which was not done. Hence, the present Appeal.

4. The Respondent approached the State Commission in CC 145 od 1016 with the following prayers:

- (i) To admit and register the complaint;
- (ii) to allow the complainants to file the complaint jointly u/s 12(1)(c) of the C. P. Act 1986;
- (iii) After hearing pleased to direct the opposite parties to execute and register deed of conveyance in favour of the complainants;
- (iv) To award compensation to the tune of ₹10,00,000/- due to harassment, mental agony and financial loss;
- (v) To award litigation cost of ₹50,000/-;
- (vi) To pass other orders as your lordship may deem fit and proper.

5. The order of the State Commission dated 15.01.2019 decided on contest reads as under:

“Ld. Counsel appearing for the Complainants in course of hearing relied on a decision of the Hon’ble National Commission in Smt. V.Kamala & Ors-Vs-K.Rajib represented by his General Power of Attorney holder, K.V.Babji and Ors reported in 2014(3) CPR 91(NC) and tried to impress that an inter se dispute between the owners and builder cannot be permitted to be used as a ploy to wriggle out of obligation under agreements and leave buyers in lurch.

In view of the said decision of the Hon’ble National Commission, I allow the Petition of complaint, direct the Opposite parties to execute and register the Deed of conveyance on receipt of the balance consideration, if any. The cost of such registration shall be borne by the complainants. Parties do bear their respective costs of the proceeding.”

6. We have heard learned Counsel for the parties and perused the material on record. Parties have filed written synopsis of arguments.

7. Appellant is the owner of the plot of land in question and engaged the Developer Respondent No.3 and its proprietorship construction Company for construction of G+2 storied building and entered into a Development Agreement dated 15.08.2010, according to which he was to receive 40% of the total saleable area and the Developer was to receive the balance after providing for common areas and amenities. It is argued on behalf of the Appellant that the building was never completed as per the sanctioned plans and no notice, as per the Agreement, was given to him which was *sine qua non* as this was the sole leverage that he held upon the Respondent. It is submitted that the Appellant remains and continues to be the owner of the subject property land. It is submitted that without consent of the Appellant, the Developer entered into agreements with the prospective buyers and received

money and that the Appellant did not receive any money. It is submitted that till date the Appellant has not received the completed owner's allocated area/apartments as agreed in the Development Agreement. Appellants contended that a common complaint was filed by them whereas there was no commonality or joint cause of action against him. Reliance was placed on judgment of Hon'ble Supreme Court in ***Vikrant Singh Mali & Ors. Vs. Supertech Limited*** in Civil Appeal No.3526 of 2016. It is further argued that there was no privity of contract between him and the Complainants as no agreement was executed between them. It is prayed that the impugned order qua him be set aside.

8. Complainants argued that despite making the entire payments towards the flats allotted to them, the Appellant and the Developer did not execute the Deed of Conveyance in their favour. It is argued that the Appellant had received his share of properties, i.e. the owner's allocations as per the development agreement and had received seven flats out of which he gifted six flats to his six sons and kept one flat for his own use. It is argued that after receiving the flats, the Appellant started creating problems and difficulties in execution of the conveyance deed in their favour. It is submitted that the Appellant has sold the flat to one Somaditya Ghosh and Dipanwita Ghosh on 05.07.2013 to which the Respondent No.3 Developer has also signed as a confirming party.

9. While it is admitted that the Appellant being the land lord engaged Respondent No.3 for construction of the building under a Development Agreement dated 15.08.2010 allocating 40% of the total saleable area, the Appellant contends that the building was not completed as per sanctioned plans. However, the Respondent No.3 (Developer) is alleged to have sold apartments in the building. No documents indicating bifurcation of flats between the Appellant and the Respondent No.3 or establishing whether flats sold by Respondent No.3 as alleged by the Appellant fell to the share of the Appellant, or Respondent No.3 have also been brought on the record. The contention of the Appellant that Respondent No.3 entered into agreements with prospective buyers and received money is also not evidenced by any documents on record. The privity of contract is between late Ekkori Das (father of Appellants) and Respondent No.3 Developer. The Complainants before the State Commission/RespondentNo.1 herein admitted to the Development Agreement at the instance of Respondent No.1 but denied executing any General Power of Authority with Respondent No.3 Developer in respect of sale and transfer of flats. According to Respondent, it was Respondent No.3 Developer who entered into agreements without consent of the Appellant. These Agreements were in the name of the Appellant. Respondent No.2 has not denied that Respondent No.3 entered into agreements on behalf of Appellant but contended that the Complaint was not maintainable against it and conveyed willingness to hand over possession of the flats.

10. Admittedly, the privity of contract is between Appellant and Respondent No.1, 2 and 3. The Development Agreement between the landlord (Appellant) and the Developer (Respondent No.3) stood annulled as per letter dated 29.09.2014 of the Appellant. Hence the Agreement for Sale of flats dated 26.04.2013 dated 04.07.2014 entered into by Respondent No.3 are not valid as the landlord Appellant with proportionate share in land is not made a

party to this agreement. This is on account of issues between the landowner and the Developer.

11. The State Commission has held that in view of *V. Kamala & Ors. Vs. K. Rajib* (represented by his General Power of Attorney Holder K. V. Balaji) & Ors. 2014 (3) CPR 91 (NC), an *inter se* dispute between the landowners and builders cannot be permitted to be used as a ploy to wriggle out of obligations under agreements to the detriment of home buyers. Opposite Parties were, therefore, directed to execute and register the Deed of Conveyance on receipt of balance consideration, if any.

12. In view of the foregoing, we do not find any merit in the Appeal. Order of the State Commission is affirmed. Parties are directed to execute Sale Deed and Conveyance Deed within a period of eight weeks subject to payment of any balance sale consideration and dues that may be payable on the part of the allottees to the flat.

13. There shall be no order as to costs. Pending IAs, if any, stand disposed of with this order.

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**SUBHASH CHANDRA  
PRESIDING MEMBER**

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**DR. SADHNA SHANKER  
MEMBER**