

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5208 OF 2022

(Arising out of S.L.P. (C) No. 11938 of 2021)

M/S SIDDHYVINAYAK INFRASTRUCTUREAPPELLANT (S)

VERSUS

KAMALAKAR JAYANT SRIVASTAVA & ANR.RESPONDENT (S)

J U D G M E N T

J.B. PARDIWALA, J.

1. The respondents, although served with the notice issued by this Court, yet have chosen not to remain present before this Court either in person or through an advocate and oppose this appeal.

2. This appeal is at the instance of the original complainant before the District Consumer Disputes Redressal Forum, Nagpur (for short, 'the District Forum') and is directed against the judgment and order passed by the National Consumer Disputes Redressal Commission, New Delhi (for short, 'the National Consumer

Commission) dated 12th December, 2019 in the Revision Petition No. 1185 of 2015 by which the National Consumer Commission disposed of the Revision Petition filed by the appellant herein against the order passed by the District Forum, Nagpur.

FACTUAL MATRIX

3. The respondent no. 1 herein is the Original Complainant. He lodged a complaint under Section 12 of the Consumer Protection Act, 1986 before the District Forum at Nagpur which came to be registered as the Consumer Complaint No. 305 of 2008.

4. The case of the respondent no. 1 before the District Forum was that the complainant and the appellant herein entered into a contract in connection with the purchase of a Twin Bungalow admeasuring 900 sq. ft. of super built up area situated at the Plot No. 132 at Tahsil and District - Nagpur.

5. It appears from the materials on record that the appellant herein is a developer. The complainant entered into an agreement dated 08.06.2006 with the appellant herein for the purchase of the bungalow in question for a total sale consideration of Rs. 9,74,000/- (Rupees Nine Lakh Seventy Four Thousand only).

6. The understanding between the parties was that the complainant would pay an amount of Rs. 4,23,520/- (Rupees Four Lakh Twenty Three Thousand Five Hundred Twenty only) in cash to the appellant herein and the balance amount of Rs. 5,50,520/- (Rupees Five Lakh Fifty Thousand Five Hundred Twenty only) would be paid to the appellant herein after the complainant would get the loan disbursed in his favour from the respondent no. 2, the bank herein.

7. It appears from the materials on record that the bank sanctioned the loan of Rs. 6,40,000/- (Rupees Six Lakh Forty Thousand only) in favour of the complainant on 24.11.2006 but the same never came to be actually disbursed in favour of the complainant.

8. In the aforesaid context, disputes cropped up between the parties. In such circumstances, the complainant thought fit to file a complaint before the District Forum at Nagpur. Before the District Forum, the appellant herein admitted that it had entered into an agreement with the complainant for sale of the house in question. The appellant also admitted that the total sale consideration as fixed was at Rs. 9,74,000/- (Rupees Nine Lakh Seventy Four

Thousand only). However, the appellant herein disputed having received an amount of Rs. 4,23,520/- (Rupees Four Lakh Twenty Three Thousand Five Hundred Twenty only) from the complainant.

9. The stance of the bank before the District Forum was that the home loan of Rs. 6,40,000/- (Rupees Six Lakh Forty Thousand only) was sanctioned in favour of the complainant and his wife on 24.11.2006. The bank called upon the complainant and his wife to submit the necessary documents regarding the property. However, the relevant documents were not furnished and, in such circumstances, the loan amount could not be actually disbursed in favour of the complainant and his wife.

10. The complaint was ultimately adjudicated by the District Forum and the same came to be partly allowed in the following terms:

- “1. The complaint of the Complainant is partly allowed.*
- 2. The Non-application No. 1 is directed that he should complete the construction of the house (semi-detached bungalow) having a built-up area of 900 Sq. ft. on Plot No. 132, P.H. No. 38, Khasra No. 39/1, 39/2 and 39/3 having total area of 2101 Sq. feet, in Ghogal Layout, as per the agreement and hand over its possession to the Complainant and execute a Sale deed of the said house in favour of the Complainant. The Complainant should bear the expenses to be incurred on Sale deed of the said house.*

3. *The Non-applicant No. 1 is directed that he should give the sum of Rs. 30,000/- to the Complainant as compensation towards physical and mental harassment the Complainant suffered on account of failing to complete the construction of the house and deliver its possession and on account of adopting an unfair trade practice.*

4. *The Non-applicant No. 1 directed that he should give to the Complainant compensation at Rs. 300/- in accordance with Condition No. 23 in the Agreement to Sell, from 01/01/2008 till receiving the possession of the house.*

5. *The Non-applicant No. 1 is directed that he should give Rs. 5,000/- to the Complainant towards cost of the present complaint.*

6. *The present complaint is dismissed against the Non-application No. 2.*

7. *The Non-applicant No. 1 should comply with the above orders within a period of 30 days from the receipt of the copy of order.”*

Thus, from the aforesaid, it appears that the appellant herein was directed by the District Forum to complete the construction of the Twin Bungalow in accordance with the agreement and hand over its possession to the complainant upon execution of the sale deed in accordance with the terms of the contract.

11. The appellant herein being dissatisfied with the order passed by the District Forum, Nagpur referred to above challenged the same before the National Consumer Commission, New Delhi by

filing the Revision Petition No. 1185 of 2015. The National Consumer Commission disposed of the Revision Petition in the following terms:

“5. The Learned Counsel appearing for the Developer submitted that the Agreement to Sell was entered into on 08-06-2006 but the loan was sanctioned only on 24-11-2007 and for the fault of the Complainant, the Developer cannot be made to wait indefinitely and that the State Commission has erred in coming to the conclusion that there was deficiency in service on behalf of the Developer.

6. He also drew our attention to the order dated 30-06-2015 passed by this Commission whereby the operation of the impugned order was stayed subject to the Developer depositing a sum of Rs.3,24,780/- with interest at the rate of 12% per annum from the respective dates of deposit. Keeping in view that admittedly the Agreement to Sell was entered into on 08-06-2006 and the loan was sanctioned only on 24-11-2007 and two notices were issued by the Developer on 21-07-2007 and on 08-01-2008, we are of the considered view that the Complainant had failed to adhere to the payment schedule as per the Agreement to Sell and did not pay the entire amount of Rs.9,74,000/-. We find force in the contention of the Learned Counsel appearing for the Revision Petitioner that the Developer cannot be made to obtain the loan amount from the Bank and it is the practice of the Bank to gather all the relevant documents including salary certificate and Income Tax Returns before using its discretion to disburse the loan. If the Complainant had failed to furnish any documents to the Bank which delayed the sanctioning of the home loan, the Developer cannot be made responsible. It is submitted that after the passing of the impugned order, a notification was issued by Collector, Nagpur on 03-02-2015 restraining all

Sub-Registrars not to register the documents in absence of the permissions/sanctions and, therefore, today it is not possible to comply with the directions issued by the State Commission to register the sale deed.

7. On a pointed query from the Bench with respect to the Occupation Certificate, the Learned Counsel for the Petitioner submitted that earlier the apartment was under the territorial jurisdiction of Gram Panchayat but now it has come under the jurisdiction of Municipal Corporation and getting the Occupation Certificate of the apartment in question will take time and in the absence of the Occupation Certificate, the Sale Deed cannot be registered. However, the Learned Counsel for the Complainant/Respondent, on instructions received, submitted that the Complainant/Respondent is prepared to take possession of the apartment in question and the Sale Deed, etc., be registered only after the Occupation Certificate is issued by the competent authority. The statement given by the Learned Counsel for the Respondent appears to be bonafide and would serve the interests of justice, we, therefore, modify the orders of both the fora below with the following directions:

(i) The Petitioner shall provide the peaceful and vacant possession of the house complete in all respects to the Complainant/Respondent No.1 within one month and execute the Sale Deed after getting the Occupation Certificate for which he will take immediate steps;

(ii) the Complainant shall pay the balance sale consideration of Rs.6,49,220/- within four weeks from the date of receipt of a copy of this order directly to the Developer. Needless to add, the stamp duty and taxes due and payable shall be borne by the Complainant;

All the directions given by the District Forum and the State Commission stand modified to the extent indicated

above. Any deposit made by the Developer in compliance of the order dated 30-06-2015 passed by this Commission shall stand refunded by the concerned District Forum along with interest accrued to the Developer.”

Thus, the National Consumer Commission directed the appellant herein to hand over the peaceful and vacant possession of the house complete in all respects to the complainant within one month from the date of the order and execute the Sale Deed after obtaining the Occupation Certificate.

12. However, while issuing such directions to the appellant herein, the National Consumer Commission also directed the complainant to pay the balance sale consideration of Rs. 6,49,220/- (Rupees Six Lakh Forty Nine Thousand Two Hundred Twenty only) within four weeks from the date of receipt of the order directly to the appellant herein. The National Consumer Commission accordingly modified the order passed by the District Forum.

13. The appellant being dissatisfied with the impugned order passed by the National Consumer Commission is here before this Court with the present appeal.

14. We have heard Mr. Vinay Navare, the learned Senior Counsel appearing for the appellant herein. We are of the view that it is not

necessary for us to adjudicate the legality or validity of the impugned order passed by the National Consumer Commission having regard to the peculiar facts and circumstances of the present litigation.

15. It is not in dispute that the Agreement for Sale was entered into on 08.06.2006. The loan came to be sanctioned by the bank on 24.11.2006. It appears from the materials on record and also as pointed out by the learned Senior Counsel appearing for the appellant that the complainant did not even bother to go to the bank and get the loan amount disbursed in his favour. Of course, the case of the complainant as it appears from the materials on record is that he was not able to get the loan amount disbursed in his favour in the absence of documents which the appellant herein failed to supply to the complainant.

16. We take notice of the fact that the National Consumer Commission had stayed the order passed by the District Forum from its operation pending the final disposal of the Revision Application on the condition that the appellant herein deposits the sum of Rs. 3,24,780/- (Rupees Three Lakh Twenty Four Thousand Seven Hundred Eighty only) with interest at the rate of 12 per cent

per annum from the respective dates of deposit.

17. It is not in dispute that the aforesaid amount came to be deposited by the appellant. We are of the view that the ends of justice would be met if we direct the appellant herein to refund the amount of Rs. 3,24,780/- (Rupees Three Lakh Twenty Four Thousand Seven Hundred Eighty only) with interest at the rate of 12 per cent per annum to the original complainant and put an end to the entire litigation.

18. We are saying as aforesaid keeping in mind, the following relevant aspects of the matter:

- a) The original agreement between the parties is of the year 2006.
- b) In accordance with the terms of the agreement for sale, both the parties were obliged to perform their part of the contract.
- c) It is not in dispute that the complainant failed to make the entire payment towards the purchase of the bungalow to the appellant herein in accordance with the terms of the contract.
- d) Although, the loan came to be sanctioned by the bank in November, 2006 yet no further steps were taken by the

complainant to ensure that the amount sanctioned by the bank is directly paid to the appellant herein.

- e) Almost 16 years have elapsed since the parties entered into the contract.
- f) We are of the view that it will be too much at this point of time i.e. after a period of almost 16 years to ask the appellant herein to execute the sale deed by accepting the balance consideration of Rs. 6,49,220/- (Rupees Six Lakh Forty Nine Thousand Two Hundred Twenty only).
- g) It appears that the complainant is also not interested in abiding by the directions issued by the National Consumer Commission.
- h) The impugned order passed by the National Consumer Commission is dated 12th December, 2019. Till this date, the complainant has not come forward to pay the balance sale consideration of Rs. 6,49,220/- (Rupees Six Lakh Forty Nine Thousand Two Hundred Twenty only) to the appellant.

i) The complainant thought fit not to even appear before this Court and oppose this Appeal.

19. In such circumstances, referred to above, we dispose of this appeal in the following terms:

- (i) The impugned order passed by the National Consumer Commission dated 12th December, 2019 is hereby modified to the extent that the appellant herein shall pay the amount of Rs. 3,24,780/- (Rupees Three Lakh Twenty Four Thousand Seven Hundred Eighty only) to the original complainant with interest at the rate of 12 per cent per annum from the date of the Agreement for Sale i.e. 08.06.2006.
- (ii) Once the aforesaid amount is paid, there shall be no further liability of the appellant herein in any respect so far as the property in question is concerned.
- (iii) The amount of Rs. 3,24,780/- (Rupees Three Lakh Twenty Four Thousand Seven Hundred Eighty only) with interest at the rate of 12 per cent per

annum from the date of the agreement shall be paid to the complainant within the period of four weeks from today.

20. As the amount of Rs. 3,24,780/- (Rupees Three Lakh Twenty Four Thousand Seven Hundred Eighty only) with interest at the rate of 12 per cent per annum has been deposited by the appellant with the National Consumer Commission with interest, it shall be open to the appellant to seek refund of the same so as to pay the entire amount to the complainant with the interest accrued upon it.

21. With the aforesaid, this appeal stands disposed of with no order as to costs.

22. Pending application(s), if any, also stands disposed of.

.....**J.**
(DR. D.Y. CHANDRACHUD)

.....**J.**
(J.B. PARDIWALA)

NEW DELHI;
AUGUST 12, 2022

