

CWP NO.8468-2024(O&M) 1

2024:PHHC:149250



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(245)

CWP NO.8468-2024(O&M)
DATE OF DECISION: 14.11.2024

M/s Ambika Realcon Developers Pvt. Ltd. and others

.....Petitioners

VERSUS

National Consumer Disputes Redressal Commission and others

.....Respondents

CORAM HON'BLE MR.JUSTICE VINOD S. BHARDWAJ

Present Mr.Munish Gupta, Advocate,
for the petitioners.

Mr. Ankit Midha, Advocate,
for respondents no.3 and 4.

Ms.Avin Kaur Sandhu, Advocate,
for respondent no.5.

VINOD S.BHARDWAJ J, (ORAL)

1. Raising challenge to the order dated 27.03.2024, passed by respondent no.1 in First Appeal No.181 of 2024, titled as “M/s. Ambika Realcon Developers Pvt. Ltd. & others versus Amit Goyal and another”, the petitioner has approached this Court, since a pre-deposit to the extent of 50% of the value of the property was not deposited by him and a deposit had been made only to the extent of 50% of the amount against other relief(s).

2. The matter came up for hearing on 18.04.2024, when the following order was passed”-

“Learned counsel appearing on behalf of the petitioner contends that National Consumer Disputes Redressal Commission has passed an order dated 27.03.2024 whereby it has directed the petitioner to deposit 50% of the



sale consideration of the flat, by applying Section 51 of the Consumer Protection Act, 2019. He contends that as per the 2nd proviso to Section 51, an applicant is required to deposit at least 50% of the amount, required to be deposited in terms of the order of the State Commission, before an appeal is entertained by the National Commission. He argues that the State Consumer Disputes Redressal Commission, U.T. Chandigarh has passed the following award dated 25.01.2024.

Relief:-

21. For the reasons recorded above, this complaint is partly accepted with costs against the opposite parties and they are jointly and severally directed as under:-

- i. To hand over possession of the unit in question, to the complainants, complete in all respects, after obtaining occupation and completion certificates from the competent Authorities and providing all the basic amenities and facilities including club house, strictly as per the specifications mentioned in the brochure and agreement, within a period of three months (03 months) from the date of receipt of a certified copy of this order.*
- ii. To pay to the complainants compensation by way of interest @9% p.a. from 30.09.2022 onwards till 31.01.2024 on the entire received sale consideration in respect of the unit in question, within a period of 30 days from the date of receipt of a certified copy of this order, failing which the entire accumulated amount of compensation from 30.09.2022 to 31.01.2024 aforesaid shall carry interest @12% p.a. from the date of default till this entire accumulated amount is paid to the complainants.*
- iii. To pay to the complainants, compensation by way of interest @9% p.a. on the entire received sale consideration, w.e.f. 01.02.2024, onwards (per month), by the 10th of the following month till compliance of directions given in sub-para no.(i) above.*
- iv. To pay to the complainants, compensation to the tune of Rs. 75,000/- for causing them mental agony & harassment, deficiency in providing service and adoption of unfair trade practice; and also cost of litigation to the tune of Rs.35,000/-, within a period of 30 days, from the date of receipt of a certified copy of this order, failing which the said amounts shall carry interest @9% p.a. from the date of default till realization.*

However, the opposite parties are at liberty to deduct the remaining sale consideration, if any/taxes as applicable as per



agreement, payable by the complainants, in respect of the unit in question, out of the awarded compensation.

Referring to the above, he submits that a direction to deliver possession cannot be construed as a direction to pay the sale consideration, while applying and interpreting the order passed by the State Commission. The National Consumer Disputes Redressal Commission thus travelled beyond the award by converting the value of the property and mandating deposit of 50 % of such value as it would amount to re-writing the legislative provision as well as amending the award. It is further submitted that the National Consumer Disputes Redressal Commission has refused to entertain the application for stay moved by the petitioner, without the pre-deposit. He makes reference to the judgment of the Hon'ble Supreme Court in the matter of "Manohar Infrastructure and Constructions Private Limited versus Sanjeev Kumar Sharma and others" reported as 2022 (1) R.C.R. (Civil) 330 and contends that the object of pre-deposit is to avoid frivolous appeals and it has no nexus with the grant of stay by the National Commission. It is submitted that the National Commission thus ought to have heard the appellant on the application of Stay. It is also pointed out that execution has already been instituted and the same is fixed for tomorrow i.e. 19.04.2024.

Notice of motion.

Notice re: Stay as well.

In the meanwhile, the operation of the order dated 27.03.2024 directing the petitioner to deposit 50% of the amount in relation to relief No.1 contained in the award passed by the State Consumer Disputes Redressal Commission, U.T. Chandigarh shall remain stayed till the next date of hearing or adjudication of application seeking stay by the National Consumer Disputes Redressal Commission, whichever is earlier.

It is further informed that the first appeal is now fixed for hearing on 31.05.2024.

Taking into consideration the totality of the facts and circumstances noticed above, the petitioner is granted liberty to move an appropriate application for pre-poning the date of hearing and/or for hearing its application for stay of execution proceedings pending appeal.

Let such an application be filed within a period of 02 weeks. The execution proceedings shall be deferred by the Executing Court for a period of 02 weeks to enable the petitioner to approach the National Consumer Disputes Redressal Commission for seeking & pursuing its relief.

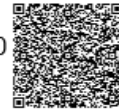
To come up on 01.08.2024 for further consideration."



3. Counsel for the petitioners contends that they have already offered possession but the respondent is not accepting the same yet. Hence, challenge to the relief no.1 about delivery of possession does not survive any further. He submits that the respondent may deposit the balance outstanding and take possession. Hence, the challenge in the appeal being limited to the interest awarded, the pre-deposit already made is a statutory compliance.

4. Counsel for the contesting respondents, however, contends that a conditional offer of possession was made by the petitioners and that they are demanding the balance amount whereas a right of set off has been granted to them. He states that he is ready to submit an undertaking that he will take possession of the flat subject to the final outcome of the pending appeal, and without prejudice to his rights, and shall deposit the balance amount, if any, payable by him, in the event of the petitioner-builder succeeding in the pending appeal. He also admits that the first part of the relief was in relation to direction to hand over the possession of the unit in question and the other relief was in reference to the Award of interest in his favour. He also admits that the appeal was not being entertained since 50% of the value of the unit had not been deposited by the petitioner towards mandatory compliance of the pre deposit under the provisions of the Consumer Protection Act, 2019. He submits that the possession of the property has since been delivered, he would have no objection to the appeal being heard on merits by treating 50% pre-deposit already made by the petitioner, which is a satisfactory compliance of the relief (ii) to (iv) awarded in their favour and against which the dispute now survives.

5. In view of the aforesaid concession made by the learned counsel for the contesting respondents, this Court does not feel necessary to go further



into the merits since the issue on merits is already *sub judice* before the National Consumer Disputes Redressal Commission.

6. The present petition is accordingly disposed of at this stage with the consent of the parties and without commenting on the merits and in the interest of justice, in view of the concession made by learned counsel for contesting respondents no.3 and 4.

7. The impugned order dated 27.03.2024, passed by National Consumer Disputes Redressal Commission (hereinafter referred to as NCDRC for short) is hence set aside. The NCDRC is requested to examine the pending appeal by treating the 50% deposit against the reliefs (ii) to (iv) as sufficient compliance since there is no further dispute qua relief granted at no.(i).

8. The parties may move an appropriate application before the NCDRC for listing of the appeal and for adjudication on merits.

9. The interim protection issued by this Court vide order dated 18.04.2024 shall continue in favour of the petitioner till revival of the appeal, including the application for seeking interim relief or for a period of four weeks, whichever is earlier.

10. Pending application, if any, shall also stand disposed of.

14.11.2024
mamta

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No