

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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**CWP No.27068 of 2017.
Date of Decision: 28.11.2017.**

Nitin Bansal

....Petitioner.

Versus

The State Consumer Disputes Redressal Commission, Punjab and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Ashutosh Gupta, Advocate for the petitioner.

Rakesh Kumar Jain, J.(Oral)

This petition is filed in order to challenge the order dated 03.10.2017 and 14.11.2017 passed in the execution application bearing No.EA 39/2016.

The respondents No.2 and 3 had filed a complaint under Section 17 of the Consumer Protection Act, 1986 (for short, 'the Act') before the State Consumer Disputes Redressal Commission, Punjab, alleging certain deficiencies in the services provided by the petitioner, being a builder.

The said complaint was allowed vide order dated 29.01.2016 and certain directions were issued which are reproduced as under:-

(i) deliver the possession of Apartment No.505, 5th Floor, Tower-C with having super area of 1760 sq. ft., complete in all respect as per the agreement including the completion certificate within a period of three months from the date of

receipt of the copy of the order by the parties; after taking the outstanding amount of basic price + Rs.1,17,420/- on account of Service Tax, Rs.60,000/- as Club Membership, Rs.7416/- Service Tax of Club Membership or by way of adjustment of the amount, which the complainant is to get from Op on account of later delivery of possession.

(ii) pay Rs.8800/- per month to the complainants as compensation on account of later delivery of possession from 30.6.2013 till the possession is actually delivered.

(iii) Op will further pay compensation of Rs.1,00,000/- on account of harassment and mental tension.

(iv) Rs.11,000/- as litigation expenses.”

Aggrieved against the said order, the petitioner had filed the statutory appeal before the National Consumer Disputes Redressal Commission, New Delhi, but remained unsuccessful as his appeal was dismissed on 12.09.2017. Since the petitioner did not follow the directions as contained in the order of the State Commission, therefore, the respondents No.2 and 3 filed the execution application No.39 of 2016 before the State Commission in terms of Section 27 of the Act. It is alleged that notice was not issued to the petitioner, but it was served upon the counsel for the petitioner. In any case, the petitioner, thereafter joined the proceedings through his counsel and on 03.10.2017 the impugned order Annexure-P11 was passed in the following manner:-

“The reply filed by the opposite party is silent with regard to the deficiencies pointed out by the applicant/Decree Holder in his application. Therefore, the opposite party/JD is

directed to file a specific affidavit on or before 24.10.2017 whether the deficiencies pointed out by the complainant/decree holder are in place in accordance with the Buyer's Agreement otherwise this Commission will be constrained to appoint the Local Commissioner and in that eventuality the costs/expenditure of the Local Commissioner shall be borne by the opposite party/JD.”

Admittedly, the petitioner did not file the affidavit as required by the State Commission which was to be filed on or before 24.10.2017, therefore, the State Commission passed the order. Thereafter, a show cause notice has been issued to the petitioner under Section 261 read with Section 262 of the Code of Criminal Procedure (for short, 'Cr.P.C.') on 14.11.2017.

The first argument of learned counsel for the petitioner is that no notice was given to the petitioner, therefore, the proceedings initiated are illegal.

I am not in agreement with the argument raised because had the petitioner remained un-represented before the State Commission then the matter would have been altogether different, but the petitioner has been served through his counsel, who has put in appearance and contested the execution application. The plea that notice was not given to the petitioner is only a plea to delay and avoid the order of the State Commission passed as far back as on 29.01.2016 which had attained finality as the appeal filed against it was dismissed on 12.09.2017 and as it was not further challenged by the petitioner before the Apex Court. The State Commission has only required the petitioner to file a specific affidavit as it was not satisfied with

the decree holder in his application, which direction should have been complied with by the petitioner because in the absence of reply much less contest of the petitioner in regard to deficiencies pointed out by the decree holder, the executing Court cannot come to the conclusion as to whether the order has been complied with or not. The executing Court has thus observed that if the deficiencies pointed out by the decree holder are in place in terms of the Buyer's Agreement, the Commission would be constrained to appoint a Local Commissioner and in that case the costs of the Local Commissioner would be borne by the petitioner.

I do not find any reason to differ with the view taken by the State Commission in that regard. In so far as the show cause notice is concerned, it is also challenged in the petition, which has been issued to the petitioner for his adamancy on the ground that the petitioner has failed to comply with the order passed by the State Commission.

In view of aforesaid discussion, there is hardly any scope to interfere in the orders dated 03.10.2017 and 14.11.2017.

The petition is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

28.11.2017
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No