IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

108

CWP-4133-2024 (O&M)
Date of decision: 20.05.2024

M/S CRYSTAL BUILDTECH PVT. LTD.

......Petitioner

VERSUS

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION AND ANOTHER

.......Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Shailender Kashyap, Advocate and
Mr. Parshant Sethi, Advocate
for the petitioner.

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VINOD S. BHARDWAJ, J. (Oral)

CM-5595-CWP-2024

For the reasons mentioned in the application, the same is allowed and Annexures P-17 to P-24 are taken on record.

CWP-4133-2024

1. Challenge in the present writ petition is to the order dated 27.10.2023 passed by the National Consumer Disputes Redressal Commission, New Delhi in the matter of ***"M/s Crystal Buildtech Pvt. Ltd. versus Mr. Rupesh Gupta"*** in ***Revision Petition No. 1570 of 2023***.

2. Learned Counsel appearing on behalf of the petitioner *inter alia* contends that the petitioner-Company is dealing in the Real Estate business and has developed a plotted township namely "Krish Seasons" at Village

Bureda, Tehsil Tijara, District Alwar, Rajasthan.

3. The respondent No.2-Consumer had approached the petitioner-Company and showed his interest in the project developed by the petitioner. He made an application for provisional registration of a plot admeasuring an area of 120.09 sq. yards therein. A booking amount of Rs. 1,80,000/- was paid through Cheque No. 742971 dated 19.04.2014 drawn on ICICI Bank. The provisional letter of allotment was issued on 29.05.2014 to the respondent No. 2 informing that Plot No. 137 in the said project had been provisionally allotted to him. The allotment agreement was eventually executed on 31.10.2014. A total payment of Rs. 16,79,661/- was made by respondent No.2-Consumer between the period from 19.04.2014 to 20.12.2016 against the total sale consideration of Rs. 23,95,795/-. It is further contended by the Counsel that a completion certificate with respect to the plotted development on the said project was issued to the petitioner on 18.07.2018 and thereafter an offer of possession was sent to the respondent-Consumer vide letter dated 20.07.2018. He contends that the possession of the developed was to be delivered within 24 months of commencement of construction, which as per the respondent-Consumer, commenced on 05.09.2016. Hence, the possession had to be delivered by the petitioner-Developer on or before 04.09.2018 and that the petitioner-developer was compliant of its contractual obligation by offering possession on 20.07.2018 i.e. nearly two months before the time agreed under the agreement, for delivery of possession. The respondent No.2-Consumer was called upon by the petitioner company to clear the outstanding installments towards the cost of the plot in question so that the actual physical possession could be handed over, however, no payment was made. Instead, the respondent No.2-

consumer filed a consumer complaint before the District Consumer Disputes Redressal Commission, Gurugram (for short “DCDRC, Gurugram”) bearing CC/458/2019 which was withdrawn on technical grounds seeking liberty to file a fresh complaint. Thereafter the Consumer Complaint No. 230 of 2020 was filed by respondent No.2 before the DCDRC, Gurugram even though the company was not in default.

4. The petitioner-Company however entered appearance before the DCDRC, Gurugram and filed its reply taking various objections with respect to the maintainability of the said complaint as also to the territorial jurisdiction. The DCDRC, Gurugram passed its award on 02.08.2021 against the petitioner-Company and in favour of respondent No.2 directing the petitioner-Company to refund the deposited amount of Rs. 16,79,661/- alongwith interest @ 9% per annum from the date of deposit of each installment till its realization alongwith compensation towards mental agony and litigation expenses as well.

5. Aggrieved thereof, the petitioner-Company preferred an appeal before the State Consumer Disputes Redressal Commission, Panchkula (for short “SCDRC, Panchkula”) registered as Appeal No. 245 of 2021. The award passed by the DCDRC, Gurugram was upheld by the SCDRC, Panchkula vide judgment dated 19.01.2023 and it was recorded that the impugned award by the DCDRC, Gurugram does not suffer from any illegality or perversity and the same is well reasoned. Still aggrieved, the petitioner-Company preferred a Revision Petition No. 1570 of 2023 before the National Consumer Disputes Redressal Commission, New Delhi (for short “NCDRC, New Delhi”) which was also dismissed vide order dated 27.10.2023 against which the present petition has been filed.

6. Learned Counsel appearing on behalf of the petitioner has raised following arguments.

i) That the consumer Courts have failed to appreciate that the completion certificate with respect to the project had been issued in favour of the petitioner-Company on 18.07.2018 by the Unique Consultant, Chartered Engineers and that possession was thereafter offered on 20.07.2018. It is submitted that as per the terms and conditions of the agreement executed between the parties, possession of the properties was to be delivered within 24 months of commencement of the construction which in the present case happened to be 04.09.2018. The possession was offered on 20.07.2018 even though it required to be delivered on or by 04.09.2018. The respondent-Consumer was under an obligation to clear the outstanding arrears so as to take physical possession of the plot which was not done. The Company was hence not in lapse.

ii) It is next argued by the learned counsel for the petitioner that the respondent-Consumer defaulted in payment of the outstanding installments and that he could not have taken advantage of his own lapses and prosecuting the petitioner-Company notwithstanding the default by the respondent-Consumer himself in clearance of the pending installments.

iii) It is next argued by the learned Counsel that the DCDRC, Gurugram did not have the territorial jurisdiction to entertain the complaint since the project in question was in District Alwar in Rajasthan and that the property was also situated in the said area. The petitioner-Company did not have any reasons to ordinarily carry on trade in the territorial jurisdiction of DCDRC, Gurugram. Hence, there was no cause of action that accrued in favour of the respondent-consumer within the above said territorial jurisdiction. The exercise of the jurisdiction was thus bad and liable to be set aside.

iv). Learned Counsel for the petitioner further contends that the NCDRC was in error in considering that no Occupancy Certificate had been placed on record by the petitioner not withstanding that as per Rule 4 Explanation (vi) of the Rajasthan Real Estate (Regulation & Development) Rules, 2017, the project of the petitioner, being a plotted development project or a township, was exempted from Registration under RERA Authorities. Therefore, it was exempted from seeking an Occupancy Certificate as it was not a housing project but only a plotted development and only the basic amenities were required to be provided.

7. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents alongwith the present writ petition.

8. Insofar as the contention of the petitioner that the DCDRC, Gurugram did not have the territorial jurisdiction to entertain the present complaint is concerned, Section 34 of the Consumer Protection Act, 2019 prescribes jurisdiction of the District Commission. The statutory provision is reproduced herein after below:

> *"34. Jurisdiction of District Commission (1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees:*
>
> *Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit.*

(2) <u>A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction,--</u>

<u>(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or</u>

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain.

(3) The District Commission shall ordinarily function in the district headquarters and may perform its functions at such other place in the district, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time."

9. A perusal of the aforesaid shows that the territorial jurisdiction is conferred on a District Commission within the local limits of jurisdiction of the opposite parties or where the opposite parties ordinarily reside or carry on business or have a Branch office or personally works for gain.

10. A perusal of the documents appended by the petitioner with respect to the status of the company itself shows that as per the declaration made on the letter head, the Corporate Office of the petitioner-Company was situated in <u>424-425, Suncity Success Tower, Golf Course Extension Road, Sector-65, Gurgaon</u>. Further, the petitioner-Company has itself acknowledged the existence of its aforesaid office even in the Memo of

Parties as declared by them in the Revision Petition filed before the NCDRC, New Delhi where the aforesaid address of Gurgaon finds a mention, and also in the present writ petition.

11. Reliance has been placed by the Counsel for the petitioner on the judgment passed by the Hon'ble Supreme Court in the matter of ***"M/s Sonic Surgical versus National Insurance Company Ltd."*** in ***Civil Appeal No. 1560 of 2004*** dated 20.10.2009 to support his argument about DCDRC, Gurugram not having territorial jurisdiction. I find that the aforesaid judgment is not applicable to the facts of the present case *inter alia* for the following reasons:-

i) That the provision of Section 34 of the Consumer Protection Act, 2019 was not under consideration before the Hon'ble Supreme Court in the said judgment. The above said provision specifically confers territorial jurisdiction on a consumer Court where any of the opposite parties voluntarily carries on business or has a Branch office or personally works for gain. It is evident from the respondent's own declaration that the Corporate office, which is not akin to a sub remote branch office, was actually functional in Gurgaon. Moreover, the respondent-complainant himself is also a permanent resident of Gurgaon as is also reflected from the Memo of Parties. Hence, the petitioner-Company as well as respondent No. 2 are carrying on business/residing in Gurgaon.

ii) In the matter of bone surgicals the godown was situated in Ambala and no cause of action arise in Chandigarh since even the policy in the said case was taken at Ambala and claim for compensation was also made at Ambala. In the present case, however, other than the project of the petitioner-Company being in Rajasthan, there is no other cause that has occurred in Rajasthan and all transactions took place in Gurgaon.

iii) Once the Corporate office of the petitioner-Company is situated in Gurugram, it cannot plead that it does not carry on business or works for gain in the said territory.

iv) Besides Section 34(2)(d) of the Consumer Protection Act, 2019 vests jurisdiction on a consumer court where the complainant resides or works for gain. There was no similar clause under Section 17(2) of the Consumer Protection Act, 1986, as amended and only the residence or place of work of the opposite party was determined of territorial jurisdiction. The provision having been specifically added by the legislative intended to extend the territorial jurisdiction based on the residence/occupation of complainant as well. Hence the said clause itself is sufficient for conferring jurisdiction.

12. Thus, not only the cause of action accrued in favour of the respondent for delay in delivery of possession at Gurgaon but also the territorial jurisdiction has been specifically conferred upon the DCDRC, Gurugram. The object of the Consumer Protection Act, 2019 being to provide protection of interest of the Consumers and for the said purposes, authorities have been established for timely, efficient, economical and effective settlement of Consumer disputes and for matters connected thereto. It aims to protect the interests of the Consumer against unscrupulous supply/service provider and that the said object cannot be defeated by the Developer by some artificial untenable technical objection. The argument thus deserves to be rejected for the said reason.

13. Moreover, even though the petitioner has laid much emphasis on the said argument, however, a perusal of the award passed by the

DCDRC, Gurugram as well as the SCDRC, Panchkula and NCDRC, New Delhi clearly shows that the said argument had not been raised and had seemingly being given up by the petitioner at the said stages. A new argument is now being sought to be raised only to cause prejudice to the rights of the respondent. Thus, considering it from either of the said perspectives, the objection as regards territorial jurisdiction is not tenable.

14. So far as the contention of the petitioner about the completion certificate having been obtained on 18.07.2018 is concerned, the petitioner has referred to the provision of Rule 4, Explanation vi. Apparently such an argument could have been raised only in case the difference between a completion certificate and occupancy certificate was not clear. A completion certificate is not to be confused with a requirement of seeking an occupancy certificate. Both the certificates are distinct and are required to be separately issued. The exemption under Rule 4 explanation VI referred to is only with respect to seeking an occupancy certificate and not with respect to necessity of obtaining a completion certificate. The completion certificate is required to be issued by the competent authority which grants the license. The requisite terms and conditions of the license as well as the rules mandating obtaining of the completion certificate have neither been placed before this Court in the present proceedings nor ever brought before the Consumer Courts at any of the said stages. The said argument is thus an afterthought and is aimed at misleading the Court to agree with the petitioner, by using the terms interchangeably, when they are different and relate to different certificates required to be issued by the competent Authority.

15. The argument as regards the respondent himself being in default

in payment of EMI cannot be permitted to be raised by the petitioner at this as the said issue is a factual aspect and has already been gone into not only by the DCDRC, Gurugram but also in the first appeal by the SCDRC, Panchkula and in the revision petition by the NCDRC, New Delhi. In any case, such a contention could have been available to the petitioner had it placed on record the document showing issuance of completion certificate much before the last date i.e. 04.09.2018. The petitioner itself having failed to show that it had satisfactorily discharged its obligation under the Contract cannot also be permitted to take benefit of its own wrong. It withheld the best document, which should have been available in its possession, showing due compliance of its obligation and having obtained the completion certificate from the completion authority. However, instead of producing the relevant document, it chose to produce a self styled and self serving certificate from its own consultant to mislead the Consumer Courts into believing that the said certificate was in fact a legal and valid document in relation to completion of project and issued by the competent authority. Such an attempt on the part of the developer is deprecated. This Court would be ordinarily inclined to impose heavy cost on such petitioner/developer. However, taking into consideration the good gesture expressed by the Counsel for the petitioner, this Court refrains from doing so. Once the petitioner failed to fulfill its obligation till the agreed date, it is open to a consumer not to accept the offer of possession and to seek refund of his money. The complaint in this case was initially filed in 2019 and then in 2020 i.e. after the date of completion on 04.09.2018. The consumer cannot be compelled to accept possession, which is offered beyond the agreed date and he is at liberty to elect for himself. Hence even the said arguments are bereft of merit.

16. Counsel for the petitioner could not establish any illegality, impropriety, perversity or misappreciation of evidence or law by the consumer Courts. A writ court does not sit as an appellate Court and exercises its judicial review under above violation only. In the absence thereof, I am of the view that the petition lacks merit.

The present writ petition is accordingly dismissed in *limine.*

All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)
MAY 20, 2024 **JUDGE**
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No