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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 3484/2013

AJIT PRASAD JAIN .....Petitioner

Through: Mr. Sanjeev Goyal, Advocate

versus

STATE & ORS .....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State with SI Pankaj Kasana, P.S. Anand Vihar.

Mr. Samrat Nigam and Ms. Arpita Rawat, Advocates for respondent Nos. 2 to 5.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **05.09.2024**

1. By way of the present petition, the petitioner seeks to assail the order dated 23.05.2013 passed by learned Additional Sessions Judge, Karkardooma Courts, Delhi in Revision No. 25/2013 whereby the order taking cognizance and summoning the accused persons i.e., respondent Nos.2 to 5, wherein respondent No. 2 is the accused company and respondent No. 3 to 5 are its Directors, under Sections 420/34 IPC has been set aside.

2. Notably, the proceedings arose in the context of the Allotment Agreement dated 20.03.2007 whereby the accused company agreed to allot Space No. 10 at Lower Ground Floor having Super Covered Area of approximate 901.72 square feet at Angel Mega Mall, Kaushambi to one *Shashi Jain* who is petitioner's wife. However, it appears from the record

that the respondent company subsequently, offered alternate space at the ground floor, which was not acceptable to the complainant. The complainant preferred an application under Section 156(3) Cr.P.C. on the basis of which FIR No. 455/2010 under Sections 420/34 IPC came to be registered at P.S. Anand Vihar. Eventually, after investigation, Cancellation Report came to be filed. The petitioner preferred a protest petition and the same was allowed by the learned Judicial Magistrate vide order dated 28.03.2012. While disagreeing with the Cancelation Report, learned Judicial Magistrate was of the opinion that the Allotment Agreement was printed and stereotyped form and was lopsided. Though, the complainant has been offered an alternate shop at ground floor however, a further sum of Rs.10 lacs was demanded by one of the directors of the accused company. It was further held that the accused company never intended to fulfil its agreement of allotment to the complainant at lower ground floor. The said order was assailed by the accused company before the learned Sessions Court. It was contended by the accused company that though the allotment letter itself specifies that the allotment was tentative and provisional and after construction is carried out, the final re-allocation will be made later by the company and the decision would be final. Clause 1 of the Agreement further provided that in case the complainant was willing to go for a refund, the same would be done alongwith penal interest @ 4%.

Apparently, during the pendency of the revision proceedings, the accused company offered to return the sum of investment alongwith interest @ 4% and the same was accepted by the complainant however, with a rider that the trial be proceeded with. It is informed that though the complainant was offered penal interest @ 4% however, she was given @ 9%.

3. During the course of hearing of present proceedings, it has been stated that petitioner/complainant has also approached the Consumer Court wherein Rs.2 lacs has been paid to the complainant over and above the refund of principal amount alongwith penal interest @ 9%. The relevant extract of the order dated 08.02.2017 passed by the Consumer Court is extracted hereunder :-

> *" It is stated that the matter has been amicably settled between the parties.*
>
> *In terms of the settlement, the OP has agreed to pay Rs.2,00,000/- to the complainant in full and final settlement of the present complaint case.*
>
> *It is stated that the aforesaid amount shall be given in three instalments.*
>
> *It is stated that the first instalment shall be given on 23.02.2017. The second instalment shall be given on 23.03.2017 and the third instalment on 24.04.2017.*
>
> *Since the matter has been settled, the present complaint stands disposed of as per terms stated above."*

4. Learned counsel for the petitioner submits that while passing the impugned order, learned Sessions Court has not appreciated the facts, inasmuch as, despite the clear and specified office space allotted to the complainant, vide the aforesaid Allotment Agreement, there was no justifiable reason for the accused company to allot an alternate space that too at the backside of the Mall. Learned counsel further submits that the accused company has obtained the completion certificate by showing the shops, including the space allotted to the complainant at the lower ground floor. Subsequently, for commercial reasons, the accused company built a banquet hall at the lower ground floor and offered the alternate space at the ground floor. While referring to the decision in Smt. Nagawwa *v.* Veeranna

Shivalingappa Konjalgi & Ors. reported as **(1976) 3 SCC 736** and Sanjaysingh Ramrao Chavan *v.* Dattatray Gulabrao Phalke & Ors. reported as **(2015) 3 SCC 123,** he submits that there was intention to cheat the complainant right from the beginning and thus, the Revisional Court ought not to have interfered with the order passed by the learned Judicial Magistrate.

5. Mr. Nigam, learned counsel while appearing for respondent Nos. 2 to 5 has defended the impugned order. He contends that though the allotment was initially offered at the lower ground floor however, subsequently on account of fire incident in Meerut, U.P. an advisory was issued by the Fire Department, Ghaziabad on 27.07.2010 consequent to which, the accused company has taken the decision not to construct any shop at the lower ground floor. He further submits that even otherwise the allotment agreement itself specifies that the allotment was only provisional and subject to final construction to be carried out.

6. The above submissions however, are disputed by the learned counsel for the petitioner. Indisputably, no construction of any shop has been carried out at the lower ground floor. The Allotment Agreement alongwith the terms and conditions has also been filed alongwith present petition. The relevant Clauses of the Allotment Agreement read as under :-

> *"1. The location and the area of the Space allotted are tentative and provisional. Though, plans for the building are yet to be sanctioned, for any reason any further changes are to be made by the sanctioning authorities or the Architects or the Company resulting in reduction or increase in the above mentioned area or its locations, no claim, monetary or otherwise will be raised or accepted, except that the aforementioned rate per Sq. ft. of Super Covered Area will be*

applicable on the changed area. In case of absolute deletion of Space, no claim, monetary or otherwise will be raised or accepted, except that the amount received will be refunded in full alongwith simple interest @ 4% per annum.

2. in case the number of Spaces to be constructed changes or areas of the Space or their locations change, the final reallocation will be done by the Company whose decision will be final and binding on the Allottee. However, preference will be given to the Allottee to choose out of unallotted Spaces, as per their preferential number, if any are available.

3. If for any reason whatsoever, whether within or outside the control of Company the whole or part of the project is abandoned, no claim will be preferred by the Allottee except that the Allottee's money will be refunded alongwith simple interest @ 9 % per annum."

7. The said Agreement was entered into by the complainant himself and it is not even the case of the complainant that the said conditions were not known to them. Though there is some variance as to whether there was any mandate however, advisory issued by the Fire Department is on record, which is also not disputed. Pertinently. The factum of advisory issued by the Fire Department was also mentioned in the Cancellation Report filed on behalf of the Police Station Anand Vihar. Even otherwise, this Court also takes note of the fact that the petitioner has already accepted the entire invested amount alongwith penal interest @ 9% (whereas Clause 1 of the Agreement provided for penal interest @ 4%). As noted above, a further sum of Rs.2 lacs has also been received by the petitioner in proceedings initiated by him under the Consumer Protection Act.

8. Considering the totality of the facts and circumstances, I find no ground to interfere with the impugned order which is hereby upheld and

consequently, the petition is dismissed.

MANOJ KUMAR OHRI, J

SEPTEMBER 5, 2024
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