

Akshay & Anr.

v.

Aditya & Ors.

(Civil Appeal Nos. 3642-3646 of 2018)

29 August 2024

[Bela M. Trivedi and Satish Chandra Sharma, JJ.]

Issue for Consideration

Appellants-landowners executed a Joint Venture Agreement and an irrevocable power of attorney in favour of the Respondent No.2-builder for the development of the land and construction of flats. Respondent No.2 entered into sale agreements with the complainants-respondents for the units in question. Complaints filed by the respondents against the appellants and Respondent No.2 *inter alia* for declaration that they were guilty of deficiency in service and were jointly and severally liable to complete the construction as per the terms and conditions agreed between the parties and put the complainants in possession of the properties after completing the construction as also to execute the registered sale deeds in respect thereof. Complaints allowed by the State Commission. Order upheld by NCDRC. Whether the appellants were bound by the acts of the Respondent No.2 carried out pursuant to the irrevocable Power of Attorney till it was terminated.

Headnotes[†]

Consumer Dispute – Deficiency in service – Non-compliance of the terms and conditions of Joint Venture Agreement (JVA) by Respondent No.2-builder – Appellants-landowners and the Respondent No.2-builder, if were jointly and severally liable as held by State Commission and upheld by NCDRC:

Held: Yes – Though allegedly the power of attorney was revoked by the appellants by the letter of revocation, the JVA was not revoked and it continued to be in force – In the revocation letter, the appellants had stated to be not liable “Henceforth”, i.e after the said letter was sent – Thus, the appellants were bound by the acts/deeds of the Respondent No.2 carried out pursuant to the irrevocable Power of Attorney till it was terminated, in accordance with law – Appellants liable for the acts of Respondent No.2 – Judgment of NCDRC not interfered with. [Paras 8, 9]

Digital Supreme Court Reports**List of Acts**

Consumer Protection Act, 1986.

List of Keywords

Consumer Dispute; Joint Venture Agreement; Power of attorney; Irrevocable power of attorney; Landowners; Development of the land; Construction of flats; Deficiency in service; Jointly and severally liable; Power of attorney revoked; Revocation letter; "Henceforth".

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3642-3646 of 2018

From the Judgment and Order dated 28.11.2017 of the National Consumers Disputes Redressal Commission, New Delhi in FA Nos. 1664-1668 of 2017

Appearances for Parties

Kailash Vasdev, Sr. Adv., R. Mohan, V. Balaji, Asaithambi MSM, B. Dhananjay, S. Devendran, Limrao Singh Rawat, Rakesh K. Sharma, Advs. for the Appellants.

Siddhartha Dave, Sr. Adv., Piyush Singhal, Bijnender Singh, Praveen Swarup, Alekhya Shastry, Ms. Arundati Mukherjee, Ms. Amita Singh Kalkal, Abhinav Ramkrishna, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

1. This set of five Appeals arises out of the common Judgment and Order dated 28-11-2017 passed by the National Consumer Disputes Redressal Commission, New Delhi (here-in-after, referred to as "NCDRC") in First Appeal Nos.1664-1668 of 2017, whereby the NCDRC has dismissed the said Appeals filed by the present appellants challenging the Judgment and Order dated 10-7-2017 passed by the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench, Nagpur (here-in-after, referred to as "State Commission") in a Consumer Complaint No. 85 of 2015.

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2. The appellants – herein are the owners of the land in question. They entered into a Joint Venture Agreement with Respondent No.2 – Glandstone Mahaveer Infrastructure Pvt. Ltd. for the development of the land and for construction of flats as mentioned herein. It appears that the appellants also executed Irrevocable Power of Attorney dated 6-7-2013 in favour of Respondent No.2 with regard to the said land. The Respondent No.2 on the basis of the said documents, entered into the sale agreements with the respondents – complainants for the units in question.
3. The respondents – complainants filed the complaints before the ‘State Commission’ under Section 17 of the Consumer Protection Act, 1986 against the present appellants and Respondent No.2 seeking *inter alia* the declaration that the present appellants and the Respondent No.2 were jointly and severally involved in the unfair trade practices and were guilty of deficiency in service, that they were jointly and severally liable to complete the activities and construction as per the terms and conditions agreed upon between the parties and put the complainants in possession of the properties mentioned in Schedule ‘D’ after completing the construction as also to execute the registered sale deeds in respect thereof.
4. The ‘State Commission’ after considering the pleadings of the parties allowed the said complaints. The ‘State Commission’ holding opponent Nos.1 to 3 (the present appellants and Respondent No.2) liable for the completion of the construction of dwelling units as per the agreement with the complainants and passed the following order:-
 - “i. The complaints as referred Nos. CC/15/85, CC/15/86, CC/15/99, CC/15/100 & CC/15/111 are partly allowed.
 - ii. The OP Nos. 1,2&3 to provide the possession of the dwelling unit agreed in Agreement to Sell (SA) with each complainant in the span of six months from the date of the receipt of copy of this order and the complainants to pay the entire consideration of the dwelling unit as per the stages and the final amount at the time of sale deed and possession as per the agreement.
 - iii. The OP Nos. 1,2,&3 after completion of construction of dwelling units as per agreement to sell & on

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receiving full consideration as per agreement as above, shall execute sale deed of respective dwelling units as per agreement to respective complainant. The complainants shall bear expenses for execution and registration of sale deeds.

- iv. The O.P. Nos.2&3 to cooperate with O.P. No.1 in the compliance of the agreement signed by the O.P. No.1 with the complainants as per the conditions of the Joint Venture Agreement (JVA) and (Irrevocable Power of Attorney (IPA).
 - v. The O.P. No.1 to provide the compensation of Rs.1,00,000/- to each of complainant for physical and mental harassment in the span of one month from the date of receipt of copy of this order and on failure, to pay interest at the rate of 9% p.a. upon it, till the final payment.
 - vi. The O.P.No.1 to provide the cost of Rs.10,000/- to each of the complainant in the span of 30 days from the date of the receipt of copy of this order & on failure to pay interest upon it at the rate of 9% p.a., till final payment.
 - vii. No order against O.P.No.4
 - viii. Copy of the order be provided to both the parties, free of cost.”
5. Being aggrieved by the said order, the present appellants, preferred the First Appeals before the ‘NCDRC’, which came to be dismissed by the ‘NCDRC’ vide the impugned common order holding as under:-

“8. The State Commission have brought out in their order that the Joint-Venture Agreement (JVA) and the Irrevocable Power of Attorney (IPA) were prepared on 06.07.2013. As per condition No.15 of the said agreement, the builder had been given the authority to sell the constructed Units on the property. The IPA also authorised the OP-1 builder to execute the registered sale deeds etc. and receive the consideration. The State Commission, further, observed that the present appellants/OP-2 and 3 had issued notice,

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by which they claimed that they had cancelled the JVA and the IPA. However, the said notice was issued on 12.08.2014, which was much after the agreement made by the OP-1 with the complainants. The State Commission concluded that at the time of the agreement between the builder and the complainants, the JVA and IPA were very much operative. It is evident, therefore, that the appellants cannot wash their hands off from the matter, as it would result in grave injustice to the complainants consumers.

9. At the time of hearing also in these appeals, the learned counsel for the appellants was asked that in case the plea taken by them in the appeals were accepted, how shall it be possible to safeguard the interests of the consumer, who had invested in the said project, after looking at the agreement between them and the OP-1 builder. However, no satisfactory reply could be given by the appellants on that score. It is made out, therefore, that the interests of the complainants/ consumers shall be heavily jeopardised, if the plea of the appellants/OP-2 and 3 is accepted.

10. The appellants have referred to the orders made by the Hon'ble Supreme Court in the case, Faqir Chand Gulati vs. Uppal Agencies Pvt. Ltd. & Anr., (2008) 10 SCC 345 and in the case, Sunga Daniel Babu vs. Sri Vasudeva Constructions & Ors., (2016) 8 SCC 429, in support of their arguments before the State Commission as well as this Commission. I, however, agree with the contention of the State Commission that these two judgments are not applicable in the present cases. In the said judgments, it was concluded that a landowner, who was supposed to be provided a portion of the developed property after the development made by the builder, was a consumer vis-a-vis the builder. The issue in the present case is, however, different, as the present complaints have been filed by the complainants against the builder as well as the land owners/appellants. The orders made by the Hon'ble Apex Court are, therefore not applicable in the present cases.

11. From the discussion above, it is held that the appellants/ OP-2 and 3 landowners cannot be allowed to escape their

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responsibility/role in the matter of providing relief to the complainants/consumers in terms of the impugned order passed by the State Commission. It is held, therefore, that the impugned order does not suffer from any illegality, irregularity or jurisdictional error of any kind and the same is upheld. The present appeals are ordered to be dismissed in limine.”

6. It is vehemently submitted by the learned Senior counsel – Mr. Kailash Vasdev that the appellants had already revoked the Power of Attorney executed by them in favour of Respondent No.2, by the letter of revocation dated 12-8-2014, coupled with Public Notice of the same date and hence the appellants could not be held liable for any act done by Respondent No.2, who had allegedly entered into agreements with the complainants. He also submitted that the Complaints as such are not maintainable under the Consumer Protection Act against the appellants, who were not privy to the agreement between the Respondent No.2 and the complainants. However, the learned Senior counsel – Mr. Siddhartha Dave for the Respondent No.2 submitted that the said respondent is still ready to honour the JVA entered into by the appellants and Respondent No.2 and ready to complete the construction work with the cooperation of the appellants. He further submitted that the Irrevocable Power of Attorney was executed by the appellants in favour of Respondent No.2 after receiving consideration of Rs.1.51 Crores, pursuant to which, the Respondent No.2 had entered into the agreement with the complainants.
7. The learned Senior counsel – Mr. Gopal Sankaranarayan drawing the attention of the Court to the alleged letter of revocation dated 12-8-2014, submitted that even as per the said letter, the appellants had stated that they could not be liable for the acts of the Respondent No.2 “henceforth” meaning thereby after the said letter, however, the Respondent No.2 had entered into the agreement with the complainants i.e consumers prior to the said letter and pursuant to the JAV executed between the appellants and Respondent No.2, which has not been cancelled so far.
8. Having regard to the submissions made by the learned Senior counsels for the parties, and to the impugned Judgments and orders passed by the ‘State Commission’ as well as the ‘NCRDC’, it

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clearly transpires that undisputedly an irrevocable power of attorney dated 6-7-2013 was executed by the appellants in favour of the Respondent No.2 along the JAV of the same date, pursuant to which the Respondent No.2 had undertaken to develop the land in question. It further appears that though allegedly the said power of attorney was revoked by the appellants vide the letter dated 12-8-2014, the JAV has not been revoked so far and the same still continues to be in force. As rightly submitted by the learned counsel for the respondents, in the letter dated 12-8-2014, the appellants had stated to be not liable "Henceforth", i.e. after the said letter was sent. The appellants therefore were bound by the acts/deeds of the Respondent No.2 carried out pursuant to the irrevocable Power of Attorney till it was terminated, in accordance with law. It is also not denied that the appellants have not taken any action whatsoever against the respondent No.2 with regard to the alleged non-compliance of the terms and conditions of JAV by the said Respondent. Under the circumstances, it does not lie in the mouth of the appellants to say that the appellants are not liable for the acts of Respondent No.2.

9. The 'NCDRC' having considered all the issues with regard to the joint liability of the appellants as well as the Respondent No.2, we do not find any good ground to interfere with the same.
10. In that view of the matter, the Appeals being devoid of merits and are dismissed.

Result of the case: Appeals dismissed.

[†]Headnotes prepared by: Divya Pandey