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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Dec-02-2013

Judge : The Honourable Mr. R. Lakshminarasimha Rao, Incharge President
& the Honourable Mr. S. Bhujanga Rao, Member

Appeal No. : CC No. 63 of 2013

Appellant : A. Sriganesh

Respondent : M/S. Sriram Nirman Rep. by Its Managing Partner Sri Mantena
Srirama Raju and Another

Judgement :

Oral Order: (R. Lakshmi Narasimha Rao, Incharge President)

1. The complaint is filed claiming payment of compensation of Rs.20,80,000/- towards delay in construction, to pay Rs.31,20,000/- towards actual loss of rentals for 10 flats Rs.3,000/- per month for 104 months, to pay Rs.9,36,000/- towards loss of rents pertaining to commercial complex @ Rs.3000/- per shop for 3 shops from 2006 till date with interest @ 12% and to pay Rs.2 lakhs towards compensation for mental agony and hardship.

2. The averments of the complaints are that the complainant entered into a development agreement cum GPA dated 31.8.2004 with the opposite party no.2 representing the opposite party no.1 himself as Managing Partner of M/s Sriram Nirman to develop the property of the complainant into residential flats and commercial complex. As per the agreement the opposite parties have to complete the construction within two years failing which the opposite parties has to pay Rs.20,000/- per month to the complainant towards loss of rentals/damages. The share of the complainant is 35% and that of the opposite party is 65% in the constructed area. The complainant appointed the opposite party no.2 as his attorney for obtaining building permissions and for entering into sale agreements with regard to his share of property with third parties. The complainant has no control over the management of the affairs of the builder and there is no profit sharing except sharing of constructed area in the vacant land given to him.

3. The complainant submitted that as per the Development agreement the opposite party has obtained building permission for construction of cellar + five floors. Each floor consists of 10 flats. Out of proposed construction of 50 flats the complainant is entitled to 17 flats being 35% of his share and share in the commercial complex. The duty of the complainant is to handover the vacant site with old house and the opposite party has to demolish the old house on the vacant site and to obtain permissions from the concerned authorities for construction. The opposite party has constructed flats in three floors out of five floors beyond the stipulated time.

4. The opposite party assured that he would complete the construction by the year 2010 and also promised that he shall be claim his right over the commercial complex as he is not yet started the same even as on 2009. Meanwhile, the complainant sold one apartment to one Sri Satyavara Prasad for Rs.4,12,000/- though the purchaser of the property has not paid the full sale consideration till date and to avoid further payment the purchaser got issue notice dated 7.10.2012 alleging deficiency in service on his part. The complainant submitted that the complainant also recommended for issuance of loans to an extent of Rs.40 lakhs from his friends and brother to the opposite party. The opposite party neglected the construction of the project and left the site and the town without informing the

complainant or the others. Further the opposite party contrary to the development agreement cum GPA attempting to sell his share in the property. The opposite party is delaying the construction and handing over of the constructed share to the complainant within the stipulated time. The opposite party no.2 has committed breach of his obligation to complete the project and diverted the funds generated in the project.

5. The opposite parties no.1 and 2 were set exparte.

6. The complainant filed his affidavit and the documents, Exs.A1 to A5.

7. The point for consideration is whether there is deficiency in service on the part of the opposite parties and if so to what relief?

8. The complainant entered into development agreement with the opposite party for development of his property comprised in Sy.No.15/1 situated at Sardar Nagar, Balighattam Village, Narsipatnam Mandal Visakhapatnam District admeasuring 2373.11 sq.yards and for construction of residential complex within a period of 24 months from the date of agreement i.e., 31.08.2004.

9. The Development Agreement provides for liability of the opposite party to pay a sum of Rs.20,000/- per month to the complainant towards loss of rental/damages in case the opposite party failed to handover 35% of the share of the flats within the prescribed time. The opposite party no.2 obtained permission for the construction of Cellar plus five floors, each floor consisting of 10 flats.

10. The terms of the development agreement entitled the complainant to 17 flats being 35% of his share and share in the building complex. The complainant has stated that the opposite party constructed flats in three floors out of five floors beyond the stipulated time and promised the complainant that the opposite party would not claim right over the commercial complex.

11. The complainant sold one apartment on 6.9.2007 for Rs.4,12,000/- to Satyavara Prasad who got issued notice on 7.10.2012 to the complainant and making the opposite party a party and alleging deficiency in service on the part of the complainant. The complainant through gift deed delivered possession of the

five flats to his brother and two flats to his sister floor numbers 4 and 5 of the complex. The complainant has, it appears referred to the notice dated 7.10.2012 issued by the purchaser of the flat in order to point out the deficiency in service on the part of the opposite party regarding incomplete construction work of the flat.

12. The complainant has not filed any document to show that on a particular day the opposite party handed over possession of the flats to him. In the circumstances it is difficult to hold him entitled for the loss of rentals from a particular day. However, it is clear that the opposite party has not handed over the possession of the flats within the prescribed time. Therefore giving liberty to the complainant to claim the loss of rentals on establishing the exact date of delivery of possession of the flats, this commission taking into consideration of date of issue of the notice of K.Satyavara Prasad i.e., 7.10.2012 and the complainant is held entitled to loss of rentals in commercial complex at Rs.3000/- per shop for 3 shops, Rs.9,36,000/-.

13. In the result the complaint is allowed directing the opposite party to pay loss of rental for the residential flats from the date of notice of K.Satyavara Prasad, 7.10.2012 and further the opposite party is directed to pay loss of rental for commercial complex, Rs.9,36,000/- with interest @ 9% per annum together with costs of Rs.5,000/-. Time for compliance four weeks.

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