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Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Aug-08-2013

Judge : The Honourable Mr. R. Lakshminarasimha Rao, Member &Amp;amp; the Honourable Mr. Thota Ashok Kumar, Member

Appeal No. : F.A.No. 1291 of 2009 Against C.C.No. 668 of 2008 District Consumer Forum-I Hyderabad

Appellant : M/S. Narne Constructions (P) Ltd.

Respondent : Dr. Devender Sharma and Others

Judgement :

Oral Order: (R. Lakshminarsimha Rao, Member)

1. The opposite party is appellant. The appeal is challenge to the order of the District Forum whereby the appellant is directed to execute sale deed in respect of Plots bearing nos.184, 185, 189 and 190 and pay an amount of Rs.50,000/- as compensation and a sum of Rs.2000/- towards costs.

2. The respondent no.1 submitted that he and his family members, viz, the respondents no.2 to 4 joined the scheme Rolling Meadows launched by the appellant-company and they paid an amount of Rs.17,51,000/- with interest thereon Rs.34,345/- for late payment as consideration for their respective plots. The sale consideration included development charges. The appellant-company

after receiving the entire sale consideration, addressed letter dated 14.10.2006 demanding the respondents no.2 to 5 to pay a sum of Rs.4,20,000/-, Rs.4,62,000/-, Rs.4,61,900/- and Rs.4,61,900/- towards additional amount on the premise that there was escalation in registration charges and additional development charges. The respondents no.2 to 5 paid caution deposit/ULC charges and on 23.1.2008 the appellant company demanded enhanced registration charges, maintenance charges and caution deposit and the first respondent through letter dated 4.3.2008 informed the appellant that they had paid all the amount.

3. The respondent no.1 requested the appellant-company to register the plots of the respondent nos. 2 to 5 plots in favour of the respondent no.1. The appellant-company sought for clarification from the respondents no.2 to 5 and thereafter agreed to register the plots of the respondents no.2 to 5 in the name of the respondent no.1. The appellant demanded the respondents to pay development charges and outstanding dues. The respondents filed complaint as the appellant failed to execute and register sale deeds in respect of the plots even after receiving the entire sale consideration from them.

4. The appellant-company resisted the claim on the premise that the first respondent has no locus standi to file the complaint and that he has no authority to represent the other respondents. It is contended that the respondents no.2 to 5 committed breach of terms and conditions of membership application by not performing their part of obligation within stipulated time. It is contended that the appellant cancelled the membership of the respondents by letter dated 1.8.2008. It is contended that on 7.9.1998 the respondents no.2 to 5 submitted membership application form agreeing to pay installments as per the terms and conditions of the membership application form.

5. The appellant submitted that in case of default by the respondents that appellant company would reserve its right to cancel the allotment and refund the advance deposit amount after deducting service charges. The appellant issued several reminders requesting the appellant to pay outstanding amount and the development charges for which the respondents did not respond. On instructions from HUDA the appellant had undertaken many additional works like rain

harvesting network which was created to ensure recharging of ground water levels. The respondents had knowledge of development work carried out by the appellant company and they are liable to pay additional development charges. There was no deficiency in service on the part of the appellant company and therefore, prayed for dismissal of the complaint.

6. In support of their case the first respondent filed his affidavit and the documents, EXs.A1 to A15. On behalf of appellant company its Chairman and Managing Director filed his affidavit and the documents, Exs.B1 to B127.

7. The District Forum allowed the complaint on the premise that the appellant company having received entire sale consideration of the plots failed to discharge its part of contract by executing registered sale deed in favour of the respondents and thus rendered deficient service.

8. Aggrieved by the order of the District Forum, the opposite party filed appeal contending that the District Forum has not considered evidence placed on record in correct perspective and that the District Forum failed to see that the respondent had not paid outstanding amount in respect of the plots under sale and that the respondent no.1 has no locus standi to file the complaint and represent the other respondents. It is contended that the respondents had not performed their part of contract by making payment of amount spent by the appellant for development of the plots and for safeguarding the property.

9. The point for consideration is whether the order of the District Forum suffers from misappreciation of facts or law?

10. The respondents no.2 to 4 addressed letter to the appellant company on 5.4.2003 requesting the appellant to execute sale deeds in respect of plots of the respondents no.2 to 4 in favour of the respondent no.1. The appellant had sought for clarification from the respondents no.2 to 4 and they had endorsed that their plots be registered in favour of the respondent no.1. From the point the respondent no.1 pursued the matter with the appellant company in respect of the plots pertaining to the respondents no.2 to 4. It is an admitted fact that the respondent no.1 is the father of the respondents no.2 to 4 and the appellant company allowed

him to pursue the transactions on behalf of the respondents no.2 to 4. As such the appellant company cannot raise an objection as to the locus standi of the respondent no.1 to file the complaint and represent the respondents no.2 to 4.

11. It is not disputed that the respondents no.1 to 4 became members of the scheme, Rolling meadows floated by the appellant company and allotted plots No.184, 185, 189 and 190 to the respondents no.1 to 5. Plot No.184 was allotted to the respondent no.3, 185 to the respondent no.2 and 189 to the respondent no.5 and 190 to the respondent no.4. It is not denied that the first respondent paid total sale consideration of Rs.17,85,345/- which is over and above the agreed sale consideration of Rs.71,5,000/-. It is pertinent to note that the appellant company collected an amount of Rs.34,345/- towards late fee.

12. The statement of account dated 13.10.2011 would indicate that the respondent had paid total cost of the plots as also interest thereon. The receipts marked Ex.A2 which are 15 in number establish payment of the sale consideration on various dates to the appellant company. The appellant company addressed letter dated 18.3.2004 demanding the respodnents no.2 to 5 to pay registration charges and it is categorically stated in the letter that final layout was sanctioned by HUDA. Thus, it is clear that by the time the appellant issued membership application form and received sale consideration from the respondents, there was no final approval of layout from HUDA.

13. The appellant company demanded amount from the respondents no.2 to 5 on the premise that as per the instructions of HUDA it had carried out additional development work for which it had incurred huge amount. The District Forum observed that there was no any evidence on record in support of the contention of the appellant company and even otherwise it is presumed that the appellant company had carried out additional development work in the plots, it ought to have informed the respondent and taken their consent before carrying out the additional development work. The District Forum rightly opined that the appellant company cannot take a unilateral decision and it has no authority to demand for payment of additional development charges.

14. The appellant company through letter dated 14.10.2006 demanded the respondents no.2 to 5 to pay sum of Rs.3,06,900/- towards additional development charges and registration charges of Rs.1,55,000/-, a total amount of Rs.4,61,000/- as condition precedent for execution of sale deed in respect of the allotted plots. The appellant demanded a sum of Rs.900/- per sq.yard extra towards additional development charges from the respondents which is double the cost of each plot purchased by the respondents no.2 to 3.

15. The appellant company issued statement of account claiming Rs.6,00,000/- towards additional development charges and Rs.2 lakhs towards registration charges and an amount of Rs.6,520/- towards interest from the respondent no.5 and a sum of Rs.9,08,525/- from the respondent no.2 and an amount of Rs.3,77,350/- from the fourth respondent, and an amount of Rs.4,06,350/- from the third respondent. The first respondent paid Rs.8,65,900/- on 15.7.2007 and despite payment of the amount by the respondent no.1, the appellant company insisted on payment of balance amount claimed as additional amount. The respondent no.1 questioned the reasonableness of the demand for additional amount.

16. The respondents in terms of the membership application form are not bound to pay any additional amount than the cost of the plot which had already been received by the appellant company. Yet the respondents paid a sum of Rs.8,65 ,900/- as additional amount to the appellant company and even after receipt of the amount the appellant company has demanded for payment of further amounts from the respondents which is neither reasonable nor sustainable and the District Forum has rightly held the demand for extra amount by the appellant company as unfair trade practice on the part of the appellant. The statement of account clearly indicates payment of entire sale consideration by the respondents on 13.10.2001 and after receiving the amount the appellant company ought to have registered sale deeds in favour of the respondents. The appellant had retained the amount with it and failed to execute sale deed in favour of the respondents and thus rendered deficient service. In the circumstances, this Commission does not find any infirmity in the order passed by the District Forum.

17. In the result the appeal is dismissed confirming the order of the District Forum. There shall be no separate order as to costs. Time for compliance four weeks.

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