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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Aug-01-2013

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

Appeal No. : F.A.No. 620 of 2012 Against C.C.No. 45 of 2010 District Consumer Forum Ranga Reddy

Appellant : M.R. Srikanth Sharma and Another

Respondent : M/S Pooja Developers and Constructions Medchal Village and Mandal

Judgement :

Oral Order: (R. Lakshminarsimha Rao, Member)

1. The unsuccessful complainants are appellants. They filed complaint claiming possession of plot number 34 and part of 35 in Pooja Enclave in survey number 344 at Athevelly Mandal, Ranga Reddy district and for payment of interest @24% p.a on the amount of Rs.6,50,000/- as also for providing basic amenities such as water connection, drainage and electricity connections and formation of roads etc., and a sum of Rs.1,00,000/- towards compensation.

2. The appellants on being represented by the respondent-company that cost of land admeasuring 150 sq. yards is Rs.1,20,000/- and costs of construction is Rs.5,20,000/-, paid an amount of Rs.2,00,000/- to the respondent-company which got executed sale deed by the landlords in favour of the appellants on 15.12.2006 and the appellants entered into agreement for construction with the respondent-company for construction of the house over the plot for consideration of Rs.5,20,000/- and paid the amount of Rs.4,75,000/- on availing loan from State Bank Of Hyderabad. The appellants claimed that they paid excess amount of Rs.5,000/- and the respondent-company failed to provide basic amenities and complete construction within the stipulated period.

3. The respondent-company resisted the claim on the premise that the appellants had not paid the amount within the stipulated period mentioned in the Development Agreement and on their request the respondent-company made construction in built up area of 808sft as against the agreed built up area of 600 sft and the appellants agreed to pay an amount of Rs.2,08,000/- for the difference built up area as also the appellants agreed to pay a sum of Rs.18,000/- for the low roofing over toilet constructed at their request by the respondent-company which amount was not paid to the respondent-company. The respondent-company contended that it has laid at request of the appellants, marble flooring ,granite kitchen and extra tiles as also it had provided all amenities in the venture.

4. The first appellant filed his affidavit and the documents, Exs.A1 to A12. On behalf of the respondent, the proprietor has filed her affidavit and the documents, Exs.B1 to B7.

5. The District Forum relegated the parties to Civil Court on the premise that it cannot decide whether the built up area is 600sft or 805 sft. The District Forum felt that it has no power to appoint an engineer to measure built-up area. The District Forum held that the respondent failed to complete construction within the prescribed period.

6. The complainants have preferred appeal on the premise that the District Forum erred in coming to the conclusion that the District Forum has no jurisdiction to appoint an engineer to physically measure the built up area.

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

8. The appellants purchased Plot bearing nos. 34 and part of 35 admeasuring 150 sq. yards in Pooja Enclave situate at Athelly village of Medchal Mandal, Ranga Reddy district through sale deed bearing document no.28260 dated 15.12.2006. The appellants entered into Development Agreement with the respondent-company on 18.01.2008 for construction of house over built-up area of 600 sft including walls in the land purchased by them at Athelly village. The respondent agreed to construct the house for consideration of Rs.5,20,000/-. The amount is agreed to be paid in phased manner as under:

1. Rs.2,00,000/- At the time of basement level

2. Rs.1,50,000/- At the time of slab level

3. Rs.1,25,000/- At the time of flooring level

4. Rs. 50,000/- At the time of completion of the house

9. Respondent agreed to complete construction and deliver the constructed house within 6 months with a grace period of 2 months from the date of agreement. The respondent issued brochure promising the prospective purchasers that it would provide in the venture, roads, street lights, electricity connection, overhead water tank, water lines, underground drainage system, Temple, Park, Plantation and pollution free area. The respondent-company had not denied issuing of brochure and the facilities promised to be provided therein. The dispute between the parties is that the appellants the respondent-company claimed an amount of Rs.2,08,000/- plus Rs.18,000/- for excess raising the construction on extra built-up area and for providing marble flooring, granite, extra tile work etc.,

10. The appellants and other flat purchasers lodged complaint with the Dy .Commissioner on 30.10.2009 seeking for taking action against the respondent-company stating that the respondent had not complied the terms of agreement and they were compelled to pay more amounts and the respondent had not taken up development work like Drainage, Electricity, Water supply, Roads etc., and the

respondent failed to complete the construction of the house after three years of receiving the amounts from them. The appellants and the other purchasers of the plots approached District Consumer Information Centre for redressal of their grievance which did not yield any positive result as the respondent had not taken steps to attend before the Consumer Information Centre.

11. The learned counsel for the appellant has contended that the respondent failed to prove that extra built up area was covered for the construction purpose the appellants had not requested for laying marble flooring etc., and as such the District Forum ought to have directed the respondent to allow the complaint as prayed for. He has relied on the order of the District Forum which involve similar facts and was filed against the same respondent-company. The District Forum in *M.Nagamani vs M/s Pooja Developers* in C.C.No.63 of 2010 decided on 13.06.2012 held that the certificate issued by the engineer and his affidavit do not establish that that the respondent-company carried out construction work in excess built up area than that is mentioned in the agreement for construction. In paras 9 and 10 of the order the District Forum observed:

9. The learned counsel for the opposite party further contended that actually according to terms and conditions of Ex.A2, the opposite party agreed to construct a house having a built up area of 840 sft only but by over sight in the said agreement the total built up area is mentioned as 1002 sft and subsequently at the request of the complainant, the opposite party constructed the house with a built up area of 1002 sft. Therefore, the contention of the learned counsel for the opposite party is by over sight the built up area is mentioned as 1002 sft in the Construction Agreement i.e. Ex.A2. Admittedly, a copy of the Construction Agreement will be also with the Opposite Party and the same is not filed into court. Except, the self-serving statement of the opposite party and also a bald allegation in the reply notice Ex.A10, there is no evidence to come to conclusion that the opposite party agreed for construction of house having a built up area of 840 sft only instead of 1002 sft as mentioned in the construction agreement i.e. Ex.A2. Therefore, unless there is strong oral evidence, it is very difficult to believe the contention of the learned counsel for the opposite party which is contrary to the terms and conditions of agreement Ex.A2. Therefore, we are of the considered

opinion that the terms and conditions of Ex.A2 will prevail rather than the oral contention of the opposite party.

10. It is true that in Ex.A10, there was a mention by the opposite party that she agreed to construction the house with a built up area of 840 sft for Rs.12,15,000/- only but as referred earlier, the agreement Ex.A2 shows that the built up area should be 1002 sft and the total cost is Rs.12,63,400/-. Therefore, any plea or contention contrary to the terms and conditions of agreement, it cannot be believed. Therefore, we are of the considered opinion that the above contention of the learned counsel for the opposite party that she agreed to construct the house with a built up area of 840 sft only and subsequently the complainant requested the opposite party to extend the slab and agreed to pay additional amounts is not correct. Therefore, the evidence of RW2 and Certificate given by him will clearly establishes that even by 30.04.2011, only 70% of the construction is completed. In the evidence and certificate of Ex.B2, the works completed are slab is completed, brick work is completed, plastering is completed, parapet wall with railing is completed, shelves are completed, low roof is completed. Therefore, there is flooring and lot of internal works is remained to be completed by 30.04.2011 including flooring and other internal works as agreed. She never denied the payments made by the complainant to her. It is also an admitted fact as referred earlier that the final payment has to be made only after entire completion of the construction of the house and delivering possession to the complainant.

12. The facts and circumstances of both cases being similar and the contention of the respondent-company in both the cases is same, the District Forum ought to have allowed the complaint as it had allowed CCNo.63 of 2010. The District Forum allowed CCNo.63 of 2010 granting the relief which reads as follows:

In the result, the complaint is allowed partly and we direct the opposite party to handover the possession of the house after completion of it in all respects as agreed within one month from the date of receipt of the order and also direct the opposite party to provide basic amenities as agreed and to pay a sum of Rs.50,000/- as compensation and we also direct the opposite party to pay a sum of Rs.10,000/- towards costs. All the above amounts have to be paid within one

month from the date of receipt of this order.

13. For the foregoing reasons, this Commission is of the view that the appellants are entitled to the aforementioned relief granted by the District Forum in CC.No 63 of 2010. Even if the matter is viewed from a different angle to consider the claim n of the respondent-company for Rs.2,08,000/- for extra built up construction, the respondent has not substantiated as to how it would claim a sum of Rs.2,08,000/-. Striking balance between the claim for Rs.2,08,000/- for extra built up construction and the respondents failure to substantiate its contention for such amount, this Commission is inclined to set off the amount to Rs.50,000/- as the District Forum awarded in similar case, to the amount due towards the claim of the respondent for construction over extra built up area.

14. In the result, the appeal is allowed setting aside the order of the District Forum. Consequently the complaint is allowed directing the opposite party to handover the possession of the house after completion of it in all respects as agreed and a sum of Rs.5,000/-towards costs. Time for compliance four weeks.

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