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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Jul-31-2013

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

Appeal No. : F.A.No. 558 of 2012 Against C.C.No. 988 of 2011 District Consumer Forum-II Hyderabad

Appellant : V. Ravinder Kumar

Respondent : M/S. Silver Shine Developers Pvt Ltd., Rep. by Its Managing Director and Ceo Sri Srihari

Judgement :

Oral Order: (R. Lakshminarsimha Rao, Member)

1. Unsuccessful complainant is the appellant. He filed compliant claiming registration of plot bearing number 94 to an extent of 200 sq. yards in survey numbers 341 and 341/A situated at Pinjartala, Kotturu Mandal of Mahaboobnagar District and for an amount of `3,80,000/- which was collected by the respondent in excess of the agreed amount as also interest @24% p.a and an amount of Rs.2,50,000/- towards compensation and a sum of Rs.1,44,000/- towards rent and

costs of Rs.5,000/-.

2. The case of the appellant as seen from the averments of the complaint is that The appellant purchased plot bearing number 94 an extent of 200 sq. yards in survey numbers 341 and 341/A situate at Pinjartala, Kotturu Mandal of Mahaboobnagar District from the respondent-company for consideration of Rs.5,00,000/- The actual cost of the plot is Rs.1,20,000/-. The respondent collected excess amount of Rs.3,80,000/- from the appellant. The respondent promised to handover the plot after providing amenities such as roads, electricity, club house, underground drainage, avenue plantation, overhead tank, childrens park etc., The respondent executed and registered sale deed in respect of plot bearing number 68 in favour of the appellant.

3. The plot bearing number 68 is not developed and it is not suitable for construction of house. After noticing the inhabitable condition of the plot, the appellant requested the respondent-company to register the plot bearing number 94 and on account of the respondents failure to register plot number 94, the appellant has to reside in a rented house by paying rent @ Rs.6,000/- per month and the appellant had paid an amount of Rs.1,44,000/- towards rent. The appellant has to pay future rent and he got issued notice to the respondent-company to register the plot bearing number 94. As the respondent failed to register the plot bearing number 94, the appellant filed the complaint seeking for execution of sale deed, compensation and for reimbursement of rent.

4. The respondent-company proceeded ex parte.

5. The appellant, in support of his claim filed his affidavit and the documents, Exs.A1 to A15.

6. The District Forum dismissed the complaint on the premise that the appellant being a party to the sale deed in respect of the plot number 68 and having taken possession of the plot, cannot seek for registration of plot bearing number 94. The District Forum held that there is no agreement between the parties for reimbursement of the amount incurred by the appellant towards rent.

7. Feeling aggrieved by the order of the District Forum, the complainant filed appeal contending that the respondent-company had not intimated the date of registration of plot number 68 to him and that in absence of the appellant, the respondent executed and registered the sale deed in respect of plot bearing number 68 and as such the appellant could not protest for registration of plot number 68. It is contended that the respondent had obtained thumb impression and signature of the appellant on Form No.32 and enclosed the form to the sale deed. It is contended that as there was no denial by the respondent, the District Forum ought to have held that the statement of the appellant true and correct.

8. The point for consideration is whether the appellant is entitled to registration and possession of plot bearing number 94?

9. The appellant joined the scheme, Silver-Park launched by the respondent-company for the purpose of purchase of a plot. The respondent-company through letter dated 14.05.2008 informed the appellant and one Manya that they were allotted plot bearing number 94 admeasuring 200 sq. yards and the plot is a corner plot with two roads on its either side. The sale deed clarifies the doubt as to whether the appellant alone purchased the plot or he did purchase it along with Manya. In the sale deed, Manya is shown as the father of the appellant. The letter reads as follows:

It is a matter of great pleasure for us that you have joined as a member in our Silver Park Venture for allotment of a Plot. We feel certainly, it is a wise decision for investment to have the plot. We are happy to inform that you have been allotted the plot No(s) 094 admeasuring 200 sq.yards as per office layout basing on your choice of interest.

It is needless to mention here that the plot having Two roads corner plot will be charged extra.

10. No consideration is mentioned in the letter. However, it is revealed through the letter that the plot bearing number 94 being a corner plot, the appellant is required to pay excess amount than the consideration for a plot which is not a corner plot. The respondent issued pass book in favour of the appellant and the entries therein

would disclose payment of an amount of Rs.5,00,000/- by the appellant. The receipts issued on 30.07.2008 for Rs.1,30,000/-, 2.4.2008 for Rs.10,000/-, 16.04.2008 for Rs.15,000/-, 26.04.2008 for Rs.1,00,000/-, 04.06.2008 for Rs.4.6.2008, 04.06.2008 for Rs.75,000/-, , 14.06.2008 for Rs.70,000/-, 25.06.2008 for Rs.50,000/-, 25.07.2008 for Rs.50,000/- and 30.07.2008 for Rs.1,30,000/- respectively coupled with the pass book establish payment of a sum of Rs.5,00,000/- towards sale consideration of the plot, some amount prior to execution of the sale deed and balance amount subsequently to the date of execution of the sale deed.

11. As per the terms of the scheme incorporated in the pass book, the appellant is required to execute sale deed after receipt of entire sale consideration. The appellant executed sale deed on 2.08.2008 and proceeded to receive the amount from the appellant in excess of the sale consideration mentioned in the sale deed. To the naked eye it appears and as seen from the color and content of document, the finger print of the appellant obtained on the paper as required by the provisions of Section 32-A of Registration Act was obtained much earlier to the actual date of registration of sale deed. The authorization contained therein in favour of the Managing Director of the respondent-company would support the contention of the appellant that he was not present before the sub-registrar at the time of registration of the document. Authorization in the form of request reads as under:

If the Buyer(s) is/are not present before the Sub-Registrar, the following request should be signed.

I/We send herewith my/our photograph(s) and fingerprints in the form prescribed through my representative Sri S.Srihari S/o Narayana as I/we cannot appear personally before the Registering Officer in the Office of Sub-Registrar of Assurances, Shadnagar.

12. Thus, it is clear that the appellant was not present at the time of registration of the sale deed in the office of the sub-registrar, Shadnagar. The sale deed was executed on 2.08.2008 i.e, much earlier to the completion of the scheme period. The appellant contends that he was offered the plot bearing number 94 and was sold the plot bearing number 68 contrary to the terms of the agreement. As seen

from the contents of the allotment letter, plot number 94 was allotted to the appellant and the sale deed was executed in respect of the plot bearing number 68. The attitude of the appellant in proceeding to pay the amount to the respondent subsequently to the date of execution of the sale deed combined with the provisions of Registration Act and Indian Evidence Act would not find favour for execution of sale deed in respect of the plot bearing number 94, for it is a complicated question of fact and law and can be decided by a civil court.

13. Insofar as the question of the respondent-company collecting excess amount, the respondent collected the amount of Rs.5,00,000/- as revealed by the receipts and entries in the pass book which is excessive to the extent of Rs.3,80,000/- than the sale consideration of Rs.1,20,000/- mentioned in the sale deed. The respondent ought to have informed the appellant and collected the amount of Rs.1,20,000/- which is shown as sale consideration of the plot bearing number 68. Even if it is presumed that the sale consideration of plot number is 94, Rs.5,00,000/- and that of plot number is 68, Rs.1,20,000/- the respondent cannot retain any amount received more than the sale consideration of the plot which is actually sold to the appellant. In any view of the matter, the respondent played unfair trade practice upon the appellant by allotting one plot and effecting sale of different plot and collecting excess amount than the actual cost of the plot. Section 2(r) of the Consumer Protection Act reads as follows:

(q) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;-

(1) the practice of making any statement, whether orally or in writing or by visible representation which,-

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be-

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided

by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation. - For the purposes of clause (1), a statement that is-(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation .-

For the purpose of clause (2), "bargaining price" means-

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;(3) permits-

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered

free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

Explanation. - For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

(6) manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services.

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

14. The appellant proceeded to pay the amount of Rs.5,00,000/- under the impression that he was going to be sold the allotted plot and realizing that the plot allotted was not sold to him, he proceeded to demand for execution of sale deed in respect of the plot bearing number 94 by getting issued notice date 22.06.2011 which reads as under:

That my client states that plot.no.94 is suitable for him to construct the house that is why he purchased the said plot. Whereas you got registered a plot no.68 is in favour of my client is unsuitable for construction of a house. Therefore the action in registration of plot.no.68 in favour of the my client is contrary to your confirmation letter dt.14.5.2008 and deficiency in service on your part and liable for civil and criminal action against you.

15. Laboring under the impression that the respondent would execute sale deed in respect of the plot bearing number 94, the appellant had proceeded to demand for execution and registration of sale deed in respect of plot bearing number 94 which this Commission would not entertain in view of the finding in the aforementioned paragraphs that for the relief the appellant has to approach civil court. In regard to the claim for excess paid amount, we find the appellant entitled to the amount of Rs.3,80,000/- which is the difference of the actually paid amount of Rs.5,00,000/- minus the sale consideration of Rs.1,20,000/- mentioned in the sale deed. The respondent is liable to pay interest thereon from the date of filing of the complaint.

16. In the result, the appeal is allowed setting aside the order of the District Forum. The opposite party is directed to pay an amount of Rs.3,80,000/- with interest @9% p.a. from the date of filing of complaint till payment together with costs throughout the proceedings , Rs.3,000/-. Time for compliance four weeks.

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