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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Jun-11-2013

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

Appeal No. : C.C.No. 2 of 2012

Appellant : L. Jayarama Naidu and Another

Respondent : M/S. Guru Raghavendra Constructions Rep. by Its Managing Partner and Others

Judgement :

Oral Order: (R. Lakshminarasimha Rao, Member)

1. The complaint is filed claiming refund of Rs.26,69,000/- with interest @ 12% per annum and Rs.5 lakhs towards compensation, a sum of Rs.17,280/- per month towards delayed construction of the house.

2. The averments of the complaint are that the third and fourth opposite parties are the legal heirs of one T.K.Ramachandra Sharma who was assigned ten acres of land in Sy.No.332 at Nizampet Village, Qutbullapur Mandal, R.R.District, by the Government of Andhra Pradesh and the opposite party 3 and 4 entered into

development agreement with the opposite parties no.1 and 2 for development of the land and construction of 87 duplex houses in gated community known as Beverly Parlms. The complainants entered into agreement of sale with the opposite parties no.1 and 2 for purchase of duplex house on plot no.19 admeasuring 3456 sft, two car parking spaces for consideration of Rs.1,20,00,000/- at the time the house was in semi-finished condition. The complainants paid Rs.5 lakhs through cheque dated 7.12.2009 and a sum of Rs.10 lakhs on 27.12.2009 and an amount of Rs.25 lakhs to the first opposite party.

3. The complainants paid the amount under oral agreement and the opposite parties no.1 and 2 prepared agreement of sale on 25.2.2010 which was signed on 10.5.2010 and thereafter the complainants paid a sum of Rs.10 lakhs through cheque and thereafter an amount of Rs.10 lakhs and Rs.7 lakhs on different occasions a total sum of Rs.67 lakhs to the opposite parties. The State Bank of India Jubilee Hills Branch sanctioned housing loan of Rs.35 lakhs to the complainants and a cheque for Rs.25 lakhs was prepared to disburse loan as first instalment. The opposite parties postponed further construction of the house and thereby the release of further loan instalments was not made by the bank. The opposite parties avoided to execute sale deed stating that the construction work would be completed within two years. The complainants requested the bank to cancel the sanctioned loan and paid Rs.1,69,000/- on Rs.33,00,000/- towards interest. The opposite parties no.1 and 2 on 4.2.2011 agreed to refund the amount of Rs.67 lakhs and Rs.1,69,000/- paid by the complainants towards interest to the bank on or before 20.2.2011. The opposite parties paid the amount of Rs.42 lakhs on different occasions and failed to pay the balance amount of Rs.26,69,000/- as also denied to pay the amount.

4. The opposite parties failed to provide the amenities such as roads, greenery, jogging track, swimming pool, pipe line gas etc., mentioned in the agreement of sale and rendered deficient service. The opposite parties failed to pay Rs.17,280/- per month for the delayed period mentioned in the agreement of sale. The opposite parties failed to complete the construction of the house and return the entire amount to the complainants.

5. The opposite parties no.1 and 2 resisted the claim by filing counter affidavit and stated that the second opposite party is the managing partner of the first opposite party firm and entered into development agreement with GV Satya Sai, who entered into agreement of sale cum GPA with the opposite parties no.3 and 4, the legal heirs of T.K.Ramachandra Sharma. The complaint is not maintainable. The relief sought for recovery of the amount is not amenable to the jurisdiction of the Consumer Forum. The complainants are not consumers as defined under the C.P.Act. There is no deficiency in service on the part of the opposite parties no.1 and 2. The complainants, towards part payment of amount under oral agreement for purchase of duplex house in Beverly Palms, paid a sum of Rs.5 lakh through cheque on 7.12.2009 and Rs.10 lakh through two cheques on 27.12.2009 and paid Rs.25 lakhs in cash a total amount of Rs.50 lakh to the opposite parties no.1 and 2.

6. The opposite parties no.1 and 2 issued receipt on 10.5.2010 acknowledging receipt of amount of Rs.50 lakhs from the complainant. The opposite parties no.1 and 2 entered into agreement of sale with the complainants on 25.2.2010. As per clause 5 of agreement of sale, the opposite parties no.1 and 2 agreed to handover duplex house to the complainants on 28.2.2011 with a grace period of three months. In accordance with the progress of construction of house, the complainants paid a sum of Rs.10 lakhs on 10.6.2010 and an amount of Rs.40 lakh on 10.6.2010 and requested the opposite parties not to deposit the cheque as they were running short of funds.

7. The complainants informed the opposite parties no.1 and 2 that they were making effort to get loan from the bank for payment of the balance sale consideration. The complainants paid an amount of Rs.10 lakhs and Rs.7 lakhs through cheques on two different occasions. The complainants paid a total amount of rs.67 lakhs and they were still due the balance sale consideration which was not paid on pretext or the other despite several reminders of the opposite parties no.1 and 2.

8. The complainants expressed their inability to proceed further with the purchase of the house as they were not in a position to pay the balance sale consideration

of the house and requested the opposite parties no.1 and 2 to return the amount paid by them. The opposite parties no.1 and 2 informed them that they will be in a position to return the amount paid by the complainants only on getting a new buyer for the house and accordingly issued letter dated 4.2.2011 and the opposite parties no.1 and 2 agreed to pay nominal amount towards interest amounting to Rs.1,69,000/-.

9. The first complainant addressed letter dated 5.12.2011 to the opposite parties no.1 and 2 that on receipt of Rs.68,69,000/- on or before 20.02.2011 they would return the agreement of sale dated 25.2.2010 to the opposite parties no.1 and 2. The opposite parties no.1 and 2 sold the house to C.Vijaya Lakxmi on 13.4.2011 and returned the amount on 14.4.2011 to the complainants. The first complainant acknowledged receipt of the amount of Rs.68,69,000/- and promised to return the original copy of agreement of sale. The complainants encashed the cheques issued by the opposite parties no.1 and 2. The complainants had not filed the letter dated 14.4.2011 which was addressed by the first complainant to the opposite parties no.1 and 2 showing issue of cheques on 26.4.2011 for Rs.32 lakhs and the cheque dated 16.4.2011 for Rs.10 lakhs. The opposite parties are not aware of sanctioning of housing loan by state Bank of India, Jubilee Hills Branch Hyderabad to the complainants. The opposite parties are not due any amount to the complainants and there was no deficiency in service on the part of the opposite parties. Hence, prayed for dismissal of the complaint.

10. The first complainant has filed his affidavit and the documents, Exs.A1 to A8. The opposite party no.2 has filed his affidavit and the documents, Exs.B1 to B7

11. The point for consideration is whether there was any deficiency in service on the part of the opposite parties?

12. It is beyond any dispute that the opposite parties no.3 and 4 are the owners of the land measuring 10 acres in Sy.No.332 situated at Nizampet Village of Qutbullapur Mandal R.R.District and they entered into development agreement with the opposite parties no.1 and 2 for development of land and construction of 87 duplex houses in the gated community, Beverly Palms. It is not disputed that the complainants entered into agreement of sale with the opposite parties no.1

and 2 for purchase of H.No.19 in Beverly Palms from the opposite parties no.1 and 2 for consideration of Rs.1,20,00,000/- The complainants claimed for the amount paid by them and the opposite parties contended that they had made refund of the amount.

13. The complainants and the opposite parties no.1 and 2 are at dispute in regard to the quantum of amount refunded by the opposite parties no.1 and 2 to the complainants. The opposite party no.2 on behalf of the opposite party no.1 firm addressed letter to the first complainant on 4.2.2011 agreeing to refund an amount of Rs.67 lakhs paid by the complainants towards consideration for purchase of villa no.19 in Beverly Palms as also the opposite parties no.1 and 2 agreed to pay a sum of Rs.169,000/- to the complainants towards the interest that was charged by the State Bank of India. The letter reads as under:

On this Day 4th Feb 2011, I, M.Chandramouli, Managing partner, Gurughavendra Constructions agree to refund Rs.67,00,000/- (Rupees Sixty Seven Lakhs only) taken from you towards the purchase of Villa No.19 in our project Beverly Palms located at Nizampet. IN addition I agree to refund Rs.1,69,000/- (rupees one lakh sixty nine thousand only) towards Bank interest charges incurred by you.

I agree and confirm that the total amount of Rs.68,69,000/- Rupees sixty Eight Lakhs Sixty Nine thousand) will be paid to you on or before 20th Feb 2011 without fail.

14. The complainants have stated that they have paid Rs.5 lakhs through cheque dated 7.12.2009 and a sum of Rs.10 lakhs on 27.12.2009 and an amount of Rs.25 lakhs to the first opposite party. They paid a sum of Rs.10 lakhs to the opposite parties through cheque No.514692 a sum of Rs.10 lakhs and Rs.7 lakhs on two different occasions and a total amount of Rs.67 lakhs to the opposite parties no.1 and 2. The opposite parties no.1 and 2 have not denied and in fact stated that the complainants paid a sum of Rs.5 lakhs through cheque bearing No.186437 dated 7.12.2009, Rs.10 lakhs through two cheques dated 27.12.2009 and further amount of Rs.25 lakhs in cash as also a sum of Rs.10 lakhs through cheque dated 10.5.2010, a total amount of Rs.50 lakh and there after an amount of Rs.17,69,000/-.

15. Thus, according to the version of the complainants, they paid an amount of Rs.67,69,000/- and the same amount is admitted by the opposite parties who had received by the complainants. The complainants have stated that the opposite parties returned the amount of Rs.42 lakh and assured the complainants that they would pay the balance amount of Rs.26,69,000/- which was subsequently denied to be paid to them. The opposite parties no.1 and 2 have stated that they paid the amount of Rs.67,69,000/- to the complainants and the first complainant acknowledged receipt of the amount and assured to return the original agreement of sale by addressing letter dated 14.04.2011. The complainants denied execution of the documents.

16. The learned counsel for the complainants has contended that on 14.4.2011 the complainant no.1 was not in India and he returned to India on 16.4.2011. It is contended that the opposite parties no.1 and 2 fabricated the document and the complainants filed criminal case against the opposite parties no.1 and 2 before the court of IX MMC Miyapur. A perusal of the complaint filed u/s 200 Cr.P.C. by the complainant no.1 would show that the complainants has stated in the complaint that the opposite parties no.1 and 2 filed the letter dated 14.4.2011 by fabricating it and at the time of entering into agreement of sale with the opposite parties no.1 and 2 they obtained the first complainants signature on blank white paper stating that it was required for them to act on behalf of the first complainant at the office of Registrar for the purpose of purchase of stamp papers and payment of amount in the bank and that the second opposite party misused the document dishonestly and fraudulently.

17. A perusal of the document, letter dated 14.4.2011 would show that the first complainant confirmed the factum of purchase of house and payment of Rs.67 lakh as also receipt of Rs.68,69,000/- from the opposite party no.1 and 2. The complainants disputed the document on the premise that it was fabricated by the opposite parties no.1 and 2 by obtaining his signature on blank paper. The letter reads as under:

I Here by Confirm That Upon Realization of Following Payments (Cash + Cheques) for total Amount of Rs.67,00,000/- (Rupees Sixty Seven Lakhs) and

Bank Interest of Rs.1,69,000/- (Rupees one Lakh Sixty Nine Lakhs Only) Total together Rs.68,69,000/- (Rupees Sixty Eight Lakhs Sixty Nine Thousand) On or Before 26.04.2011, I will release Villa No.19 in Beverlypalms and return all Original Copies of Agreement of sale.

Cash Rs.15,00,000/- (Rupees Fifteen Lakhs Only) has been Paid on 14.04.2011 and Rs.1,69,000/- (Rupees one Lakh Sixty Nine Thousand Only) has been paid on 14.04.2011 Balance Payments yet to be Paid

Rs.10,00,000/- (Rupees Ten Lakhs Only) Cheque No.400702 Drawn on Axis Bank Dated 16.04.2011

Rs.10,00,000/- (Rupees ten Lakhs Only) Cheque No.400703 Drawn on Axis Bank Dated 26.04.2011

Rs.10,00,000/- (Rupees ten Lakhs Only) Cheque No.400704 Drawn on Axis Bank Dated 26.04.2011

Rs.12,00,000/- (Rupees twelve Lakhs Only) Cheque No.400705 Drawn on Axis Bank Dated 26.04.2011

Rs.10,00,000/- (Rupees ten Lakhs Only) Cheque No.400704 Drawn on Axis Bank Dated 27.04.2011

18. Since the parties are at dispute as to the document dated 14.4.2011 which according to the opposite parties no.1 and 2 supports their case that the complainants received the entire amount paid by them together with a sum of Rs.1,69,000/- towards the interest on the amount sanctioned towards housing loan by the State Bank of India whereas the complainants claim that the document was fabricated though the signature on the document pertains to the first complainant. Apart from the document, the opposite parties no.1 and 2 had stated that the complainants had encashed the cheques issued by them which has not been denied by the complainants. Such facts which are complex and complicated in nature require elaborate evidence in the form of examination and cross examination of witnesses which is not possible and permissible in summary proceedings before this Commission. It is pertinent to note that a case filed by the

complainants is pending investigation by the police in this regard.

19. The aforementioned complicated and complex questions involved in the subject matter can be addressed on detailed examination of the witnesses and the documents which is not possible in summary proceedings before this Commission.

20. In *Synco Industries Vs State Bank of Bikaner and Jaipur and others*, I (2002) CPJ 16 (SC) the Honble Supreme Court held that the matter involving complex questions of complicated nature can only be addressed by Civil Court where elaborate examination and cross examination of the witnesses is possible. The Supreme Court observed

The National Commission was right in giving to the appellant liberty to move the Civil Court. This is an appropriate claim for a Civil Court to decide and, obviously, was not filed before a Civil Court to start with because, before the Consumer Forum, any figure in damages can be claimed without having to pay court fees. This, in that sense, is an abuse of the process of the Consumer Forum.

21. For the fore going reasons, we are of the considered opinion that the complaint cannot be entertained by Consumer Forum and the parties are to be relegated to the Civil Court. In the circumstances, this Commission is inclined to give opportunity to the complainants to seek redressal of their grievance before a civil court.

22. In the result, complaint is dismissed with liberty to the complainants to approach the Civil Court or any other Forum. In the event the complainants approach the Civil Court or any other Forum, the period spent between the filing of the claim before the District Forum and the disposal of the matter today by us will be excluded under Section 14 of the Limitation Act, 1963 in the light of the decision of the Honble Supreme Court in *Trai Foods Ltd vs National Insurance Company Ltd and others* reported in III (2012) CPJ 17.

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