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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Jun-06-2013

Judge : The Honourable Mrs. M. Shreesha, Presiding Member & the Honourable Mr. S. Bhujanga Rao, Member

Appeal No. : CC 4 of 2012

Appellant : Smt. Muddasani Hemalatha

Respondent : Prudvi Engineering Developers Rep. by Its Managing Partners and Another

Judgement :

Oral Order: (Smt. M. Shreesha, Member)

1) The brief facts as set out in the complaint are that the complainant intended to buy an apartment No.201 in semi finished condition in Nava Nidhi Apartments at H.No.16-2-147/A, 16-2-147/A/2 and 16-2-147/A/3 situated at Akbarbagh, Dayanandnagar, Malakpet Hyderabad for a total cost of Rs.28,00,000/- from the opposite parties. The complainant submitted that opposite parties informed that they were holding all necessary permits/licenses/clearances from the Government authorities and GHMC for construction and sale of the said apartment. The

complainant submitted that the opposite parties also informed that the said apartment is given under mortgage to GHMC as security against any deviations on their part which is a mere formality and ensured release of the same once the entire payment is made by the complainant. The complainant further submitted that she is suffering from knee pain and the opposite parties promised to provide a standard LIFT to the building and a generator. The complainant submitted that she paid an advance of Rs.9,00,000/- by way of cheque No.677852 dated 26-1-2010 and entered into a sale agreement with opposite parties on the same day and has to pay the remaining sale consideration of Rs.19,00,000/- as follows:

a) Rs.9,00,000/- on or before 28-2-2010

b) Rs.5,00,000/- on or before 30-4-2010 and

c) Rs.5,00,000/- will be paid after release of mortgage of flat from GHMC, Hyderabad at the time of registration.

The complainant further submitted that she paid two instalments promptly as per the agreement and paid a total sum of Rs.23,00,000/- except the last instalment of Rs.5,00,000/- and approached the opposite parties number with the balance of Rs.5,00,000/- for registration of the flat but they have been dodging the matter. The complainant submitted that in good faith she spent another sum of Rs.5,00,000/- on extra fittings and furniture in the flat on the fond hope that the opposite parties will hand over the flat after releasing the same from GHMC mortgage as promised and once again approached the opposite parties in December, 2010 with the last instalment of Rs.5,00,000/- but they promised to take the payment by 01-1-2011 and register the flat but to no avail and their silence shows that they have deliberately violated the terms and conditions prescribed by GHMC. The complainant submitted that the opposite parties are pressurizing the complainant to pay the monthly maintenance of the flat even though the complainant has not started staying in the flat whereas the opposite parties have given their own flats on rent and earning Rs.9000/- per month. The complainant submitted that she was informed that GHMC authorities have issued a notice to the opposite parties on 23-6-2011 regarding the violations they committed during the construction and when the complainant met the opposite

parties personally on 03-9-2011, they promised to get the flat freed from mortgage and register the same in favour of the complainant but thereafter nothing happened and the opposite parties have also not provided the lift and generator and therefore the complainant is unable to live in the said flat. The complainant submitted that clause 3 of Agreement of sale dated 26-2-2010 reads as follows:

In case the purchaser fails to neglect to pay the remaining balance amount as stated in this agreement to the developer or Vendor the purchaser shall have to forfeit the 20% of the advance sale consideration. And if the Vendor and Developer fails to execute Sale Deed and deliver the possession of the flat by receiving the balance amount from the purchaser they are liable to refund the advance amount with interest @ 24% per annum to the purchaser.

2) The complainant therefore got issued a legal notice on 11-10-2011 to opposite parties 1 and 2 to get the mortgage freed from GHMC and register the flat in her favour after receiving the balance amount of Rs.5,00,000/- and the notice sent to opposite party No.1 returned as not received and though the second opposite party received the notice, he did not choose to give any reply. The complainant submitted that so far the opposite parties have not handed over the flat to the complainant nor obtained certificate of occupancy from GHMC authorities. Hence the complaint for a direction to the opposite parties to pay the following amounts besides interest at 2% per month till the date of realization as per clause 3 of agreement of sale and interest is calculated till December, 2011 for the convenience of calculation subject to upto date interest till the date of realization from the said respective date.

1.	Total advance paid	Rs.23,00,000-00
2.	Interest on Rs.9,00,000 from 26- 1-2010 to 26-12-2011 @ 2% per Annum (23 months)	Rs. 4,14,000-00

3.	Interest on Rs.9,00,000 from 28- 2-2010 to till date @ 2% per Annum (22 months)	Rs. 3,96,000-00
4.	Interest on Rs.5,00,000/- from 30- 4-2010 till date @ 2% per annum (20 months)	Rs. 2,00,000-00
5.	Investment on Furniture, fittings And fixtures	Rs. 5,00,000-00
6.	Compensation for the mental agony Caused to the complainant	Rs. 10,00,000-00
7.	Legal and other miscellaneous exp.	Rs. 50,000-00
	Total	Rs. 48,60,000-00

3) Opposite parties 1 and 2 filed written version resisting the complaint. They admitted that the complainant entered into an agreement of sale with opposite parties on 26-1-2010 knowing that the said flat is under mortgage with GHMC. They denied the allegation that the complainant approached them for payment of the balance of Rs.5,00,000/- and submitted that he had obtained the Occupancy certificate from GHMC on 01-3-2012 stating that the premises has been completed as per sanction vide permit No.25/50 dt.08-5-2009 in file No.147/A,A/2,A/3/2/16/2009 as per G.O.Ms.No.86, dt.03-3-2006 and G.O.Ms.No.171 MA dt.19-4-2006 and G.O.Ms.No.623 MA dt.01-12-2006 consisting of stilt for parking + four floors for residential purpose upto a height of 11.80 meters excluded stilt floor and is fit for occupation and hence as per this occupancy certificate, there are no deviations and the allegations levelled against the opposite parties are false and baseless. The opposite parties also submitted that the lift is already fixed on 21-7-2011 and is functioning from the date of

installation itself and hence the allegation of non-installation of lift does not arise. The opposite parties submit that the entire building is occupied by other inmates and they are paying common maintenance and like other flat owners, the complainant is also liable to pay common maintenance from the date of occupation of the said flat.

4) Opposite parties further submitted that as per the agreement of sale, para No.2(C) , the remaining amount of Rs.5,00,000/- will be paid after release of mortgage of flat from GHMC, Hyderabad or at the time of registration and the GHMC issued the occupancy certificate and they are ready to do the registration in favour of the complainant on payment of remaining balance of Rs.5,00,000/- to them. They submitted that they gave a reply to the notice got issued by the complainant on 29-10-2011 and denied the allegations made in the legal notice dated 11-10-2011 and submitted that they have delivered the vacant physical possession of flat No.201 to the complainant in the month of January, 2011 and at the request of the complainant for doing fixation of interior wood works, other designs etc. and the complainant is residing in the said flat after the said wood work and hence the question of non delivery of possession of the flat does not arise. The opposite parties further submit that they have already obtained the occupancy certificate of the said premises and that they are strictly following the agreement of sale dated 26-1-2010 and submit that there is no violation of any clause by the opposite parties or deviation in construction and submitted that the delay occurred in getting the occupancy certificate is due to administrative procedure of GHMC and Telangana agitation and submitted that there is no deficiency in service and prayed for dismissal of the complaint.

5) The complainant in proof of her case filed her affidavit reiterating the facts stated in her complaint and got marked Exs.A1 to A5. Whereas the opposite parties 1 and 2 filed their affidavits reiterating the facts stated in the written version and submitted that the complainant is not paying monthly maintenance charges from the date of her joining in the flat and is liable to pay the maintenance charges along with other co-owners and also liable to pay damages for the mental agony as they sustained financial problem due to the action of the complainant. The opposite parties relied on Exs.B1 to B4.

6) Both sides filed written arguments.

7) The brief point that falls for consideration is whether there is deficiency of service on behalf of the Ops and whether the complainant is entitled for the reliefs sought for in the complaint?8) It is the complainants case that she entered into an agreement of sale on 26.1.2010 with the opposite parties for purchase of a flat evidenced under Ex. A1 for a total sale consideration of Rs. 28 lakhs out of which Rs. 9 lakhs was paid by way of cheque on 26.1.2010 at the time of entering into the agreement of sale. The complainant submits that out of this total sale consideration an amount of Rs. 23 lakhs has already been paid and an amount of Rs. 5 lakhs is due. It is the further case of the complainant that the flat was mortgaged to GHMC and she filed Ex. A2 dt. 23.6.2011 which is the letter issued by GHMC stating that there are deviations in the South and East side which is more than 10% of the set-back area and therefore the occupancy certificate cannot be issued. There after the complainant vide Ex. A3 got issued a legal notice on 11.10.2011 stating that as the said flat was mortgaged and in spite of several requests by the complainant to cancel the allotment and refund the amount paid, the opposite party did not respond.

9) It is the case of opposite parties that the occupancy certificate is issued by GHMC and that they are ready to register the flat provided the balance of sale consideration of Rs. 5 lakh is paid by the complainant and as against the complaint that the lift is not functioning the learned counsel for the opposite parties submitted that the lift is also functioning now, and has submitted before this Commission that they are ready to register the flat immediately provided the complainant pays balance of amount of Rs. 5 lakhs.

10) The learned counsel for the complainant submitted that the complainant is not ready to accept this offer. We observe from the record that Ex. B1 occupancy certificate is dt. 3.3.2012 whereas the legal notice got issued by the complainant is in October, 2011. The opposite parties also filed a certificate issued by Johnson Lifts Pvt. Ltd., showing that there is a provision for left which is already working, however, the complainant submits that they are vexed with the attitude of the opposite parties and as the agreement Ex. A1 is dt. 26.1.2010 and it was only on

3.3.2012 the opposite party was able to get the occupancy certificate they sought for cancellation of allotment and refund of the amount vide their legal notice Ex. A3. Though clause-3 of the agreement states that the complainant should forfeit 20% of the advance sale consideration if he has not paid the balance of amount, equally the same clause also states that if the developer does not execute the sale deed and deliver possession on time, he is liable to refund the amount with interest @ 24% p.a., However, keeping in view the facts and circumstances of the case where the purchaser seeks refund and the opposite party is ready and willing to register the flat, we are of the considered view that interest @ 24% p.a., cannot be awarded and at the same time 20% forfeiture clause cannot also come into play.

11) Keeping in view, the submissions of both sides and the material on record and also the fact that the complainant is still due an amount of Rs. 5 lakhs, equally the opposite party could get the occupancy certificate only in the month of March, 2012, we do not see it a fit case to award compensation as prayed for by the complainant. The complainant is entitled to the amount which she paid i.e., Rs. 23 lakhs with interest @ 9% p.a., from the date of issuance of legal notice Ex. A3 dt. 11.10.2011 till the date of realization together with costs of Rs. 5,000/-.

12) In the result the complaint is allowed in part directing the opposite parties to refund Rs. 23 lakhs with interest @ 9% p.a., from the date of legal notice i.e., from 11.10.2011 till the date of payment together with costs of Rs. 5,000/-. Time for compliance four weeks.

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