

Deepa Narasimhan and Another Vs. Aditya Foundations (a Sampath Raj)

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Sep-28-2012

Judge : Honourable Thiru Justice R. Regupathi, President & Honourable
Thiru a.K. Annamalai, Judicial Member

Appeal No. : C.C.NO.34 of 2012

Appellant : Deepa Narasimhan and Another

Respondent : Aditya Foundations (a Sampath Raj)

Judgement :

(The complainant filed a complaint before this Commission against the opposite party praying for a direction to the opposite party to pay a sum of Rs.5,50,000/- with 18% interest and to pay Rs.16,00,000/- towards compensation for mental agony and sufferings and to pay a sum of Rs.1,50,000/- towards loss of construction work with costs.

This complaint coming before us for hearing finally on 17.09.2012. Upon hearing the arguments of the counsel for the complainant and, perusing the documents, this Commission made the following order)

A.K.ANNAMALAI, JUDICIAL MEMBER

1. The complaint filed under Section 17 of Consumer Protection Act 1986.

2. The complainant praying relief for refund of Rs.5,50,000 with 18% interest for not constructing the flat as promised by the opposite party and to pay Rs.16,00,000/- towards compensation for mental agony due to deficiency in service and Rs.1,50,000/- towards loss due to increase in cost of construction and alternatively to give copy of CMDA plan approval and for costs.

3. The first complainant being the daughter of the second complainant and on the basis of the advertisement given by the opposite party for the construction of flats at Santhoshapuram near Tambaram, after visiting the site for construction and agreed to purchase 750 sq.feet of apartment in the first floor for Rs.20,35,000/- including for all charges. The second complainant paid Rs.1,00,000/- by cash and for Rs.4,50,000/- by cheque dated 25.07.2010 booked in the name of the first complainant with the opposite party. Subsequently the opposite party failed to provide necessary copies of documents relating to the project and plan approval and when it was demanded by the 2nd complainant only after 2 months informed the 2nd complainant that the plan was rejected by CMDA thrice and thereby the complainant demanded for the refund of the amount paid and a letter was sent for which also there was no response for the same which forced the complainant to come forward with this consumer Complaint claiming the reliefs as above.

4. The notice was sent to the opposite party and the same was returned as left for the hearing on 7.6.2012 and thereby substituted service of paper publication was ordered for the hearing on 10.07.2012 which was also effected, for which also the opposite party not turned up and thereby the opposite party was set exparte on 17.09.2012 and thereby the order being passed on merits.

5. On perusal of the averments, complainant side documents, Ex.A1 the copy of the deed of allotment issued by the opposite party for the project Adityas Futura dated 25.07.2010 in the name of the first complainant with other details entered for the allotment of flats in Block-B1 1st Floor, 750 sq.ft with open car parking for the offered price for Rs.20,35,000/- are found mentioning and for booking amount paid by cash as Rs.1,00,000/- by cash and for Rs.4,50,000/- by cheque with details of cheque number and bank name, date of cheque and with next payment due date as on 25.09.2010 for Rs.7,31,000/-. Ex.A3 is the letter dated 27.7.2011 the second

complainant addressed one Sampath who is representing the opposite party requesting for details relating to the agreement and registration and undivided share of land and requested to add other facilities, requesting the copy of the CMDA plan and other documents and thereafter the complaint was filed in the month of March 2012. The document Ex.A2 is the power of attorney authorizing the second complainant by the first complainant regarding the proceedings to be initiated. On perusal of Ex.A1 it is proved that Ex.A1 and A3 that the complainant have paid the amount for the project in purchase of a flat which was not materialized because of the non approval of the plan by CMDA which is said to have been rejected thrice by CMDA and thereby the complainants are entitled for the refund of the amount already paid to the opposite party and the same was not made or the request of the complainant for furnishing of the CMDA plan not complies with. In those circumstances we are of the considered view that there was deficiency in service by the opposite party in fulfilling the obligations to provide necessary documents and details relating to the proposed project in which the first complainant was allotted a flat and till date of complaint, the project was not commenced or the complainants are not in touch with correspondences relating to the project on the basis of Ex.A1 and Ex.A3 inspite of the substantial sum of Rs.5,50,000/- for proposed cost of Rs.20,35,000/- the price of the flat was received by the opposite party and thereby the complainants are entitled for the refund of the amount already paid in this regard with reasonable interest from the opposite party.

6. As far as the compensation is concerned the complainants have claimed a sum of Rs.1,50,000/- being the loss due to the increase in cost of construction and Rs.16,00,000/- as compensation for mental agony and for deficiency in service and for costs. Regarding those amounts are concerned since the project itself was not materialized and the complainants have not shown that they opted for some other project the question of loss in construction caused will not arise and as far as the compensation of Rs.16,00,000/- towards mental agony and deficiency in service is concerned the amount claimed cannot be considered as a reasonable one to the proportionate loss alleged and since the complainants are entitled for interest also for the amount paid by them towards purchase of the flat which was retained by the opposite party wrongly as not obliged to fulfill the assurance the

compensation could be given only to a reasonable extend and alone.

7. Hence, in view of the foregoing discussions, we are of the view that the complaint to be allowed in part with the following directions accordingly:

In the result, the complaint is allowed in part. The opposite party is directed

1. to refund the amount of Rs.5,50,000/- already paid by the first complainant with 12% interest from the date of 25.07.2010 till the date of payment to the first complainant through the second complainant.

2. The opposite party is directed to pay a sum of Rs.50,000/- towards compensation for mental agony and for deficiency in service to the complainants even though the complainants are allowed to claim interest for the amount paid at 12% interest which they are legally entitled from the opposite party in view of the nature of the transaction entered into with the opposite party.

3. The opposite party is directed to pay a sum of Rs.2,000/- as costs to the complainant.

4. The opposite party is directed to comply the above directions within one month from the date of this order.

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