

Mukesh M. Shah Vs. Star Foundations and Structures Pvt. Ltd.

Mukesh M. Shah Vs. Star Foundations and Structures Pvt. Ltd.

SooperKanoon Citation : sooperkanoon.com/1108778

Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Nov-22-2011

Judge : The Honourable Mr. M.V. Viswanathan Judicial Member

Appeal No. : Complaint Case No. 27 of 2011

Appellant : Mukesh M. Shah

Respondent : Star Foundations and Structures Pvt. Ltd.

Judgement :

The complaint filed .under Section, 12 of the Consumer Protection Act. 1986.

2. The case of the complainant is as follows; The complainant entered into an agreement with the opposite party Star Foundations and Structures Pvt. Ltd for purchase of an apartment in the Multi storied building named Water Melon. As per the said agreement, the complainant agreed to purchase 1/65 undivided share in 26 cents of land with apartment more particularly described as Flat No. G. in the Forth Floor of the said building on a total consideration of Rs. 6,90,000/- which is to be paid on or before 27th June, 2006. The opposite party also agreed to complete the construction of the apartment and handing over the same to the complainant by 31st December, 2007. The opposite party also agreed to pay rent for the said flat @ Rs. 2,917/- but the opposite party paid the monthly rent up to 31.12.2009 and committed default in paying the monthly rent from 1.1.2010 on

wards. In spite of the repeated requests, the opposite party failed to complete construction of the apartment and hand over possession of the apartment to the complainant. The complainant and his family suffered inconvenience and financial loss due to the default on the part of the opposite party in completing the construction of the apartment. The complainant also suffered mental agony inconvenience and the hardship and financial loss on account of the default and breach of the agreement committed by the opposite party. The default and lapse on the part of the opposite party would amount to deficiency in service and unfair trade practice. Hence the complaint is filed to direct the opposite party to complete construction of the apartment and to hand over possession of the same to the complainant or in the alternative to refund the complainant the consideration of Rs. 7,24,685/- paid by the complainant along with interest @18% per annum from 15.6.2007 up to the date of payment and also for punitive damages of Rs. 7 lakhs and compensation of Rs. 5lakhs with interest and costs.

3. Notice in the above complaint was served on the opposite party. But, the opposite party remained absent. This Commission was pleased to permit the complainant to adduce evidence in support of his case. The Power of Attorney Holder of the complainant filed proof affidavit in support of the complainants case. He also filed documents to substantiate his case and the documents are marked as Exts. A1 to A12. The Power of Attorney Holder of the complainant was examined as Pw1. The evidence adduced from the side of the complainant stands unchallenged. The counsel for the complainant was also heard in the matter.

4. The proof affidavit filed by the Power of Attorney Holder of the complainant would support the case of the complainant regarding deficiency in service and unfair trade practice on the part of the opposite party. The evidence of the complainant is strengthened by Exts. A2 to A12 documents produced and marked on the side of the complainant. Ext. A1 is the Power of Attorney executed by the complainant in favour of Pw1, Vasanth P. Zaveri. As per A1document, Pw1 was authorized to prosecute the complaint in C.C. 27/11 on behalf of the complainant, Mukesh M. Shah. Ext. A2 is copy of the receipt dated 26.6.2006 issued by the opposite party Star Foundations and structures Pvt. Ltd., in favour of the complainant Mukesh M Shah for acceptance of Rs. 50,000/- by way of cheque

dated 26.6.2006. Ext. A3 is Notarised copy of the receipt dated 24.7.2006 issued by the opposite party in favour of the complainant for acceptance of Rs. 6,50,000/- Ext. A6 is notarized copy of the receipt dated 15.6.2007 issued by the opposite party, star Foundations and structures Pvt. Ltd. in favour of the complainant for acceptance of Rs. 24,685/- Thus, Exts. A2, A3 and A6 receipts would establish the case of the complainant that he paid a total of Rs. 7,24,685/- to the opposite party as consideration for the apartment and the 1/65 undivided share in A Shedule to Ext. A5 Agreement. The aforesaid payments would further show that the complainant as second party to the said Agreement dated 26.6.2006 has complied with the terms and conditions incorporated in the said Agreement. It would in turn establish the case of the complainant that he has complied with his part of the terms and conditions in the said Agreement. Ext. A5 is Notarised copy of the said agreement entered in to between the complainant and the opposite party. The terms and conditions in A5 Agreement would also show that the opposite party promised and assured construction of the apartment in A schedule property by 31.12.2007.

5. The Ext. A9 is the progress report as on 30.7.2009 issued by the executive customer service of the opposite party, Star Foundations and Structures to the complaint. A9 Progress Report of the construction of the apartment would show that the opposite party failed to complete construction of the apartment even on 30.7.2009. A9, Progress Report would establish the case of the complainant that the opposite party failed to complete construction of the apartment in the multi storied building by name Water Melon. Thus, A9 document would substantiate the case of the complainant that there was failure on the part of the opposite party in completing construction of the apartment and that the said failure would amount to deficiency in service and unfair trade practice.

6. Ext. A10 is copy of the letter issued by the opposite party expressing the inability of the opposite party to pay the agreed monthly rent to the complainant. As per A4, Agreement the opposite party had also agreed to pay monthly rent to the complainant from the expected date for completion of construction of the apartment. In the present case on hand, the opposite party failed to complete the construction of the apartment by 31st December, 2007. Thereby the opposite party

was bound to pay monthly rent for the apartment @ Rs. 2/sq.ft. Ext. A7 and A8 documents would show that the agreed monthly rent due to the complainant was Rs. 2,917/- and paid the same to 31.12.2009. Thus, the complainant has also established his case that the opposite party failed to pay the agreed monthly rent @ Rs. 2,917/- with effect from 1.1.2010. So, the claim of the complainant for monthly rent @Rs. 2,917/- with effect from 1.1.2010 is to be allowed.

7. Ext,. A11 is the copy of the lawyer notice dtd. 8.1.2011 issued to the opposite party at the instance of the complainant. In the said lawyer notice, the deficiency in service and unfair trade practice on the part of the opposite party has been alleged. The complainant has also claimed compensation of Rs. 5lakhs and cost of the said notice. The complainant had also claimed the arrears of monthly rent due to him with effect from 1.1.2010. Ext. A12 is the notarized copy of the postal acknowledgement for issuance of the original of A11 Lawyer Notice. It is averred by the complainant that opposite party did not respond to his lawyer notice and that the opposite party has also failed to comply with the terms and conditions in A4 and A5 Agreements. Thus, the complainant has succeeded in establishing his case regarding the deficiency in service and unfair trade practice on that part of the opposite party. So, the prayer for directing the opposite party to complete construction of the one bed room residential apartment and to handover possession to the complainant as per the Agreement dated. 26.6.2006 is to be allowed. Hence the opposite party is directed to complete construction of the said apartment and to handover the same to the complainant within one month from today.

8. There can no doubt that the complainant suffered mental agony, inconvenience and financial loss on account of the deficiency in service and unfair trade practice on the part of the opposite party . The complainant is to be compensated for the mental agony, inconvenience and financial loss suffered by the complainant. So, the opposite party is made liable to pay compensation to the complainant.

9. The complainant has claimed a total of Rs. 5 lakhs by way of compensation. But, the complainant has not adduced any evidence to substantiate his claim for Rs. 5 lakhs as compensation. Considering the nature of the deficiency in service

and unfair trade practice on the part of the opposite party a sum of Rs. 3,00,000/- is awarded as compensation.

10. The complainant has also sought for alternative relief for refund of the consideration of Rs. 7,24,685/- paid by the complainant to the opposite party. He has also claimed interest @ 18% per annum on the said sum of Rs. 7,24,685/- from 15.6.2007 till the date of payment. The aforesaid alternative prayer for refund of the aforesaid amount with interest can be allowed in the event of failure of the opposite party to complete construction of the apartment and to hand over possession of the same to the complainant within one month from today.

11. The complainant also claimed cost of the proceedings. The aforesaid claim can be considered as legitimate claim. We fix the cost of the proceedings due to the complainant at Rs. 5,000/-

In the result the complaint is allowed partly. Thereby, the opposite party, Star Foundations and structures Pvt. Ltd is directed to complete construction of the apartment more specifically described in the Schedule to A4 Agreement and to handover possession of the said apartment to the complainant within one month from today. The opposite party is also made liable to pay compensation of Rs.3,00,000/- to the complainant for the deficiency in service and unfair trade practice on the part of the opposite party. In the event of failure to complete construction of the apartment and to handover possession of the same to the complainant, the opposite party is made liable to refund the consideration of Rs. 7,24,685/- to the complainant with interest @ 18% per annum from 15.6.2007 till the date of payment and also to pay compensation of Rs. 3,00,000/- to the opposite party. The opposite party is also made liable to pay cost of Rs. 5,000/- to the complainant. The complaint is disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com