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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Aug-11-2011

Judge : D. Appa Rao, President, the Honourable Mrs. M. Shreesha, Member & the Honourable Mr. R. Lakshminarsimha Rao, Member

Appeal No. : F.A.No.1268 of 2009 Against C.D.No. 699 of 2008

Appellant : A. Deva Raj

Respondent : Jana Harsha Estates &™ Constructions Ltd., Rep. by Its Managing Director

Judgement :

R. Lakshminarasimha Rao, Member:

1. The unsuccessful complainant is the appellant. The District Forum has dismissed the complaint as barred by limitation.

2. The appellant joined as a member in Dream City-II Garden Unit Scheme floated by the respondent company. The respondent allotted four plots each measuring 120 sq.yards for a consideration of Rs. 36,000 for each plot payable in 50 monthly instalments vide allotment letter dated 29.6.2002. The appellant paid an amount of Rs. 99,920 and the balance amount of Rs. 44,080 was payable on 2.7.2005.

3. The appellant has contended that the executives of the respondent company used to collect the instalments at his residence and they had stopped collecting the amount from 2.7.2005. It is contended that the respondent company refused to receive the balance amount and execute the sale deed.

4. The respondent company resisted the claim on the premise of lack of jurisdiction of the District Forum as also the maintainability of the complaint on the limitation aspect. It is contended that the respondent company allotted four plots in favour of the appellant in the month of March 2002 and the appellant agreed to pay Rs. 580 per month besides Rs. 5,800 in the first month of each calendar year over a period of 50 months. The appellant stated to have paid Rs. 4,580 for each plot and failed to pay the balance amount of Rs. 1,800 per plot and thereafter he had paid Rs. 3,000 per plot in the month of June 2002 and Rs. 1,200 for each plot in the month July 2002 and thereafter he had paid Rs. 1,200 under each passbook. The appellant had paid an amount of Rs. 2,000 under each passbook in the month of July 2003 and he committed default in payment of the instalments from August 2003 to February 2004 and he had paid a sum of Rs. 3,000 under each passbook in the month of March 2004. Thereafter the appellant had paid Rs. 10,000 in the month of July 2005 and the scheme period was completed by 20.6.2006.

5. It is contended that the appellant was irregular in payment of monthly instalments and as per the Clause XI of the membership application the appellant is liable to pay interest @ 2% per month on the dues in case he fails to pay instalments for three months in succession the respondent company is empowered to cancel his membership without issuing any prior notice. It is contended that the appellant had opted for change in payment structure of instalments in the month of June 2002 and accordingly the respondent company had changed the payment structure from Clause 7(c) to 7(a) of the agreement whereby the scheme period was extended to 52 months and its expiry was also accordingly extended from April 2006 to June 2006. The respondent company had cancelled the membership of the appellant in the month of August 2006 and as such the appellant is not eligible to claim any benefits under the scheme and he has filed the complaint on 10.7.2008 which is filed with a delay of 1103 days from

the date of last payment of instalment i.e., 2.7.2005. It is contended that the appellant is not eligible for allotment of plot.

6. The appellant filed his affidavit and documents Exs. A1 to A5. On behalf of the respondent company its Managing Director P.V.Ramana Murthy has filed his affidavit and the documents Exs. B1 to B7.

7. The points for consideration are-

(1) Whether the complaint is not filed within the period of limitation?

(2) Whether there is any deficiency in service on the part of the respondent company in refusing to execute sale deed in respect of four plots?

(3) To what relief?

Point Nos. 1 and 2

8. The appellant is the member of Dream City-II, Garden Unit Scheme and on his application in the year 2002 the respondent company had allotted him four plots each measuring 120 sq.yards for a total consideration of Rs. 1,44,000. The respondent company issued four passbooks with membership A/c Nos. S46088 S46089 S46090 and S46091 and allotted the four plots and also informed through allotment letter dated 29.6.2002 that the consideration was payable in 50 months. In the passbook the payment options have been incorporated under Clauses 7(a) to 7(d). At the first instance the complainant opted for the payment option under Clause 7(c) and subsequently in the month of June 2002 the appellant requested for change of payment option from Clause 7(c) to Clause 7(a) of the terms of the passbook. The Clauses 7(a) and 7(c) mentioned in the passbook read as under:

7(a) 52 Months Instalment Scheme:

Cost of the 120 sq.yards unit in 52 months instalment scheme is Rs. 36,000, this includes the monthly instalment of Rs. 400 along with special instalments of Rs. 1,000 in first month, Rs. 1,400 each in 5th, 10th, 15th, 20th, 25th, 30th, 35th and 40th months and Rs. 3,000 in 50th month respectively. Those who pay 50th month spl. Instalment in advance will become eligible to get unit reservation and those

who pay all special instalment in advance will become eligible to get sale agreement. Unit reservation for the members who fail to pay 2 instalments in succession will stands cancelled.

7(c) Equal Monthly Instalments (EMI):

Cost of the 120 Sq.yard unit is Rs. 36,000, Rs. 6,000 Spl. Instalment to be paid in 1st month balance can be paid in equally monthly instalments in 50 months i.e., Rs. 600 per month beginning with first month. Members opting this system are eligible for unit reservation. Unit reservation for the members who fail to pay 2 instalments in succession will stands cancelled.

9. The change in payment option from Clause 7(c) to Clause 7(a) of the terms of the passbook would extend period of two months. As per the payment option under Clause 7(c) the equal monthly instalments are payable over a period of 50 months whereas Clause 7(a) gives the appellant benefit of paying the EMI over a period of 52 months.

10. On the same day request made by the appellant i.e., 29.6.2002, the respondent company had changed his payment structure from Clause 7(c) to Clause 7(a) of the terms of the clause of the terms of the passbook. It is contended by the appellant he had paid the EMIs to the executive of the respondent who used to collect the EMIs at his residence and they stopped coming to him owing to the death of one of the director and that on 2.7.2005 he visited the office of the respondent company and paid an amount of Rs. 2,000 under each of the passbooks and thereafter the respondent company had not accepted the instalments offered by him for the reason that the cost of the plot had been escalated.

11. The appellant had been irregular in payment of the monthly instalments. He had paid the EMIs though not at regular intervals and from the month of March 2002 till the month of July 2005 the appellant had paid a sum of Rs. 99,920 for the four plots and still he was due an amount of Rs. 44,080 which could not be paid by the appellant as per the payment structure of the instalments. The respondent company had accepted the instalment amounts as and when paid by the

appellant. The respondent company has not cancelled the membership of the appellant when he failed to stick to the payment schedule and committed default successively for two months or so. The scheme period as per the payment option under Clause 7(c) of the terms of the passbook would expire after a period of 52 months and according to the version of the respondent company the scheme period came to an end by the month of June 2006. The respondent company has pleaded that it had cancelled the membership of the appellant in the month of August 2006. Probably, the cancellation of membership after expiry of the scheme period has been projected in order to hold the appellant disqualified for the benefits conferred on him by the scheme.

12. In the light the contention of the respondent company that it had cancelled the membership of the appellant, the limitation period for filing the complaint has to be reckoned from the date of cancellation of membership of the appellant. The scheme period was expired in the month of June 2006. The respondent company had cancelled the appellants membership in the month of August 2006. The complaint was filed on 30.6.2008. The period of limitation prescribed by Section 24A of the Consumer Protection Act is two years from the date of cause of action. The cause of action for the complainant to file the complaint arose in the month of August 2006 when the respondent company cancelled his membership and as such the complaint is filed within the period of limitation.

13. The appellant has paid an amount of Rs. 99,920 to the respondent and he was ready to pay the balance consideration which the respondent company had not come forward to receive on the premise of default committed by the appellant. The respondent company had not explained why it had not sent a notice prior to or after the expiry of the scheme period. It is also not accounted by the respondent company as to how it could withhold, the amount paid by the complainant, even after expiry of the scheme period. The negligence on the part of the respondent company is manifest on two counts, the respondent company should refund the amount paid by the appellant once the scheme period is expired and secondly, the respondent company could receive the balance sale consideration and execute sale deed in respect of the allotted plots. The respondent company had failed to perform either act which constitutes deficiency in service on the part of the

respondent company.

14. The respondent company had not executed the sale deeds by issuing notice to the appellant by informing him that he was due an amount of Rs. 44,080 and the scheme period was going to expire by the month of June 2006. The respondent company is liable to refund the amount with interest @ 18% per annum. The respondent company had utilized the amount paid by the complainant from the date it has received and even after the scheme period was expired. Award of interest @ 18% per annum by way of damages and compensation is approved by the Supreme Court in Brij Pal Sharma v. Ghaziabad Development Authority, reported in III (2005) CPJ 43 (SC)=VI (2005) SLT 365. The Apex Court had referred to its earlier decision in Ghaziabad Development Authority v. Balbir Singh, reported in II (2004) CPJ 12 (SC)=III (2004) SLT 161 and Haryana Development Authority v. Soma Devi, reported in I (2005) CPJ 11 (SC)=VII (2004) SLT 373. Having retained the amount pertaining to the appellant, the respondent as such is liable to refund the amount with the aforementioned rate of interest. In the circumstances, the appeal deserves to be allowed. In the result, the appeal is allowed. The order of the District Forum is set aside. The respondent company is directed to refund the amount of Rs. 99,920 with interest @ 18% per annum from the date of last payment of instalment. The costs of the proceedings quantified at Rs. 2,000. Time for compliance four weeks.

Appeal allowed.

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