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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Mar-28-2011

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

Appeal No. : F.A.1610/2008 against C.C.93/2006, Dist. Forum, Ranga Reddy

Appellant : A. V. Prasad

Respondent : Home Line Construction Rep. by Its Managing Partner and Another

Judgement :

Oral Order: (Per Honble Justice D. Appa Rao, President)

- 1) The appellant is unsuccessful complainant.
- 2) The case of the complainant in brief is that he entered into a tripartite agreement of sale and construction on 14.7.2003 with the respondents including the vendors of the land. The respondent agreed to construct the house with some specifications. The respondent handed over possession in the month of May, 2004 on which he has issued no due-cum-possession certificate. However, to his dismay he observed some major cracks in the internal walls which could be seen even from outside. By the end of June, 2005 he observed that flooring in two

bedrooms was shrunk. He informed the same to respondent who in turn deployed their men to rectify the mistake. They made a temporary repair. The hall and other remaining areas were affected with same problem. At the time of repair work he observed dust comprising of crushing material was filled in majority instead of filling up with concrete and cement up to basement level. They failed to take proper steps in filling the material. For the said reason the basement including the stones were damaged totally. It became uninhabitable. On that he shifted to a rented house by paying Rs. 4,500/- p.m. He had sustained a loss of Rs. 5,900/- p.m. This was due to improper construction of house by the respondent. The complainant requires Rs. 75,000/- for flooring work, Rs. 20,000/- for plastering work of interior side of compound wall. Therefore he filed the complaint demanding rectification of defects or in the alternative pay a compensation of Rs. 4 lakhs together with interest and costs.

3) The respondents resisted the case. While admitting that they have entered into an agreement for sale and construction of an independent house they alleged that in fact they are civil engineers and started a firm under the name and style of Home-Line Constructions to construct independent houses to maintain standard and quality. They have constructed more than 50 independent houses. They have handed over possession in the month of May, 2004. However the allegation that there were major cracks in the internal walls and that it was intimated to them by phone is false. In fact when the complainant informed about the condition of the house they found in one of the places there was damage. Immediately they along with their workers went there, and found that due to improper maintenance of the house and surroundings some bandicoots made big holes and that was the reason why flooring got shrunken. Immediately they rectified the problem and informed the complainant to maintain the premises and surroundings clean and that they would not attend whatever problem that may arise in future. The allegation that he observed dust instead of concrete and cement was false. In fact the material used was Robo sand and not dust. They had taken proper steps in filling the basement with required material. Due to improper maintenance of surroundings the house had developed problems. No complaint was made by any of the members of the association till now. There are 150 to 200 family members residing in the venture happily. There was no defect nor deficiency in service on their part. Therefore they

prayed for dismissal of the complaint with costs.

4) The complainant in proof of his case filed his affidavit evidence and got Exs. A1 to A6 marked while the respondents filed the third party affidavit evidence of S. Venkata Chary of plot No. 60, wherein he stated that there was no problem in regard to quality of construction since his occupation. The builder has completed all the development works for whatever he promised. They also filed the third party affidavit evidence of P. Ravinder Babu of plot No. 39 and 40, P. Chandra Sekhar of plot No. 47 to the same effect.

5) The Dist. Forum after considering the evidence placed on record opined that the complainant failed to prove that there were defects. He had filed the complaint two years after taking possession. When he complained, the respondents had attended to it. The complainant himself was at fault for not maintaining the house properly, and therefore dismissed the complaint.

6) Aggrieved by the said decision, the complainant preferred the appeal contending that the Dist. Forum did not appreciate the facts or law in correct perspective. It ought to have seen that the very respondent admitted that the flooring was shrunken which according to him was due to bandicoots. However, it had failed to appreciate that it was due to sub-standard material used and that flooring was defective. Photographs were also filed in order to show that cracks were developed. The Dist. Forum went wrong in dismissing the complaint, and therefore prayed that the appeal be allowed.

7) The point that arises for consideration is whether the order of the Dist. Forum is vitiated by mis-appreciation of fact or law?

8) It is an undisputed fact that the respondent a builder constructed a house as per the specifications by virtue of agreement Ex. A1 and handed over the same to the complainant in the month of May, 2004 evidenced under letter Ex. A2. For the first time the complainant two years after occupation alleges that due to sub-standard material cracks were developed in the internal walls. Equally flooring was shrunken due to inferior quality of building material that was used for filling up the basement. Since there were damages the house became uninhabitable. The

respondent while denying that the construction was sub-standard, however admitted at para-5 of its counter which we excerpt for better appreciation: It is utterly false to say that the complainant has observed that two bedrooms flooring got shrunk to a depth of one inch below skirting. As a matter of fact when the complainant informed about the condition of the house is only in one or two places were damaged, then immediately we along with our workers approached there and found that due to improper maintenance of the complainant house and surroundings, some bandicoots made very big holes in various places in the premises. On that reason only flooring got shrunken. Immediately we rectified the present problem and informed to the complainant herein after if maintained the premises of the complainant house and surrounding make it clean, the problem will not come, and we are not responsible in future but he failed to do so , and the same problem arose because of bandicoots.

9) It may be stated herein as rightly complained by the complainant but for substandard material used by the respondent while constructing the basement, bandicoots could not have made big holes at various places. It is nothing to do with the maintenance. The construction should be of such nature it should not allow them to make holes and damage the very basement. The respondent admits that flooring was shrunken which he attributes to bandicoots. It is strange how the flooring could be shrunken. Unfortunately the complainant did not take any qualified engineer to find out the cause for these damages and assess or estimate the amounts that would be spent in case of repair. A qualified engineer would undoubtedly explain whether these defects or deficiencies were due to non-maintenance or inherent defects due to using of sub-standard material. Belatedly he filed a report of M/s. Rao and Kumar Associates, Chartered Architects and Engineers along with photographs. Having filed the report the complainant did not choose to file an application to receive as additional evidence. No doubt technical rules of evidence will not apply, however, the respondent should be given an opportunity to controvert the report. Whatever order that could be passed by this Commission in receiving such a report would un-necessarily amenable for revision. The complainant except filing the said report did not file the affidavit of the author of the report in order to vouchsafe the contents of the said report. There was no mention as to the amount that could be spent for rectifying those defects.

10) At the cost of repetition we may state that the respondents have no opportunity to controvert the report of the Chartered Architects and Engineers if it were to be taken as evidence. Since ex-facie the respondent admits about the fact that the flooring was shrunken and the photographs marked as Ex. A6 showing damage that was caused to the walls which the respondent did not dispute, it is a fit case where the matter has to be remitted to the Dist. Forum in order to enable the complainant to lead additional evidence with an opportunity to the respondent to place additional evidence to rebut the case of the complainant. This is necessitated in view of the fact that the complainant was unable to prove his case as per law. We are constrained to observe that many of the complaints are being dismissed solely on the ground that they were unable to let in proper evidence to substantiate their case. Merely filing an affidavit or document would in no way be construed as proving of a fact. May be the Indian Evidence Act has no application. We can go to the extent and state that some of the principles under Evidence Act are based on principles of natural justice, equity and good conscious etc. When the complainant intends to prove a particular fact necessarily it has to be proved by letting evidence either by filing affidavit evidence or by some other mode of proof. The complainant while filing the affidavit evidence did not choose to controvert the affidavit evidence of third parties filed by the respondent. All this was happened due to ignorance as to how a fact has to be proved by a party.

11) In the light of report of Chartered Architects and Engineers besides admission by the respondents in its counter, we are of the opinion that this is a fit case where matter has to be relegated to Dist. Forum in order to enable both parties to lead fresh evidence. The Dist. Forum is directed to dispose of the matter as per law after giving opportunity to both sides to lead evidence. The Dist. Forum shall not carry away by the observations made this Commission in this regard. It has to come to the conclusion independently, uninfluenced by any observations made by us in the order.

12) In the result the appeal is allowed setting aside the order of the Dist. Forum. The Dist. Forum is directed to restore the complaint to its file. The matter is remitted to Dist. Forum with a direction to issue notice to both sides, and dispose of the matter as per law after giving opportunity to both sides to lead evidence. In

the circumstance no order as to costs.

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