

G. Rajender and Another Vs. M. Kasenath and Others

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Jul-07-2010

Judge : Smt M. Shreesha, Honourable Member & Sri R.Lakshminarsimha Rao, Honourable Member

Appeal No. : F.A. No. 1698 OF 2007 AGAINST C.C.NO.531 OF 2006 DISTRICT CONSUMER FORUM-I HYDERABAD

Appellant : G. Rajender and Another

Respondent : M. Kasenath and Others

Advocate for Pet/Ap. : Counsel for the Appellants: Sri Ch.Ravinder, Advocate. Counsel for the Respondents No.1 to 5: Smt M.Bhagyamma, Advocate. Counsel for the Respondent No.6: Publication filed.

Judgement :

Oral Order (As per R.Lakshminarsimha Rao, Member)

The opposite parties no.2 and 3 in C.C.No.531 of 2006 on the file of District Forum-I, Hyderabad are the appellants herein.

The complainant filed the complaint contending that they have purchased the flats in the year 2004 by paying entire sale consideration and have been in possession and enjoyment of it. While so, one of the complainants received notice dated

1.9.2005 from HMWS and SB informing that fresh water connection in the appropriate category should be applied within three days else the old connection would be disconnected. As per the terms and conditions, the opposite parties have provided water connection and they failed to take new connection as per the rules. In spite of the request, the opposite parties failed to take any steps to get new connection. Hence, the complainants filed the complaint before the District Forum seeking direction to the builder and also to the owners of the property to obtain water tap connection for the building.

The opposite party no.1 filed counter contending that he is unaware of the notice sent by HMWS and SB. Opposite party no.1 is not at all responsible to provide a new connection. The Opposite party no.1 had provided water, drainage and electricity connection of which water connection means bore water which is sufficient to meet the requirements of the flat owners. It is nowhere mentioned in the agreement that the water connection from HMWS and SB will be provided by the opposite party no.1. There is no deficiency in service on the part of the opposite party no.1. The complainants and opposite parties no.2 and 3 shall contribute their share for getting a new connection as required.

The opposite parties no.2 and 3 filed counters contending that the water works department issued notice on 1.9.2005 for applying fresh water connection to the appropriate category. Since the earlier connection was domestic one, all the owners of the flats held a meeting and requested the opposite party no.1 who failed to take any action. Opposite party no.1 being a developer of the flats he has the responsibility to provide a new connection as required.

The complainant has filed documents Exs.A1 to 6.

Exs.B1 has been marked on behalf of the opposite parties.

The District Forum has allowed the complaint directing the opposite parties no.1 to 3 to apply for fresh water connection from HMWS and SB by meeting necessary expenditure to have drinking water connection to the flats in question and if the opposite parties failed to obtain the sanction of the connection, the flat owners may contribute together and recover the cost by enforcing the order. The opposite

parties also directed to pay compensation of Rs.5,000/- along with costs of Rs.2,000/-.

Feeling aggrieved by the impugned order, the opposite parties no.2 and 3 preferred the appeal contending that the complainants have no locus standi to file the complaint as they are not the original purchasers of flats from the appellants and there is no relationship of vendor and vendee between the appellants and the complainants and that the appellants are only the land owners and they had given their land for development to the respondent no.6 as such they are not concerned with the amenities to be provided to the purchasers of the flats that the District Forum did not consider the clause 5 of the development agreement in proper perspective and wrongly interpreted the same and fixed the liability on the appellants along with the respondent no.6 that clause 5 of the Development Agreement clearly stipulates that it is the duty of the Developer i.e., Respondent no.6 to provide all amenities including the water at his own cost.

The point for consideration is whether the impugned order vitiated by misappreciation of fact or law?

The complainants purchased flats in Gayatri Megana Complex in the year 2004. The opposite party no.1 is the builder and the opposite parties no.2 and 3 are the owners of the property whereupon the opposite party no.1 constructed the building, Gayatri Megana Complex. The opposite party no.1 entered into development agreement dated 8.5.2003 with the opposite parties no.2 and 3 for construction of the building with the understanding that 50% and 50% flats had to be shared between them. It is not in dispute that the complainants had paid the entire sale consideration to the opposite party no.1. The complainants were given possession of their respective flats by the opposite party no.1. Thereafter, on 1.9.2005 the HMWS and SB had issued notice directing the complainants to apply for fresh water connection under appropriate category for the reason that the existing water connection was sanctioned under domestic category and the building comprising the flats had to be granted the water connection under a different category. The matter was brought to the notice of the opposite parties. As there was no action on the part of the opposite parties, the complainants filed the

complaint wherein the impugned order was passed directing the opposite parties no.1 to 3 to apply to the authority concerned for obtaining fresh water connection to the Gayatri Megana Complex.

The District Forum has allowed the complaint directing the opposite parties no.1 to 3 to apply for fresh water connection from HMWSand SB. Further, it was provided in the order that on failure of the opposite parties to obtain the fresh water connection, the complainants were given opportunity to obtain the water connection and recover the expenses incurred for obtaining the water connection from the opposite parties.

The opposite party no.1 has not filed any appeal against the impugned order. The opposite parties no.2 and 3 filed the instant appeal contending that they being owners of the land cannot be saddled with any burden of obtaining fresh water connection for the building as the opposite party no.1 is solely responsible to meet the requirement either in law or in view of the factual situation obtained in the case. The opposite parties no.2 and 3 relied upon clause 5 of the Development Agreement they entered with the opposite party no.1.

Clause 5 of the Development Agreement reads as under:

That the part of the Second shall agree to provide amenities such as Water, drainage, electricity connection of such amenities required for the said flats in the building to be constructed at their own cost.

The opposite party no.1 had not chosen to contest the appeal. In the District Forum he had contended that what all clause 5 of the Development Agreement states is in regard to providing drainage and electricity connection whereas the water supply was intended to be from a bore-well. A perusal of the clause 5 which has been extracted hereinabove clearly shows that the electricity connection as also the water tap connection as well as the drainage connection had to be obtained by the opposite party no.1 at his own costs. Water connection cannot be interpreted as the supply of water from a bore well. The interpretation of clause by the opposite party no.1 is not sustainable. The opposite party no.1 attempted to draw inference that the water connection was meant to be from a bore well in view

of the existing tap connection. Any such interpretation of clause 5 is not permissible. The words used therein are capable of being transparent, clear and having no trace of any ambiguity and it goes to show that the connection either in case of electricity or in regard to the supply of water is to be obtained from the respective authorities.

The learned counsel for the opposite parties no.2 and 3 relied upon the judgment of the Honble Supreme Court in *Fakir Chand Gulati Vs. Uppal Agencies* reported in (2008) 10 SCC 345 to contend that the opposite parties no.2 and 3 being the owners of the property which was given to the opposite party no.1 for the purpose of development and raising a construction thereon, cannot be treated as or on par with the status of a builder. The Supreme Court held that the owner of the land who entered into a development agreement with the builder for development of his property by construction of a building can be a consumer enjoying the status of purchaser of a flat qua the builder and can maintain a complaint against the builder in case of any breach by failing to deliver his share of constructed area or by obligations relating to amenities like water, electricity and drainage. The Supreme Court held laid down the principle that the owner of the property for all practical purposes insofar as the services to be rendered by the builder in terms of the development agreement is concerned, is a purchaser of the flat. In view of the settled proposition of law, the opposite parties no.2 and 3 cannot be obligated to obtain fresh water connection or pay amount incurred in obtaining the connection.

In view of clear and specific obligation fastened upon the opposite party no.1 to obtain water tap connection from HMWS and SB, the direction to all the opposite parties issued by the District Forum cannot be treated as sustainable to the scrutiny of facts by this Commission. Hence, we do not have any hesitation in setting aside the direction issued by the District Forum against the opposite parties no.2 and 3. Insofar as the liability of the opposite party no.1 is concerned, we maintain the direction of the District Forum. Accordingly, the impugned order is liable to be modified.

In the result the appeal is allowed by setting aside the direction in the order dated 3.9.2007 against the opposite parties no.2 and 3. The rest of the order against the

oppose party no.1 is upheld. In the circumstances of the case, there shall be no order as to costs.

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