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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Jun-07-2010

Judge : Sri Syed Abdullah, Honourable Member & Sri R. Lakshminarasimha Rao, Honourable Member

Appeal No. : P. P. NOS. 27, 28, 29 of 2006 AGAINST C.D. NOS. 142, 144, 145 of 2001

Appellant : K. Hari Prasad and Others

Respondent : M/S. Sai Krishna Constructions and Another

Advocate for Pet/Ap. : Counsel for the Petitioner: Mr. M. Lakshmi Prasad, Advocate. Counsel for the Respondents: Mr. D. Ranganath Kumar for R1 and R2, Advocate.

Judgement :

(As per Sri Syed Abdullah, Honble Member)

These petitions are filed U/s. 27 of Consumer Protection Act to pass orders forfeiting the security deposit of Rs.1,50,000/- deposited by the respondents and to direct them to pay a sum of Rs. One lakh towards balance of rentals and also to pay compensation of Rs. 5 lakhs.

Separate Petitions are filed in the above PPs

According to the petitioners, who are the complainants in C. D. Nos. 142, 144 and 148 of 2001, they filed the claims against the respondents to direct them for construction of flats by delivering it as per the agreement, so also, to pay the loss sustained towards rent for the delay in delivering the flats.

The said complaints were allowed on 17.02.2003 in terms of joint compromise filed by both the parties. Even though, the respondents have agreed to comply with the terms but they failed to comply the same. Thus, they committed default. So the petitioners/complainants filed PP 20/2003, 22/2003 and 23/2003 before the State Commission praying to punish the respondents. Pursuant to it, Non-bailable warrant was issued on 27.04.2004 and on that the respondents paid rents partly to an extent of Rs.57,500/- by giving undertaking to provide water supply within four weeks and on that the Non-bailable Warrant was kept in abeyance. On 27.04.2005, a Non-bailable Warrant was issued against the opposite party for non-compliance of the orders passed by this Commission on 14.10.2004. An Advocate Commissioner was appointed. Basing on the report of Commissioner dated 04.11.2003, this State Commission passed an order on 28.12.2004 directing the respondent/opposite party to comply with the terms of compromise within a period of 8 weeks failing which Non-bailable warrant shall be issued. Further, on 06.03.2006, the State Commission passed an order in PP 20/2003 directing the respondent to complete the installation of the second lift and to complete the left over unfinished works. In spite of it, the respondent willfully kept the works pending though agreed under joint compromise dated 06.02.2003.

In the order dated 06.03.2006 passed by the State Commission, it is mentioned that on 29.06.2004 both parties filed a Joint Memo of compromise agreeing to comply with the terms and conditions. But, the said joint memo is denied by the petitioners stating that the said Joint Memo was not at all signed by them. It is stated that the respondent has mis-represented it before the Honble Commission. The Opposite parties have not fulfilled the terms and conditions of the Joint Memo in respect of the installation

(1). Second Lift Installation

(2) As per the agreement and compromise memo 36.5% parking area . i.e., 3630 SFT (3630/6) - 605 sft is to be allotted to each owner but allotted only 28% i.e., 1540 Sft (257 Sft). 348 Sft and the value of the deficit area is 348 sft X 1000 = Rs.3,48,000/-.

(3). Implementation of the order dated 17.12.2003 passed by this Commission.

(4). Penalty amounts for the delay in handing over the possession of the flats beyond 24.02.2003 (clause 5) of the Joint Compromise Memo.

Further, in spite of lapsing of three years, the opposite parties have failed to comply the terms and conditions. The petitioners have been suffering from heavy loss since 24.09.1998. It is contended that when the compromise memo is null and void, the terms and conditions of the development agreement will revive automatically. As per clause 30 of the development agreement, in case of violation of any of the terms of agreement, the petitioners are at liberty to revoke the agreement forfeiting the security deposit of Rs.1,50,000/- and also to claim damages. The petitioners are constrained to file these petitions praying to forfeit the security deposit amount of Rs.1,50,000/- and to direct payment of damages of Rs. One lakh towards the balance of rental amounts and also a compensation of Rs. 5 lakhs as damages.

The respondents have filed counter admitting that as per Joint Compromise Memo filed by the both parties, this Commission had passed an order on 17.02.2003 and pursuant there to the petitioners have filed PP 20/2003, 22/2003 and 23/2003 complaining that the parties have failed to comply with the terms and conditions of the compromise memo. It is stated that the opposite parties have filed a detailed memo that they have complied with the order by enclosing documentary proof. Pursuant there to, the Honble State Commission in PP 22/2003 passed the following order :

The opposite parties agreed to pay a lump sum compensation of Rs.1,20,000/- to the complainant for the delay in handing over the possession of the flats, which shall be adjusted from out of the security deposit of Rs.1,50,000/- lying with the complainant .

As per the clause of the compromise memo, the complainant is entitled to retain Rs.1,20,000/- out of the security deposit of Rs.1,50,000/- which is lying with the complainant and return the balance of Rs.30,000/- to the opposite party. So in respect of this clause, nothing is to be complied with by the opposite parties.

(b). The opposite parties shall construct and hand over the possession of the flat nos. 106, 210, 307 in all respects as per the specifications along with car parking areas by 24.02.2003. If there is any further delay, the opposite parties shall pay a sum of Rs.2,500/- per month per flat to the complainant .

Accordingly, the opposite parties have constructed the flats and handed over the keys to the complainants counsel on 09.01.2004 during hearing which was recorded. The opposite parties had to pay a sum of Rs.2,500/- per month to the complainant from March, 2003 to December, 2003 which comes to Rs.25,000/- per flat and for the three flats the total amount comes to Rs.75,000/- after deducting a sum of Rs.30,000/- out of balance security deposit refundable to the opposite parties by the complainants. The balance amount payable by the opposite parties to the complainants comes to Rs.45,000/-. As can be seen from the docket order of the State Commission, on 05.07.2004, the opposite parties had paid the same to the complainants in the presence of the State Commission across the bar which was already recorded. Thus, the opposite parties have complied with this clause of compromise.

. The Opposite party shall earmark the car parking area of 36.5% falling to the share of the landlords and the opposite parties shall ensure that the complainant will get two car parking areas

This clause was also complied with and the car parking area of 36.5% of the area was assigned and allotted. Copies of the car parking allotment letters along with the car parking drawing was filed in PP 22/2003.

(d). As per clause 9 of the Development Agreement, the opposite parties have to provide all the amenities including water (Bore Water and Municipal Water Supply), drainage, electricity, lift etc. at the cost of the opposite parties and the complainant need not pay any extra amounts in respect of those amenities .

This clause was also complied with. Two bore wells were dug and fitted with motors. Also obtained municipal water connection with 1 diameter of the pipe. Receipts were filed in earlier PP No. 22/2003. drainage was also provided. Electricity was also provided along with transformer. Lift was provided. Thus, the clauses have been complied with. Installation of second lift was already initiated. So Sri A. G K. Raju, Secretary of the Association was entrusted with the work. Hence prayed to dismiss the above petitions.

The petition averments and the counter averments in all the PPs are identically the same. So they are not reproduced to avoid repetition.

Point for consideration is, whether the opposite parties have complied with the terms and conditions of the compromise memo dated 06.02.2003?

It is seen from the record that earlier these petitioners/complainants have filed PPs alleging that the Opposite parties have failed to comply with the terms and conditions of the compromise. This Commission had passed an order in PP 20/2003, PP 21/2003 and PP 22 /2003 on 06.03.2006. The orders passed by the State Commission in PP 20,21 and 22 of 2003 are relevant to be extracted for appreciating the contentions raised by the parties to decide as to the compliance or non-compliance.

In earlier PPs 20. 21 and 22 of 2003, the petitioners have alleged that the respondents have not complied with the terms and conditions of compromise. During the pendency of the enquiry, an Advocate commissioner was appointed who filed a report. Pursuant there to, both parties said to have filed Joint Memo of compromise and an order was passed which reads as follows :

1. The respondents have paid a sum of Rs.57,500/- to the petitioner and the petitioner has no further claim against the respondents and ;
2. The respondents have also received D. D. No.60561 dated 6.5.2004 for Rs.75,000/- and a D.D. No.605967 dated 10.06.2004 of S. B. H. , S. R. Nagar was obtained to pay the required charges to the Hyderabad Metro Water Services and Sewerage Board towards the proportionate share on behalf of the petitioner herein

and other petitioners in PP Nos. 20 , 21 and 22 of 2003.

Based on the Joint Memo this Commission passed the following order on 28.12.2004.

Since the respondent/opposite party failed to comply with the terms mentioned in the Joint Compromise Memo dated 6.2.2003 we direct the respondent/opposite party to comply with the terms of compromise within a period of eight weeks from today failing which Non-Bailable Warrants shall be issued. This PP is accordingly allowed .

During pendency of PPs 20, 21 and 22 of 2003, petitioners/complainants have put forth the grievance that though the keys were handed over but the infrastructure and basic facilities are not provided to occupy the flats that were handed over. At that stage, this Commission had observed that after persuasion the opposite party has obtained separate drinking water and sewerage and amenities of drinking water and sewerage facility. It is also mentioned that the petitioner has agreed to forego a lumpsum compensation of Rs.1,20,000/- out of security deposit of Rs.1,50,000/- and ultimately the flats were delivered on 24.02.2003 duly completing along with car parking areas. The petitioner has not paid the amount towards the rental loss @ Rs.2,500/- per month per flat as per clause 11 of the Development Agreement-cum-General Power of Attorney. As per clause 9 of the said agreement the petitioner has to provide all amenities at his cost. Subsequently, the State Commission has passed the following direction on 06.03.2003:

Based on these proceedings the Commission directed the opposite party to report compliance of the orders of the State Commission in the aforementioned C.Ds. That on 1.7.2005 the opposite party has filed a memo reporting compliance and also filed letters of car parking allotment. He has also fled proceedings issued by HMWS and S,B dated 18.10.2002 in proceedings No. 195B/3445 and also another proceedings regarding intimation for sanction dated 4.9.2004 under which he paid Rs.6,41,343/-. The opposite party also filed various receipts from HMWS and SB and these receipts establish that the entire amount has been paid. In view of the long run proceedings and claims and counter claims of the parties we direct the

opposite party to complete the installation of the second lift and also any left over works, it is open to the complainants to approach this Commission afresh in the event of their genuine grievances.

The petitioners in PPs have filed a calculation Memos calculating the rent due from 24.02.2003 to August, 2004 @ Rs.2,500/- per month, for three flats the total is Rs.8,750/-.

For 18 months (Rs.8,750 X 18) = Rs.1,57,500/-,

Less, the amount paid by the builder

in the State commission, = Rs. 57,500/-,

then the balance comes to =Rs.1,00,000/-.

The fee of the Advocates Commissioner appointed

in the State Commission for inspection of site from

1.11.2003 which is paid by the petitioner/complainant = Rs.2,500/-

Expenses incurred for the advocate in filing the

Petition = Rs.15,000/-

Additional expenditure incurred by each of the flat

Owners for attending to the repairs of floor, painting,

Electrical works etc. @ Rs.10,000/- for 3 flats = Rs.35,000/-

Mental agony suffered for non-compliance = Rs.50,000/-

Total = Rs.2,02,500/-.

Allotment of parking area:

(As per the drawing submitted along with the Report of the Advocate Commissioner).

Total area of the parking = 11,500 Sft

Common area = 1,616 sft

Area after allotment = 9,884 sft

6 land owners are entitled 36.5% area of the total area = 3,607.66 sft

Each owner to be allotted with = 601.2 Sft

The actual allotted area for parking to each is = 401.2 sft

Rents due to be paid as per the compromise till 06.02.2003

Rental amounts adjusted on 24.02.2003 = Rs.1,20,000

From 24.02.2003 to 17.12.2003, i.e.. for 10 months

Paid on 05.07.2004 is = Rs. 57,500

Less : deduction of deposit = Rs.30,000/-

The respondents/opposite parties have not filed any objections on this calculation memo filed by the petitioners/complainants.

Admittedly, as contended by the petitioners the PP 20, 21 and 22 of 2003 were closed holding that the respondents/opposite parties hve complied with the orders in pursuance of the Joint Memo. The contention that the opposite parties have complied with the order is not true and correct based on record.

This Commission while disposing PP nos. 20, 21 and 22 of 2003 have terminated PPs as the same were pending since a long time with an observation that in view of the long run proceedings and claims and counter claims of the parties we direct the opposite party to complete the installation of the second lift and also to complete any left over works, it is open to the complainants to approach this

Commission afresh in the event of their genuine grievances.

The contention of the petitioners/complainants is that taking advantage of the termination of the proceedings with an observation to install second lift and also to complete the left over works without fixing time the opposite parties have taken the advantage of it and did not complete the same till date. So they should be punished.

During pendency of the present prosecution petitions, an advocate commissioner was appointed again on 26.12.2003 directing to inspect the complex and submit report with regard to the compliance of the orders of the State Commission and to give intimation to the parties about his visit . The advocate Commissioner has filed his report on 18.01.2008. The Commissioner made the following observations.

the lift work entirely incomplete, the outside grills of the lift in each floor the association itself arranged for protection so that the children and other persons may not come into contact with the unprotected steps. The Commissioner has stated that even with regard to the first lift it was not in proper condition so the association itself had spent money for which they got bills. As regards the parking area, it is stated that according to him in total there are 41 car parking areas are marked with paintings. He took measurements of the parking area. Single parking area extent is 100 sft. The entire parking area measured by him comes to Rs.11500sft, out of it, common area is observed as more than 1500 sft. The allotted entire parking area is 10,000 sft. The respondent/opposite party has allotted to each land owner is 200 sft., in total comes to 1200 Sft. But as per the agreement 1200 Sft will not work out for the share of 36.5% to the land owner. It is further also observed that association has reported that in view of long delay the association itself had completed the same like providing drainage cover, construction of RCC, slab on the water tank for which they submitted the bills. He also observed that in each of the floors electrical wires are left open without any coverage which is dangerous to the inhabitants. He also filed the photographs along with the report. As per the original brochure and the ground plan the total number of car parkings in the developed site is 28 in number.

But according to the Commissioners report on the date of inspection there are 41 car parkings with paintings. The respondents/opposite parties contended that an adjacent vacant site is also secured for car parking area so the total number comes to 41. The additional site existing adjacent to the developed area might have been secured for car parking. But as per the orders, 36.5% of the parking area from out of the total car parking area of the developed site is to be allotted by ensuring each owner of the flat gets two car parkings. Merely because two car parking area is earmarked it will not satisfy the total extent of 36.5% and this is made clear by the Commissioner in his report. The petitioners/complainants are entitled for total area of 36.5% of the Car Parking area for their four flats, so that, each of the flat owners would get parking area of two cars. The Car parking area of 100 Sq. feet for each car is not sufficient if the car is of big size. So the respondents/opposite parties are bound to provide an extent of 36.5% area for car parking for four flat owners, so that, two cars to be parked in that area easily. It is the duty of the respondents to obtain acknowledgements that the total extent of 36.5% car parking area was handed over to them but they have not filed any acknowledgements or receipts. The so called allotment letters are not signed by the petitioners.

During the pendency of earlier PPs 20, 21 and 23/2003, it is observed that both sides have filed compromise memo and on the basis of it, the PPs were terminated. The petitioners/complainants have stated that the respondents/opposite parties have mis-represented the fact stating that they have signed the Joint Compromise Memo which is incorrect and in fact they did not sign at all. A copy of the Joint Compromise Memo dated 25.07.2000 is filed and on perusal it does not contain the signatures of the petitioners/complainants. In this Memo it is only stated about the payment of amount of Rs.57,560/- and Rs.75,000/- towards the sewerage charges. Believing the correctness of the said compromise memo the earlier PPs were terminated by permitting the complainants to approach the Commission in the event of genuine grievances. Right from the date of compromise which was entered into on 17.02.2007, there is an inordinate delay on the part of the respondents /opposite parties in installing the second lift and as well in completion of the incomplete works which undoubtedly has caused lot of inconvenience and hardship, so also, there was a delay in

payment of rent and in handing over the flats with all amenities.

As per the Compromise Memo, they have agreed to pay Rs.1,20,000/- to each of the petitioners/complainants for the delay in handing over possession which amount shall be adjusted from out of security deposit of Rs.1,50,000/- lying with them. So, out of it, still Rs.30,000/- is to be refunded by each of the petitioners to the opposite parties. Further, as per the direction each of the flat owners is to be paid with Rs.2,500/- in case of delay in handing over the possession. It is also directed that on providing Drinking Water Supply connection from HMWSB by 24.05.2003 the petitioners shall return the security deposit amount of Rs.30,000/- to the opposite parties by deducting penalty if any for the delay in handing over the possession of flats from 24.03.2003. in view of the specific directions, as per the compromise memo it is the duty of the respondents/opposite parties to show that physical possession of flats were given by providing all amenities required for occupation. No evidence is placed all the while. So the petitioners/complainants are entitled to claim rent from 24.02.2003 till August, 2004 which is worked at Rs.1,57,500/-, out of which, Rs.57,500/- which was paid before the State Commission was deducted, still, a sum of Rs.one lakh remains due. The petitioners have claimed advocate fee of Rs.2,500/- towards their half share paid to the Advocate Commissioner, so also, additional expenses incurred to an extent of Rs.15,000/- and another sum of Rs.35,000/- incurred for completing the incomplete works and a sum of Rs.50,000/- towards expenses for mental agony. An Advocate was appointed as Commissioner, so that, he may inspect and give correct picture and he was appointed to assist so the fee paid cannot be claimed as expenses. Similarly, other miscellaneous expenses of Rs.15,000/- as claimed by them. As regards the expenditure of Rs.35,000/- incurred for effecting unfinished works. This amount seems to be quite reasonable which can be allowed to an extent of Rs. 30,000/-. It would be proper to impose costs of Rs.2000/- payable to each of the complainant towards costs of the litigation.

In the result, PPs 27, 28 and 29 are allowed directing the opposite parties to obtain certificate from the technical expert that the second lift which was installed has been in good working condition and further directed to allot deficit car parking area from out of 36.5% of the total car parking site on which flats were built. Further

directed to pay a sum of Rs.2,500/- pm per flat , ;i.e., 3 flats to the complainants (for the period 24.2.2003 to August, 2004) as worked at Rs.1,57,500/- less deducting Rs.57,500/- and Rs.30,000/- balance due from each of complaints. Further directed to pay a sum of Rs.30,000/- each towards the expenditure incurred by the complainants in completing the unfinished works. Further directed to pay costs of Rs.2000/- to each of the petitioners. The order shall be complied with within 30 days from the date of the order.

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