A.Krishna Kumar Vs. M/S Samatha Constructions

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Nov-26-2009

Judge : The Honâ€™Ble Sri Justice D.Appa Rao, President, Sri Syed Abdhullah, Member &Amp; Sri R. Lakshminarsimha Rao, Member

Appeal No. : F.A.No.1813 OF 2007 AGAINST C.D.NO.67 OF 2002 DISTRICT CONSUMER FORUM RANGA REDDY

Appellant : A.Krishna Kumar

Respondent : M/S Samatha Constructions

Advocate for Pet/Ap. : Counsel for the Appellants: Sri V.Gourisankara Rao, Counsel for the Respondents: Sri D.V. Ramana Sarma

Judgement :

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

The complainant being not satisfied by the order passed by the District Forum-I , Hyderabad in C,D.No.67 of 2002 whereby the opposite party was directed to hand over the sale deed dated 8th September, 2001along with link documents in respect of the pent house as also the opposite party was directed to take steps for regularization of the plan in respect of the pent house. The complainant seeks for refund of an amount of Rs.1,15,000/- along with interest which amount was said to have been excessively collected from the complainant. Further, the appellant seeks for redeeming of mortgage of the pent house.

Briefly stated the facts of the case are that the opposite party promising that he had obtained technical clearance from HUDA, approval from Municipality, Malkajigiri for construction of residential complex, Jayanthi Apartments, submitted proposal to Malkajigiri Municipality for approval for construction of double bed room Pent house on the terrace admeasuring 950 sft., offered to sell the pent house for a consideration of Rs.3,00,000 for purchasing of which the appellant paid an amount of Rs.3,25,000/- inclusive of Transformer charges and registration charges. The respondent had not executed agreement of sale even after receiving of the total sale consideration. By a notice dated 12th August,1998 issued by the Muncipal Council, Malkajigiiri, the appellant came to know that the respondent had applied for regularization of the plan of the flat in the 4th floor of the building. The respondent agreed to take steps for regularization of the flat. The respondent, after much persuasion executed agreement dated 28th October,1999 in respect of double room flat bearing no.15 in 4th floor of Jayanthi Apartments with plinth area of 500 sft, along with undivided share of 12.5 sq.yards for a total consideration of Rs.1,50,000/-. After execution of the agreement, the appellant came to know that the respondent played mischief on him as the area was 500 sft.only against 950 sft. that was agreed to be sold. The appellant raised objection about the discrepancy in the plinth area whereupon the respondent assured the appellant that the discrepancy would be rectified at the time of execution of the sale deed. The respondent delivered possession of the flat to the appellant in the month of February,1999, however he did not execute the sale deed till 8th September, 2001 in violation of the clause 4 of the Agreement where under time for execution of the sale deed prescribed was only two months from the date of execution of the agreement of sale.

The appellant came to know that the sale deed was executed for consideration of Rs.1,80,000/- in variation of the amount of Rs.1,50,000/- stated in the agreement of sale. The respondent had not handed over the sale deed and link documents of the flat to the appellant. The flat developed cracks in the walls, seepage of water Cheap wood was used for doors and windows. The respondent constructed 2 pent houses against the one promised. After taking possession of the flat the appellant had spent an amount of Rs.2,00,000/- for improvements of the flat.

The respondent contested the claim by filing counter. It wa contended that the agreement was executed for an extent of 500 sft., for a total consideration of Rs.1,50,000/- apart from extra works. The respondent constructed the house as requested by the appellant. The respondent informed the appellant that permission was not obtained for construction of the pent house. The pent house would be regularized as and when BRS scheme comes into force. The respondent applied for regularization of the flat by paying the required fee. The application is pending with the Municipality. The respondent handed over possession of the flat to the appellant in the year 1999 where the appellant accepted to take possession after having satisfied himself with the construction of the flat. The appellant at first requested the respondent to execute the sale deed in favour of his nominee as he is a bachelor. Later, the appellant requested the respondent to execute the sale deed in his favour in terms of the draft sale deed given to the respondent. Accordingly, on 8th Septemebr,2001, the respondent executed the sale deed in favour of the appellant. The appellant requested the respondent to keep the sale deed with him till he makes the payment for difference of the area i.e., 220 sq.ft. The actual built up area is 720 sq.ft. which was constructed at the request of the appellant. Therefore, the appellant is due to pay the differential of the built up area of 220 sq.ft.

The points for consideration are:

i) Whether the appellant is entitled to refund of Rs.1,15,000/- stated to have been excessively collected from him?

ii) Whether the respondent had mortgaged the pent house to UCO Bank?

iii) Whether there was any discrepancy in the extent of the plinth area of the flat in the agreement of sale and the sale deed?

iv) To what relief?

POINTS NO.1and2 The version of the appellant is that he entered into an agreement with the respondent on 28.10.1999 for purchase of double bedroom penthouse in Jayanthi Apartments at Malkajigiri Hyderabad, for a consideration of Rs.3 lakhs. The appellant states that the respondent misrepresented him that he had obtained clearance from HUDA and permission from Municipality, Malkajigiri. We will come to this aspect a little later. Insofar as the sale consideration is concerned the appellant claims refund an amount of Rs.1,15,000/-. Admittedly, the sale deed was executed for a sale consideration of Rs.1,80,000/-. In the sale deed an extent of 550 sq.ft is mentioned as the plinth area. The complainant has to establish that in addition to the amount of Rs.1,80,000/- mentioned in the sale deed he has paid excess amount. The appellants has paid an amount of Rs.3,20,000/- evidenced by Exs.A3 to A7 receipts issued by the respondent. The appellant cannot take a contrary view against what is stated in the sale deed. Admittedly, the extent under occupation of the appellant is 720 sq.ft whereas the plinth area mentioned in sale deed is 500 sq.ft only. Citing this difference in the plinth area actually under occupation of the appellant to that what is mentioned in the sale deed, the respondent had contended that the appellant is still due amount in this regard. In the absence of any evidence to the effect that the appellant had paid Rs.3,25,000/- for an amount of Rs.720 sft to the respondent, it cannot be held that the appellant entitled to the refund of Rs.1,15,000/- from the respondent.

Except stating that the respondent had mortgaged the flat in question to the UCO Bank, the appellant had not brought on record any evidence in support of his contention as also that the appellant had not made the UCO Bank in whose favour the house in question said to have been mortgaged, is not made party to the proceedings. In the circumstances, it is not possible to issue direction for redeeming of a mortgage which has not been established.

POINT NO.3 The respondents version is that he had informed the appellant that the flat was constructed without any permission. Further it is his case that he had informed the appellant that he would apply for regularization of the construction as and when BRS comes into force. It is not in dispute that the respondent had filed application for regularization of the flat as also that the application is pending before the concerned municipal authorities. The appellant had improved his version stage wise, stating at the initial stage that he had entered into agreement to purchase of 500 sft plinth area. The appellant improved the plinth area of 500 sft to 720 sft on the premise that he had no knowledge of the extent mentioned in the sale deed as also that it was not within his knowledge the execution of the sale deed and the extent of plinth area mentioned therein. Thereafter another improvement to the case of the appellant is that he claimed at the subsequent stage that the appellant offered him, induced him to purchase 950 sft plinth area and it was orally agreed that the respondent would sell 950 sft. Plinth area. Absolutely, there is no evidence so far the aspect of 950 sq.yards plinth area is concerned. Coming to the question of the extent of plinth area under occupation of the appellant compared to the extent of 500 sft mentioned in the sale deed, the appellant attempts to defend that the respondent had cheated by receiving of amount of Rs.3,25,000/- and executed the sale deed only to the extent of 500 sft. We do not agree with the submission of the appellant as this statement is not supported by any evidence. The District Forum has rightly held that the appellant had purchased the penthouse knowing well that the respondent had not obtained any permission thereof. The District Forum also held that the appellant failed to produce any receipts to show that he had spent Rs.2 lakhs for himself to the flat. Therefore, viewed from any angle, we do not see any reason to find infirmity with the order of the District Forum. The appeal is devoid of any merit and is liable to be dismissed.

In the result the appeal is dismissed. No costs.