

**The Executive Engineer and Others Vs. Dr. C. Kamaraj**

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**Court :** Tamil Nadu State Consumer Disputes Redressal Commission SCDRC  
Chennai

**Decided On :** Sep-16-2009

**Judge :** Hon'Ble Thiru Justice M. Thanikachalam President Thiru Pon.  
Gunasekaran B.a.,B.L., Member - I

**Appeal No. :** A.P.NO.634 of 2005 (Against order in O.P.No.103/2002 on the file of  
the DCDRF, Madurai)

**Appellant :** The Executive Engineer and Others

**Respondent :** Dr. C. Kamaraj

**Judgement :**

M. THANIKACHALAM J, PRESIDENT.

1. The opposite party, aggrieved by the order of the District Forum, have come to this commission, as appellant.
2. The complainant/ respondent, pursuant to the advertisement, appeared in the daily, offered to purchase the property in question, for a sum of Rs.13,50,000/- on 6.2.95. Accepting the offer a direction has been issued to deposit the balance 85% of the sale consideration, as per the tender condition. Thereafter, paying the said amount, possession was given on 10.5.95. But the opposite parties while handing over the building and the appurtenant land, did not handover the approved plan and layout scheme from the Town and Country Planning Department. Because of

this inaction, the complainant was unable to mobilize fund, by offering this medicare centre, as collateral security. Therefore the complainant was unable to remit the balance amount in time, and in this way, he was directed to pay penal interest of Rs.34,380/-. By the belligerent conduct of the opposite parties, the complainant was unable to commence his service for 3 months. Later, they have offered additional area of 230.75 Sq.meter, for which the complainant was directed to pay a sum of Rs.1,03,979/-, which was paid in three instalments. Even after taking possession of the medical centre, the complainant was unable to run the centre continuously. Because of the inferior quality of materials, the building developed crack for which the complainant had spent Rs.1,27,800/- to make the building function and fit for use. Between November 1996 and June 1998, medicare centre had to be closed and the complainant was deprived of income. The western side of the fence was removed and the complainant had to spent Rs.50000/- to put up the fence, again which was removed by the opposite parties.

3. Though the complainant had paid full amount towards the cost of the building, and the vacant land, the opposite party, requested the complainant as per the letter dt.15.7.99, to pay a sum of Rs.93000/- as balance, which was later enhanced to Rs.3,83,540/- in the year 2002, for which no reason assigned. Under the guise, as if there is a balance, they are evading to execute the sale deed also. Because of delay in execution of the sale deed by the opposite party, the complainant will be asked to pay higher stamp duty and registration charges. For the past 7 years, the complainant had been put to unwanted financial strain and mental agony, which is to be compensated suitably. Hence, the petition is filed seeking a direction to execute sale deed, to give the building plan and site plan to reimburse the interest amount of Rs.34,380/-, to reimburse the repair charge of Rs.1,27,800, with interest to restore the fencing or to pay the cost of the same at Rs.50000/-, to pay a sum of Rs.1 lakh as compensation for deficiency in service, and to pay a sum of Rs.1 lakh as compensation for mental agony, worries suffered and loss of reputation of the complainant, for the past 7 years. Hence the complaint.

4. Opposite parties denying various allegations leveled against them in their written version, have stated, that the offer of the complainant was accepted on

payment of 15% of the cost i.e., Rs.2,02,500/-, that on receipt of the balance, possession was handed over on 10.5.95, that when the complainant wanted to raise fund, no objection certificate to mortgage the medicare centre, in favour of Lakshmi Vilas Bank was issued on 21.3.95, and as such no negligence could be attributed or deficiency in service does not arise, that the sale deed will be executed if the balance amount is paid by the complainant, as well on receipt of no objection certificate from the Lakshmi Vilas Bank, and that thereafter alone, the complainant is entitled to building plan and site plan, after paying the necessary charges for the same, and that the compensation claimed and other amounts claimed are baseless, thereby praying that the complaint may be dismissed with cost.

5. The District Forum, after elaborate enquiry, marking documents on either side, has decided as if there was deficiency in service, and therefore directed the opposite party to execute the sale deed, without demanding any further payment, as well as to give the building plan and site plan, in respect of the medicare centre, after collecting the registration fees, further directing to pay Rs.1 lakh as compensation for mental agony and suffering and monetary loss, made by the complainant, due to the deficiency in service, rejecting other claims, which caused grievance to the opposite parties, resulting this appeal.

6. It is the submission of the learned counsel for appellant, that after taking over possession on 10.5.95, the complainant did not approached the office at any point of time to get layout plan, and therefore for not supplying the said plant, no deficiency could attributed. It is the further submission of the appellant, that in order to raise fund, no objection certificate was also issued in favour of Lakshmi Vilas Bank on 21.3.95 and this being the admitted position, the complainant was put to monetary loss, unable to obtain loan from the financial institution is erroneous. It is further urged that at the time of measurement, it was noticed that there was extra land 230.75 sq.meter, for which he agreed to pay amount, which he failed to pay, despite the demand and in order to overcome the payment, alleging false defense after 8 years, a case came to be filed, which was erroneously accepted by the District Forum.

7. On the other hand, it is the submission of the learned counsel for respondent/complainant that as requested and as demanded by the opposite parties, amount was paid and at various point of time, different amounts have been claimed, without reasons and because of the same, the complainant was put to untold misery, for which only a reasonable compensation has been awarded, which deserves confirmation.

8. Heard the learned counsel for appellant as well as the respondent, perused the written submissions, lower court records and the order passed by the District Forum.

9. Admittedly, the complainant offering to purchase a Medicare Centre, purchased the same, for a sum of Rs.13,50,000/- and pursuant to the same, possession has been handed over. As reported, and as seen from the records, in time as agreed, or as per the tender clauses, amounts were not paid, warranting calculating of interest, which alone appears to have caused problem, resulting not executing the sale deed, because of the fact, the complainant has not paid the amount as demanded. Therefore, when there was a dispute regarding the payment of the amount in time, for which interest is calculated, even as per the terms and conditions, which the complainant had agreed to abide, then the accusation as if he had paid the entire amount, whereas the opposite parties have failed to execute the sale deed, appears to be unacceptable. It is also an admitted fact, that at the time of the measurement, on ground there found to be excess land, which was also agreed to be purchased by the complainant, for the price fixed. That amount also not paid in time, as seen from the correspondence between the parties, resulting claim of interest by the opposite parties. If, as agreed amounts were paid then and there, question of claiming interest on interest, would not have arisen. From the pleadings also, it is seen, that the complainant was not having good financial support and that is why, he had borrowed loan from Lakshmi Vilas Bank, after obtaining no objection certificate from the opposite parties. Therefore, it is evident that amounts were not paid in time, resulting penal interest, which cannot be found fault, whether they are entitled to claim compound interest or not.

10. Under the change of circumstances, as reported, we feel it may not be necessary for us to go into detail about the non-payment of the amount, or why the sale deed was not executed in time, etc. After the disposal of the case by the District Forum on 24.5.2005, as per the letter dt.31.3.2006, the complainant appears to have paid the entire amount, whatever may be the amount. Therefore, the Tamil Nadu Housing Board, Executive Engineer and Administrative Officer under communication dt.28.4.2006 (4 is corrected as 3, which should obviously mistake), informed the complainant, since he has paid the full cost for the above plot, and also produced all required documents, is requested to contact the head surveyor of Madurai Housing Unit on any working day, and to take over the plot on or before 15.4.2006. Under the letter dt.31.3.2006 also, the complainant was informed by the Executive Engineer, to receive the sale deed. It seems only responding the above communication, probably he has written a letter and therefore as on this date, there is no money due from the complainant to Tamil Nadu Housing Board, in respect of his Medicare Centre, and in this view, the first direction issued by the District Forum, could be complied with and it requires no modification or reversal.

10. The direction by the District Forum, to pay Rs.1 lakh as compensation, appears to be arbitrary and baseless, since we find no evidence and no finding also on this point. Because of the fact, the National Commission has granted some compensation, in some case, it is not mandatory for the lower Forum to grant compensation, and it should record reasons, how the monetary loss sustained, how he was put to mental agony, etc. In the complaint, though many things said, we find no material except the correspondence between the parties, explaining what is the monetary loss incurred by the complainant and infact it is also absent in this case. For the delay in not executing the sale deed, the opposite party alone cannot be held responsible, and to our mind, the complainant also is responsible, and therefore accusing the other party, the complainant is not entitled to any compensation, and in this view, we are inclined to set aside the compensation part.

11. In the result, the appeal is allowed in part, setting aside the order of the District Forum, Madurai, in CC No.103/2003, in respect of granting compensation of Rs.1

lakh alone, confirming the other reliefs granted by the District Forum, as such. There will be no order as to cost in appeal.

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