

Sreelatha Vs. M/S. Baker Homes, Represented by Its Director and Another

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : May-13-2009

Judge : Sri. M.V. Viswanathan: Judicial Member, Sri. S. Chandra Mohan Nair:
Member

Appeal No. : OP N0.9 of 04

Appellant : Sreelatha

Respondent : M/S. Baker Homes, Represented by Its Director and Another

Judgement :

SRI. VISWANATHAN: JUDICIAL MEMBER

Complaint filed under Section 12 of the Consumer Protection Act, 1986.

2. The case of the complainant is as follows:

The complainant entrusted construction of a residential building with car porch and a commercial shop room with the 1st opposite party M/s.Baker Homes. The 2nd opposite party is the director of the 1st opposite party construction company. But the opposite parties failed to construct the residential building with car porch and commercial shop room as agreed. There occurred deficiency in service on the part of the opposite parties in executing the aforesaid construction works. The residential building constructed by the opposite parties was having leakage and

that the car porch is not fit for the purpose of keeping a car. The construction of the commercial shop room was also defective and that the complainant could not get the approval and sanction of the local authority for the said commercial shop room as it was constructed violating the prevailing building rules. The complainant has to demolish the said shop room which is furnished by the complainant by incurring expenses of Rs.3,00,000/-. Thus, the complainant claimed a sum of Rs.20,85,000/- as compensation including the compensation for mental agony, hardship and other difficulties suffered by the complainant.

3. The opposite parties entered appearance and filed written version contending as follows:

The complaint is not maintainable either in law or on facts. The complaint is ill-conceived and mischievous and liable to be dismissed. The 1st opposite party is not a company that there was no deficiency in service on the part of the opposite parties in constructing the residential building and other structures. The allegations and averments are made contrary to realities and suppressing material facts. There was no agreement to construct a car porch as alleged. The commercial shop room was constructed as per the specification of the complainant and that there was no agreement to get approved plan from the local authority by the opposite party. On 3/5/03 an agreement executed between the complainant and 2nd opposite party for construction of house having 1250 Sq ft for a total cost of Rs.5,25,000/- at a rate of Rs.420/- per square feet. The construction work has been completed up to the satisfaction of the complainant. There was no defect in the construction of the building. The opposite party never promised to take necessary permission from the local authority. The attempt on the part of the complainant is to harass the opposite parties. The opposite parties are willing to rectify the leakage in the building. Hence the opposite parties prayed for dismissal of the complaint in OP 9/04.

4. The Points that arise for consideration are:-

1) Whether there was any deficiency in service on the part of the opposite parties in constructing residential building with car porch and a commercial shop room for the complainant as alleged?

2) Whether the compensation as claimed in the complaint can be allowed?

5. The evidence in this case consists of the oral testimony of the complainant as PW1 and that of her husband as PW2 and the Secretary of the Karakulam Grama Panchayat as PW3. Exts.A1 to A8 were also marked on the side of the complainant. The 2nd opposite party was examined as DW1. No documentary evidence has been adducted from the side of the opposite parties. The expert advocate Commissioner has been examined as CW1 and the Commission report is marked as C1.

Both parties submitted written argument notes. They were also heard in detail.

6. Points 1 and 2 : The complainant and the 2nd opposite party Sri.Rajmohan, the director of the 1st opposite party M/s.Baker Homes entered into an agreement dated 3/5/03. Ext.A1 is the said agreement dated 3/5/03. Execution of A1 written agreement is admitted by both parties. As per A1 agreement the opposite parties agreed for construction of a residential building for the complainant at a cost of Rs.5,25,000/- @ Rs.420/- per Sq ft. The total area of the building to be constructed was fixed at 1,250 Sq ft. The other specifications are also given in A1 agreement. A payment schedule and work schedule are also attached to A1 agreement. As per the said schedule the construction work ought to have been completed by 15/9/03. There is no whisper in A1 agreement regarding construction of car porch or commercial shop room. But admittedly there was an additional agreement entered into between the parties in the form of revised cost of the residential building for Smt.Sreelatha Sukumaran Nair . Ext.A5 is the revised estimate submitted by the 2nd opposite party for the 1st opposite party M/s. Baker Homes. A5 estimate is dated 5/8/03. Thereafter the 2nd opposite party submitted A6 revised cost of residential and commercial building. As per A6 revised cost, the cost of construction for the residential and commercial building has been fixed at 6,87,500/-. Another sum of Rs.55,000/- is also shown as the cost of additional works such as well construction, compound wall including two gate and painting works. In Ext.A6 the receipt of Rs.6,25,000/- is shown. The submission of A5 estimate and A6 revised cost are also admitted by the parties to this complaint. So, by virtue of A1, A5 and A6 the parties had agreed for construction of

residential building with a commercial shop room. A5 estimate would give the indication that a car porch was also agreed to be constructed by the opposite parties. Therefore, the total cost of the residential building with car porch and commercial shop room would come to Rs.6,87,500/.

7. Ext.A2 series of receipts issued by the opposite parties would make it clear that a total of Rs.7,35,000 has been received from the complainant. There is also no dispute regarding the acceptance of Rs.7,35,000/- by the opposite parties from the complainant. It is admitted by the opposite parties that among the additional works they have only done construction of a well and compound wall with 2 gates and there was no occasion for the opposite parties to do the painting works. If that be so, the total cost of the construction works including the additional works would come to Rs.7,22,500/-. The balance amount would come to Rs.12,500/-. So, the complainant herein is entitled to get the said sum of Rs.12,500/- from the opposite parties being the excess amount received by the opposite parties.

8. The complainant would allege that there was deficiency in service on the part of the opposite parties in constructing the residential building with car porch and commercial shop room. An expert advocate Commissioner was deputed from this Commission. The expert Commissioner submitted Ext.C1 report. He has also been examined before this Commission as CW1. A perusal of the testimony of CW1 and C1 Commission report would make it abundantly clear that there was deficiency in service on the part of the opposite parties in constructing the residential building and the commercial shop room because of the fact that there was leakage for the residential building and the commercial shop room. The expert Commissioner who had the opportunity and occasion to inspect the residential building and the commercial shop room has categorically reported that there were major cracks on the roof of the residential building and there is water leakage through those cracks. He also reported that there were other minor cracks on the walls of the residential building. It is to be noted that the opposite parties being the builders were expected to construct the residential building without any defects such as leakage, cracks on the walls etc.. The failure on the part of the opposite parties in constructing a defect free residential building and commercial shop room would amount to deficiency in service.

9. The expert Commissioner estimated the cost for rectifying the defects in the residential building at Rs.8,940. The estimated cost for rectifying the defects of leakage can be treated as just and reasonable. The opposite parties are liable to pay the aforesaid amount of Rs.8,940 to the complainant towards the charge for rectifying the defects of leakage. The expert Commissioner has not given the details for rectifying the minor defects such as the cracks on the walls of the residential building and the commercial shop room. The advocate Commissioner has also reported that the defects in the construction was due to inferior quality of materials used for the construction work and also the poor quality of workmanship.

10. The expert Commissioner has not considered the inconvenience, hardship and mental agony suffered by the complainant due to the defective construction of the residential building and the commercial shop room. The complainant has claimed a sum of Rs.8,00,000/- by way of compensation towards mental agony, hardship and other difficulties suffered by the complainant. The aforesaid amount of Rs.8,00,000/- claimed is on the higher side. There can be no doubt that the complainant suffered mental agony and inconvenience due to leakage caused to her residential building . Nobody will be interested in getting a residential building constructed with leaking roof. So, we are of the view that a sum of Rs.50,000/- can be considered as a reasonable compensation for the mental agony and inconvenience suffered by the complainant.

11. The complainant has got a case that the car porch attached to the residential building is not fit for using the same for keeping even a small vehicle like Maruthi car. But the specification given in A5 additional estimate would show that the complainant asked the opposite party to construct such a small car porch. The mere fact that even small car could not be kept in the car porch cannot be taken as a ground to hold that there was deficiency in service on the part of the opposite parties in constructing the car porch. The materials on record would show that the opposite parties constructed car porch as specified and agreed by the parties. There is no deficiency in service on the part of the opposite parties in constructing the car porch.

12. The complainants case that the opposite parties agreed for taking approved plan from the local authority for constructing the residential building with car porch and commercial shop room. But A1 agreement is totally silent about obtaining approved plan from the local authority. In the ordinary course it is the duty of the owner of the house to get approved plan from the local authority. It is also to be noted that only the owner of the building can apply to the local authority for getting approved plan and sanction for constructing any building. In the absence of any material on record it is too much on the part of the complainant to say that the opposite parties agreed for getting an approved plan and sanction from the local authority. The complainant as PW1 has even deposed that she never had the occasion to see the approved plan. The aforesaid admission on the part of PW1 would give an indication that she was negligent in performing her duty as the owner of the building. Nobody in the ordinary and natural course will permit construction of building without getting approved plan from the local authority. Here is an owner who was least bothered and concerned about the plan for constructing residential building as well as commercial shop room. It is also to be noted that the opposite parties constructed shop room with the knowledge and consent of the complainant. The complainant was watching progress of construction of the shop room. The complainant and her husband PW2 were keeping mum while constructing a shop room without approved plan. The construction of the shop room without getting an approved plan from the local body would show that the complainant was totally negligent in the matter. She cannot be permitted to find fault with the opposite parties in not obtaining the approved plan from the local body. The construction of the shop room by the opposite party without obtaining approved plan cannot be treated as deficiency in service on the part of the opposite parties. It may be true to say that it was primary duty of the opposite party to see that an approved plan is obtained constructing a commercial shop room. Moreover, the opposite party being a builder will know about the building rules. It was the duty cast upon the opposite party to ask for an approved plan for constructing the residential building. So, there was some sort of negligence or carelessness on the part of the opposite parties also in constructing a commercial show room violating the prevailing building rules. The opposite parties could have advised the complainant to get an approved plan from the local

body for constructing such a commercial building. Anyhow, the negligence on the part of the complainant would out weigh the negligence on the part of the opposite parties. We are of the view that the complainant is not entitled to get any compensation from the opposite parties for constructing a commercial shop room violating the building rules and without obtaining an approved plan. If that be so, the compensation of Rs.8,00,000/- claimed under the heads loss due to non opening of the commercial shop room and loss due to furnishings done in the shop room cannot be allowed. It is also to be noted that the complainant had not taken any steps to get ratification of the action in constructing commercial shop room violating the building rules. The oral testimony of PW3, the Secretary of the local body would show that the complainant has not taken any steps to get the said construction approved by the local body. Thus, in all respects the claim for compensation of Rs.8,00,000/- under the aforesaid two heads is disallowed.

13. The complainant has also claimed a sum of Rs.3,00,000/- under the head loss due to heavy leakage of the house we have already considered the loss under this head. The complainant has also claimed a sum of Rs.1,85,000/- as excess amount paid to the opposite party; but we calculated and assessed the excess payment at Rs.12,500/-. So the opposite parties are liable to pay Rs.12,500/- as excess payment received by them from the complainant.

14. The complainant is entitled to get her cost in the proceedings in OP No.9/04 she has taken out an expert Commission and a sum of Rs.2,000/- has been paid to the expert Commissioner by way of Commission batta. Considering all these aspects the opposite parties are directed to pay a sum of Rs.5,000/- by way of cost to the complainant. These points are answered accordingly.

In the result the complaint is allowed to the extent as indicated above. The opposite parties are directed to refund the excess payment of Rs.12,500 received by them from the complainant with a compensation of Rs.50,000/- for mental agony and inconvenience suffered by the complainant. The opposite parties are also liable to pay a sum of Rs.8,940 by way of expenses for rectifying the leakage. The opposite parties are further directed to pay interest @ 9% per annum on the excess payment of Rs.12,500/- from the date of complaint till the date of

realization. They are also liable to pay cost of Rs.5,000/- to the complainant.

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