

K.C. Reghu Kumar Vs. Star Foundation and Structures Pvt.Ltd. and Another

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Jul-26-2008

Judge : Smt. Valsala Sarangadharan: Member, Sri. M.V. Viswanathan: Judicial
Member

Appeal No. : OP. NO. 55 of 01

Appellant : K.C. Reghu Kumar

Respondent : Star Foundation and Structures Pvt.Ltd. and Another

Judgement :

SRI.M.V. VISWANATHAN: JUDICIAL MEMBER

The complaint filed under Section 17 of the Consumer Protection Act, 1986.

2. The case of the complainant is as follows :-

The complainant entered in to an agreement dated 1/7/1998 with the opposite parties and thereby the opposite parties agreed to construct an apartment with two bed room having an area of 573.50 Sq.ft. identified the apartment with No. 4F5, in the 4th floor of the said building project on a total sale consideration of Rs.6,55,000/- which is to be paid in 17 instalments including the registration fee ending by 10th November 2000. The complainant paid a total of Rs.4,03,200/- as on 12/6/99; but the opposite parties failed to commence the construction of the

work. So the complainant stopped payment of remaining instalments. Even though the complainant issued letters to the opposite parties requesting for the completion of the work, they failed. There occurred deficiency in service on the part of the opposite parties. Hence the complaint is filed claiming refund of a sum of Rs.5,91,619/- with future interest @ 18% p.a. till realization and also for a sum of Rs.1,00,000/- as compensation for mental agony and other expenses suffered by the complainant with costs of Rs.5,000/-.

3. The opposite parties filed written version contending as follows:-

The complaint is not maintainable either in law or on facts . The complaint is bad for non-joinder of necessary parties; that the complainant is not a consumer; that there was no deficiency in service on the part of the opposite parties; that the delay in completion of the work occurred due to the intervention of the southern Railway and the local authorities; that the opposite parties informed the complainant about all the facts. The payment of Rs.4,03,200/- by the complainant is admitted and ready to return the said amount as per Clause 9 of the agreement entered in to between the parties. It is also contended that the relief claimed for recovery of the money is outside the purview of the Consumer Protection Act. Thus, the opposite parties prayed for dismissal of the complaint.

4. Both the parties filed proof affidavit in support on their case. The complainant produced Exts.A1 to A18 documents and marked on his side. The opposite parties produced copies of 9 documents but they failed to get those documents marked on their side. There was no representation from the side of the opposite parties. Notice informing the posting of the case was also issued to the opposite parties; but they did not turn up and they remained absent.

5. The points that arise for consideration are :-

- 1) Whether the complainant can be considered as a consumer coming within the ambit of the Consumer Protection Act 1986?
- 2) Is there occurred any deficiency in service on the part of the opposite parties in completing the construction of the apartment as agreed by them by virtue of

Exts.A2 agreement dated 1/7/98?

3) What order as to relief and cost?

6. When this original petition was taken up for final hearing there was no representation for the opposite parties. We heard the counsel for the complainant. He submitted his arguments based on the Ext.A1 to A18 documents produced from his side. He pointed out the deficiency of service on the part of the opposite parties in handing over the apartment as agreed by them. Thus, the complainant requested for granting the relieves sought for.

7. Point No. 1:- A mere reading of the complaint and written version filed by the parties would make it clear that there was a contractual obligation on the part of the complainant to pay the consideration as agreed by him and that the opposite parties were bound to complete the construction of the apartment and handover the same to the complainant on or before 31/12/00. Ext.A2 agreement dated 1/7/98 entered into between the complaint and the 1st opposite party would make it abundantly clear that the opposite parties agreed for construction of the apartment on consideration of Rs.6,55,000/- and the said construction will be completed before 31/12/00. Admittedly the complainant paid a total of Rs.4,03,200/- as on June 1999. But the opposite parties failed to start the construction work. The opposite parties can be treated as service provider and that the complainant availed the said service of the opposite parties on consideration. The complainant can be considered as a consumer as defined in Sec.2 (1) (d) (ii) of the Consumer Protection Act, 1986. The definition of service under Sec.2 (1) (o) of the Consumer Protection Act would make it further clear that the facilities provided for housing construction would come within the purview of the Consumer Protection Act, 1986 . Thus in all respects the complainant is a consumer coming within the ambit of the Consumer Protection Act, 1986.

8. Point No.2:- The complainant has proved his case by filing the proof affidavit with Ext.A1 to A18 documents. Ext.A1 is the offer letter given by the opposite parties expressing their readiness for construction and for completion of the project including the apartment set apart to the complainant. Ext.A2 agreement executed by the parties would make it clear that the opposite parties agreed for

construction and completion of the apartment in the 4th floor of the said building on a total sale consideration of Rs.6,55,000/- and the said amount is to be paid in 17 instalments starting from 14th August 1999 ending by 10th November 2000. Admittedly the complainant has paid total of Rs.4,03,200/- covered by Exts.A3 to A11 cash receipts issued by the 1st opposite party, the Managing Director of the concern. The aforesaid cash receipts would show that as on 10/6/99 the complainant had paid a sum of Rs.4,03,200/-. Ext. A2 agreement would show that the complainant was bound to pay the remaining instalments by 10th November 2000. But the complainant has given sufficient reason for stopping the payment of further instalments. It is stated that the opposite parties failed to go on with the construction of the project and there was default on the part of the opposite parties. The complainant is justified in defaulting payment of further instalments from August 1999 to November 2000 @ of Rs.35,200/-. The communication between the complainant and the opposite parties would make it clear that there was no fault on the part of the complainant but there occurred default on the part of the opposite parties in completing the construction of the building. Ext.A15 is the reply notice issued by the opposite parties to the lawyer notice sent at the instance of the complainant. A perusal of A15 reply would make it clear that there occurred deficiency on the part of the opposite parties in completing the project. It is true that the opposite parties have given so many reasons or excuses for the delay in the completion of the project. It is to be noted that there is no whisper in A15 reply regarding any omission, lapse or default on the part of the complainant. In the said letter at para 8 the opposite parties expressed their readiness to provide free equivalent accommodation or to credit monthly rent for a 2 bed room apartment in the accounts of the complainant till the apartment in the project gets ready for occupation. The aforesaid readiness expressed by the opposite parties is against the terms and conditions of A2 agreement. So, A15 reply would show the deficiency on the part of the opposite parties. The other communication between the complainant and the opposite parties evidenced by A12 to A17 would also show that there was no sort of default or lapse on the part of the complainant and but the delay occurred only on account of the negligence and laches on the part of the opposite parties. Another important aspect to be noted at this junctures is that even after the lapse of 8 years the opposite parties failed to offer the apartment to

the complainant as agreed by them in A2 agreement.

There can be no doubt about the fact that there was gross negligence and deficiency of service on the part of the opposite parties in completing the construction of the apartment and handing over the same to the complainant. Even after the lapse of 8 years the opposite parties are not in a position to handover the apartment as agreed by them in A2 agreement. Hence, this Commission have no hesitation to hold that there is deficiency of service on the part of the opposite parties. This point is answered accordingly.

9. Point No.3:- The complainant has claimed a sum of Rs.5,91,619/- with future interest @ 18% p.a. There is no dispute that the complainant paid a total of Rs.4,03,200/- to the 1st opposite party. The complainant is entitled to get refund of the said amount with interest. As per A2 agreement the agreed rate of interest in the event of default is shown as 18% p.a. So the complainant is entitled to get the said a sum of Rs.4,03,200/- with interest @ 18% p.a. from the respective dates of payment of the instalments till the date of realization.

10. The complainant has also claimed a sum of Rs.1,00,000/- as compensation for mental agony and the other expenses suffered by the complainant. It is to be noted that the opposite parties had agreed to handover the completed apartment in December 2000 on a total sale consideration of Rs.6,55,000/-. Now 8 year is lapsed. There can be no doubt that by this time the cost of construction has also been escalated. There can be no doubt that the complainant who paid a sum of Rs.4,03,200/- has been waiting for the apartment and by the failure on the part of the opposite parties in handing over the said apartment has resulted in causing mental agony and inconvenience to the complainant. We are of the view that the complainant is to be paid a sum of Rs.50,000/- as compensation under the head mental agony and inconvenience.

11. The complainant has also claimed a sum of Rs.5,000/- towards cost. Considering the nature and volume of the evidence adduced from the side of the complainant, the cost of the proceedings due to the complainant is fixed at Rs.2,000/-. This point is answered accordingly.

In the result the complaint is allowed. Thereby the opposite parties are directed to refund the sum of Rs.4,03,200/- with interest @ 18% p.a. from the respective dates of payment of the amounts till the date of realization and a further sum of Rs.50,000/- as compensation for the mental agony and inconvenience suffered by the complainant. A sum of Rs.2,000/- is ordered towards the cost of the proceedings to the complainant. The opposite parties are jointly and severally liable to pay the aforesaid amounts due to the complainant. The opposite parties are directed to comply with the aforesaid directions within one month from the date of receipt of copy of this order failing which the complainant will be at liberty to proceed against the opposite parties for realization of the decreed amounts .

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