

Baba Constructions and Another Vs. Ashok Korada and Another

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Mar-12-1999

Judge : S. Parvatha Rao, President, the Honourable Mr. K. Ranga Rao, Member
& the Honourable Dr. (Mrs.) Mamata Lakshmana, Member

Appeal No. : F.A. Nos. 95 & 108 of 1999

Appellant : Baba Constructions and Another

Respondent : Ashok Korada and Another

Judgement :

S. Parvatha Rao, President:

1. The opposite parties 1 and 2 in O.P. Nos. 947 and 1067 of 1995, who are common, have filed these appeals questioning the common order of the Hyderabad District Forum-I dated 30.11.1998 partly allowing the same and directing them to complete the left over/unfinished works mentioned in para 19 of the order and also to pay Rs. 10,000/- as compensation to each of the complainants and Rs. 2,000/- towards costs to each of the complainants within three months from today. The complaints as against opposite party No. 3 were dismissed without costs. The complainants in the O.Ps. are the respondents before us.

2. The question involved in these appeals is in a short compass and can be resolved without much argumentation in view of the clear provisions in the agreements entered into between the complainants and the appellants on the one hand, and the owner of the premises on the other.

3. The 1st appellant is a firm promoted by the 2nd appellant and is engaged in apartments construction work. The service of the 1st appellant were engaged by one Sri Bhagwandas, who was the absolute owner of the entire premises bearing Nos. 6-1-286 to 289 situated in Padmaranagar in Secunderabad (the said Premises for short). Thereafter Bhagwandas entered into agreements with each of the complainants on 15.10.1988 agreeing to sell undivided proportionate share of land in the said Premises to them for a consideration, of which Rs. 1,000/- was paid by each of the complainants at the time of entering into the agreements and the balance amounts were agreed to be received by him from the complainants at the time of execution and registration of the sale deeds in respect of the said undivided shares fixing the outer time limit for payment of the balance amounts as 31.3.1989 tentatively. It is not in dispute that the sale deeds were executed on 23.10.1989 itself. Separate agreements were entered into by the appellants with the two complainants on 15.10.1988 where under the appellants agreed to construct to each of the complainants a flat in the building complex undertaken by them to be constructed in the said premises. The consideration for the construction of the flats was fixed in the agreements and each of the complainants paid Rs. 1,000/- as advance. As regards the payments of the balance consideration amounts, the agreements provided as follows :

..In pursuance of the above the parties of the second parties in addition to abovesaid initial amount binds to tender to the parties of the first part (complainants) further payments within ten days from the date of intimation in writing given by the parties of the first part except the loans to be obtained through C.P.F. and H.D.F.C or any financial institutions. (Emphasis supplied)

The relevant clauses in the agreements dealing with delivery of possession of the flats to the complainants are as follows :

3. The party of the first part undertakes to deliver possession of scheduled unit to the party of the second part on intimation in writing by parties of the first part about the completion of construction work as well as full and final reimbursement of all amount claimed by Messrs. Baba Constructions for constructing the said unit.

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8. The time limit for construction and handing over of completed Unit No. A2 is tentatively fixed as twelve months from the date of obtaining permission for construction from Municipal Corporation of Hyderabad. The above period shall be extended by a further period of four months depending upon the non-availability of construction material or any unforeseen circumstance either created by any Government or imposed by the contractor or sub-contractor.

9. The party of the second part hereby binds himself not to do or cause the (to be ?) done any act, deed or thing whereby the progress of construction work is hampered by any way. In the event the party of this second part contravene the above, the parties of the first part shall be entitled to claim and receive damages for all such losses, costs and damages incurred by them or to any other occupant or proposes owner of other units.

Thus the provisions in the agreements between the complainants and the appellants are clear and unambiguous as regards payments of the balance consideration amounts to be made by the complainants and also as regards the time within which the completed flats had to be delivered by the appellants. It is not in dispute that the delivery of possession of the flats was delayed inordinately. According to the complainants the flats were delivered without completing the works in all respects. They approached the Hyderabad District Forum-I for redress.

4. After considering comprehensively the disputes between the parties, the District Forum specified in para 19 of its order the incomplete works to be completed by the appellants and directed the appellants to complete the unfinished works within three months. There is no dispute in respect of the same by the appellants. But the 2nd appellant, who is appearing for himself in person and also for the 1st

appellant, contends very vehemently that the delay in the delivery of the possession of the flats and in completing the same in every respect was because of the delay in the complainants making payments of the balance consideration amounts, though they paid the entire balance consideration amounts.

5. Even before the District Forum it was contended on behalf of the appellants that the delay in the construction of the flats was because of the delayed payments made by the complainants. The District Forum observed that on the other hand the case of the complainants was that the appellants were very slow in making construction and that they had to make payments depending upon the progress of the construction. The District Forum, on the basis of the material before it, ascertained the actual amounts paid by each of the complainants. The District Forum held that the complainant in O.P. No. 947/1995 had to pay under the agreement a sum of Rs. 3,17,470/- to the appellants and that it was admitted that he made a total payment of Rs. 3,41,500/- to the appellants and that from this it was clear that he paid an excess sum of Rs. 24,030/-. As regards the complainant in O.P. No. 1067/1995 the District Forum found that he had to pay under the agreement a sum of Rs. 3,14,290/- and that though he claimed that he paid in all Rs. 3,22,220/- he had not produced any documentary proof to establish that he paid that much. The District Forum observed that opposite parties 1 and 2 (appellants) admitted that he paid Rs. 3,18,000/- and on that basis held that he infact paid a sum of Rs. 3,18,000/- i.e., an excess sum of Rs. 3,710/- to the appellants. The District Forum further held as follows :

...It is significant to note here that at no point of time the opposite parties Nos. 1 and 2 (the appellants herein) demanded the complainants in writing for payment of the amount as stipulated in the agreement. As the opposite parties Nos. 1 and 2 have not completed the construction of the flats even after four years, we agree with the plea of the complainants that they took possession of their respective flats in an unfinished condition in the month of December, 1992. There is no material on record to speak that after possession was delivered to the complainants, the opposite parties Nos. 1 and 2 have made any attempt to complete the left over works. It is pertinent to note here that at the request of the complainants an Advocate Commissioner was appointed for the purpose of knowing about the left

over works. The Commissioner has filed his report mentioning the left over works. The Commissioner also enclosed the photos with negatives to his report and from the perusal of them it is evident that the flats of the complainants were not completed in all respects and their appearance is very shabby.

As regards the escalation charges claimed by the appellants the District Forum held that at no point of time the appellants gave any notice to the complainants for payment of escalation charges, that even in the version/counter filed by the appellants they did not claim any escalation charges, and that therefore, they could not be allowed to make a claim for escalation charges for the first time after the Advocate Commissioners report. On that basis the District Forum held that the appellants were not entitled to claim any escalation charges and that infact they received more amounts than what they bargained.

6. We are inclined to agree with the District Forum both as regards the rejection of the escalation charges claimed by the appellants and as regards the rejection of the contention of the appellants that there were delays made by the complainants in paying the balance consideration amounts. The 2nd appellant before us admits that no notice was given to the complainants for payment of escalation charges. But he points out that he made the following claim in the amended counter filed on behalf of the appellants :

Due to the abnormal delay of payments made by the complainant alongwith other owners, I could not complete the work as stated in the agreement on time which can be clearly observed in the Annexure of Schedule of payments. Therefore, I have incurred the irreparable loss in connection with escalation of steel, cement, plumbing goods, wood, labour and other materials. In this connection I am entitled for such escalation as per agreement for 10% increase in steel and cement 3% increase of price per sq. ft. on Rs. 265/- as per Clause No. 5 of Development Agreement.

But this proceeds on the premises that there were abnormal delays in payments made by the complainants. This was clearly found against the appellants by the District Forum and we agree with the District Forum in view of the fact that admittedly no notices in writing for payment of the balance amounts of

consideration were issued by the 1st appellant to the complainants. We have earlier extracted in our order the clauses in the agreements entered into between the appellants and the complainants which clearly provided that it was for the appellants to give notices in writing for the payments to be made by the complainants. No such notices issued by the appellants were placed before the District Forum. Even before us the 2nd appellant has admitted that no written notices were given by him on behalf of the 1st appellant to the complainants for making various payments. In the absence of any such, we cannot fault the District Forum for holding that there were no delays on the part of the complainants in making payment of the balance consideration amounts to the appellants.

7. We, therefore, find that the amount of Rs. 10,000/- awarded as compensation for the delay in completion of the various works by the appellants need not be interfered with by us as admittedly even by today the balance works were not completed.

In the result, we do not find any merit in these two appeals and they are, therefore, dismissed.

Appeals dismissed.

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