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Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Dec-29-1995

Judge : A. Venkatarami Reddy, President, the Honourable Mrs. J. Ananda Lakshmi, Member &Amp; the Honourable Mr. K. Ranga Rao, Member

Appeal No. : C.D. Nos. 28 & 29 of 1992

Appellant : M.B. Srinivas and Another

Respondent : M/S. India Housing Finance and Development Ltd. and Another

Judgement :

K. Ranga Rao, Member:

1. Complaints filed under Section 17(1)(a) r/w Section 12 of the Consumer Protection Act.

2. Briefly stated the allegations in the complaint are as follows :

3. The complainant in C.D. No. 28/1992 is the husband of the complainant in C.D. No. 29/ 1992. The complainant in C.D. No. 28/1992 has been working in the A.P. Electricity Board. In the Newspapers circulated on 22.1.88, 23.1.88, 29.1.88, 1.2.88, 2.2.88, 3.2.88, 10.2.88 and some other dates, the opposite party, India

Housing Finance and Development Limited issued publication inviting the public to subscribe to the shares of their Company at the rate of Rs. 10/- each representing that the main object of the Company is to provide long term housing finance for acquisition or purchase of flats or houses in India, that it provides loans to individuals, Co-operative Societies, Association of persons and companies, that the share-holders would be eligible to preferential treatment in the matter of grant of housing loans and interest concessions of long term housing loans and are also eligible for preferential treatment in the matter of allotment of flats or houses promoted by IHFD Construction Limited. The opposite party has also represented that it has already finalised construction of 72 flats at Coimbatore, 52 houses at Vijayawada and 1200 flats at Hyderabad and the housing projects at Salem, Visakhapatnam, Cochin etc. are underway. The opposite party also assured additional concessions to the shareholders who purchase 1000 shares at a time, and promised to grant reduction in the cost of the flat, concessions in the rate of interest at 1% of housing loan and priority in sanction of the houses or the flats to the shareholders subscribing for 1000 shares at a time. The complainants believing the said representations and assurances subscribed for 1000 shares each by paying Rs. 10,000/- each with a view to availing the preferential treatment as promised by the opposite party in the matter of grant of housing loan, reduction of rate of interest and the cost of the house or flat. The opposite party collected huge amounts from the public. But it has not taken steps to materialise the scheme of construction of 1200 flats at Hyderabad even after four years. It has not even procured the site at Hyderabad. It had received huge amounts from other subscribers by indulging in unfair trade practice. The complainants, hoping to own a house at Hyderabad were disappointed and they did not approach any other financier for housing loan. They lost valuable time of four years. The cost of the site has gone up three to four times during the last four years. Eligibility of the complainant in C.D. No. 28/1992 for sanction of housing loan is Rs. 2,20,360/- under category C at the time when he purchased the shares of the opposite party. Because of escalation in the cost of the land, he has to pay Rs. 5,00,000/- for the same house now. The shares purchased by the complainant have no market value and no dividends were declared by the opposite party. The complainants could have owned the house had the opposite party constructed and allotted the house as promised. The complainants are forced to live in a rented house by paying Rs. 1,500/- per month. On 2.12.91, the first opposite party gave evasive reply to the letter dated 25.11.91 of the complainant in C.D. No. 28/92 stating that the project at Hyderabad could not be taken up due to legal and tenants problems. Therefore, the promise or assurance made by the opposite party that they have already finalised the house construction project at Hyderabad is false and misleading. The opposite parties failed to sanction loans and allotted houses to any share-holder. Each complainant suffered financial loss, inconvenience, hardship and mental agony on account of misleading and false representations made by the opposite parties. Hence, the complainants prayed for a direction to the opposite parties to pay a sum of Rs. 2,50,000/- to each of them towards compensation for inconvenience and mental agony.

4. The opposite parties filed a joint counter/- affidavit contending that the complainants have not hired the service of the opposite parties and the purchase of the shares by the complainants is under the purview of the Companies Act and not the Consumer Protection Act. The opposite parties never declared that they would promote housing colonies. The prospectus issued by the opposite parties only stated that the opposite parties have a subsidiary organisation by name IHFD Constructions Limited which has proposed to construct flats at Madras and the object of the opposite party is to provide housing finance and not to promote housing colonies. The opposite parties have not represented that they finalised the construction of 72 flats at Coimbatore, 52 houses at Vijayawada and 1200 flats at Hyderabad and that housing projects at Salem, Vizag, Cochin etc., are under way. The advertisements issued by the opposite parties that their subsidiary company by name IHFD Constructions Limited has proposed housing construction is only by way of information to the public and it is not the representation made by the opposite parties. The opposite parties have not made any promise of additional concessions to share-holders who purchase 1000 shares at a time. The IHFD Constructions Limited, a subsidiary of the opposite parties has plan in the year 1988 to construct 1200 flats at Hyderabad, but it could not be materialised due to reasons beyond its control. There is no misrepresentation on the part of the opposite parties. The complainants were never prevented from approaching other construction companies for financial assistance. The complainants never

approached the opposite parties for any housing loan. It is only in 1991 that the complainants addressed a letter for the first time and raised the issue. The complainants became share holders in the year 1988 and the complaints were filed in February, 1992, therefore, the complaints are barred by limitation. There is no question of failure to keep up its promise of providing a house to the complainants, since the opposite parties never represented that they would allot a house to the complainants. The opposite parties have not indulged in any unfair trade practice and they never made misleading promises. There is no deficiency of service on the part of the opposite parties. The complainants are not entitled to any compensation, and the complaints are liable to be dismissed.

5. No oral evidence was adduced by either party. Exs. A-1 to A-11 were marked on behalf of the complainants in C.D. No. 28/1992. No documents marked in C.D. No. 29/1992. No documents were filed for the opposite parties. Heard the Counsel for both parties.

6. The point for consideration is whether there is deficiency of service on the part of the opposite parties If so, what relief the complainants are entitled to ?

7. As similar questions of facts and law arise in both the matters, they are disposed of by a common order.

8. The case of the complainants, is that the opposite party made false representations and false promises of providing housing loans and houses and flats if they purchased 1000 shares each and that after they purchased 1000 shares each, the opposite party failed to fulfil their promise and thereby the opposite party indulged in unfair trade practice and are also guilty of deficiency of service. There is no dispute by the opposite parties that both the complainants purchased 1000 shares each of their Company and the said shares were allotted to the complainants at share value of Rs. 10/- each. The opposite parties denied that they offered to construct houses or to grant housing loans. It is further submitted for the opposite parties that they only published in the Newspapers that their subsidiary organisation will construct flats at Hyderabad and Madras and the share-holders of their Company will get some concession in the matter of construction cost and concessional interest if housing loan is taken by the

shareholder. Ex. A-4 publication of the public issue of the opposite parties mention that construction of 87 flats at Madras, 72 flats at Coimbatore, 52 houses at Vijayawada and 1200 flats at Hyderabad were proposed to be constructed by the subsidiary Company of the opposite parties. It also mentioned that the shareholders of the opposite parties will get the houses at a concessional rate. It is the further plea of the opposite parties that the subsidiary Company took steps to construct some houses in Hyderabad, but due to some legal problems the project could not be pushed through and that there is neither false promise nor indulgence in unfair trade practice on their part. We have gone through Exs. A-4 to A-10 copies of publications in the Newspapers. They show that the opposite parties mentioned in the said publications that some flats and houses have to be constructed, that the persons applying for 1000 shares and deposit-holders of Rs. 10,000/-for five years period will get a reduction of Rs. 10/-and Rs. 5/-per sq. feet respectively in the cost of the houses or the flats. It is also mentioned that the share-holders are eligible for preferential treatment in the grant of long term housing loans. The learned Counsel for the opposite parties points out that so far the complainants have not applied for any housing loans or for allotment of houses, that the complainants were allotted 1000 shares each, and that there is no deficiency of service on their part. It may be seen that in their letter Ex. A-3, the opposite parties categorically informed the complainants that the project at Hyderabad could not be proceeded due to legal and tenant problems which is very common in Hyderabad and that the complainants have not filed the loan applications so far. There is no material to show that the complainants sent loan applications to the opposite parties at any time or requested the opposite parties to allot the flats or houses. Even otherwise we are of the opinion that the failure of the opposite parties either to sanction a loan or to allot the flat to the complainants will not amount to deficiency of service inasmuch as the sanction of loan or allotment of houses depends on the availability of funds and the flats or houses as the case may be. Accordingly, we hold that there is no deficiency of service on the part of the opposite parties as far as sanction of housing loans or allotment of flats is concerned.

9. It is next contended for the complainants that making false promises to the effect that the share-holders will be given rebate in the cost of the flats or houses

or concession in the rate of interest on the housing loans amounts to unfair trade practice and, therefore, the opposite parties are liable for payment of compensation. He contends that in view of Section 2(1)(r) of the Consumer Protection Act, defining unfair trade practice; the conduct of opposite parties in making false promises or false representations amounts to unfair trade practice. It may be seen that Section 2(l)(r) says that practice of making false representation that the goods of a particular standard, quality, quantity, grade, composition, style, or model or that the services are of a particular standard, quality or grade or that the services have sponsorship, approval, performance, characteristics, accessories, or that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have or that makes false or misleading representation concerning the need for or the usefulness of any goods or services or that gives to the public any warranty or guarantee of the performance are not based on an adequate or proper test thereof amounts to unfair trade practice. In this case, it is argued for the complainants that the shares are goods and that for promoting the sale of the shares, the opposite parties made false or misleading promises that they would give concessions in the rate of housing loans and rebate in the cost of the flats to be built by them. It may be seen that it is not the case of the complainants that the opposite parties have not allotted the shares after taking the money. The only grievance of the complainants is that after they purchased 1000 shares each, the opposite parties have not kept up their promises with reference to grant of housing loans and allotment of houses. As the shares, even if they are treated as goods according to the complainants, were allotted to the complainants by the opposite parties and as there cannot be a defect in the quality, grade or composition of shares, we are of the view that there is no unfair trade practice on the part of the opposite parties as far as allotment of shares is concerned.

10. It is next argued for the complainants that the shares of the opposite parties have no value in the market and that, therefore, the opposite parties are liable to pay compensation. We are not inclined to agree with this contention. As any Company can go into losses and no Company can give the guarantee that the share value will not come down at any time after allotment and as share value is subject to fluctuations, we hold that the fact that the shares of the opposite parties

Company have no value in the share market cannot be made a ground to make the opposite parties liable for payment of compensation.

11. For all the aforesaid reasons, we hold that there is neither deficiency of service on the part of the opposite parties nor that the opposite parties indulged in unfair trade practice and the opposite parties are not liable to pay any compensation to the complainants on the ground that the alleged representations or promises with regard to allotment of flats or houses or sanction of housing loans.

12. In the result, both the complaints C.D. No. 28/1992 and C.D. No. 29/1992 are dismissed but without costs in the circumstances of the case.

Complaints dismissed.