

Sunita Vs. M/S. N. Khandwani Builders and Developers Krishna-lila and Another

Sunita Vs. M/S. N. Khandwani Builders and Developers Krishna-lila and Another

SooperKanoon Citation : sooperkanoon.com/1147762

Court : Maharashtra State Consumer Disputes Redressal Commission SCDRC Nagpur

Decided On : Apr-17-2014

Judge : The Honourable Mrs. Jayashree Yengal, Presiding Member

Appeal No. : First Appeal Nos. A/382, 383 of 2009

Appellant : Sunita

Respondent : M/S. N. Khandwani Builders and Developers Krishna-lila and Another

Judgement :

Jayashree Yengal, Presiding Member:

1. These two appeals arise out of the common order passed by the additional district Forum, Nagpur on 9/2/2009 dismissing the consumer complaints bearing No.173/08 and 174/08 with liberty to file a consumer complaint afresh.

2. Feeling aggrieved by the impugned order, the original complainants have filed these appeals. These appeals were heard exparte against the respondents since they remained absent, though served. Therefore, as per the single member bench constituted by the State Commission by office order dated 31/1/2014, assigning complaints and appeals which have been ordered to be heard exparte against all

the respondents are assigned to a single member bench.

3. Appellant, Smt.Sunita Jejani in A.No.383/09 and appellant Ajay Jejani in A.No.382/09 to be referred as complainants and respondent No.1 in M/s N.Khandavani Builders and Developers and Resp.No.2 Naresh Tulsidas Khandavani proprietor of respondent No.1 in both the appeals be referred as respondents for the sake of brevity.

4. Since these appeals arise out of a common order passed in two complaints, I proceed to decide these appeals by this common order ..

5. Brief facts giving rise to this appeal are that the complainants had entered into an agreement of sale with the respondents for purchase of two flats bearing Nos.207 and 208 admeasuring 760 and 910 sq.ft. respectively in the proposed housing development scheme of the respondents for a consideration of Rs.6 lacs and 7,50,000/- respectively. The complainants at the time of executing the agreement of sale had paid an amount of Rs.3 lacs and 3.25 lacs to the respondents towards the purchase of the said flats and the balance amount towards cost was to be paid in 12 months by monthly installments of Rs.25000/- each. As per the agreement, the respondents were to handover the possession of the said flats in June, 2008. However, the respondents neither developed the land nor handed over the possession of the flat inspite of the complainants having already paid 50% of the agreed cost. The complainants filed a consumer complaint alleging deficiency in service and sought for directions against the respondents to complete the construction of flats, hand over its possession and execute the sale deed thereof in their favour and further to pay Rs.2 lac for mental and physical harassment. The complainants, in their complaint, also expressed their willingness to pay the balance amount at the time of executing the sale deeds.

6. The respondents resisted the complaints by filing their written version and denied all the adverse allegations of the complainants. The respondents specifically submitted that the possession of the flats were to be given to the complainants only in June,2009 and not in June,2008 as alleged in the complaint and it is the complainants, who have breached the conditions of the agreement by

not making payment as per the conditions of the agreement. The Opposite Parties, however, submitted that if the complainants paid the balance amount, then they are ready to handover the possession of the flats by June, 2009 as per the conditions of the agreement.

7. The Forum after perusing the agreement of sale, dismissed the complaint as it was filed premature. The Forum observed that the clause No.7 of the said agreement mentions the date of handing over possession of the flats as Jun, 2009, however, it reflects that the said date is corrected as 2008 by over writing. The complainants had vehemently submitted that the clause mentioned year 2008 only and not 2009. However, the Forum, accepted the printed figure in the agreement which is 2009 coupled with the submission made by the Opposite Parties that the possession of the flat was to be handed over to the purchasers in 2009 as per the agreement. The Forum has held that the consumer complaints are filed on 30/8/2008 clearly shows that it is filed prematurely. Holding accordingly, the Forum dismissed the complaint being premature, with liberty to file afresh.

8. Feeling aggrieved, the original complainants have filed these appeals.

We perused the written notes of arguments filed by the appellants, copies of the complaints, written versions agreement to sell and other documents filed on record.

9. The only issue that survives for our consideration is, whether the consumer complaints are filed prematurely i.e. before accrual of cause of action.

10. We perused the clause 7 of Agreement to sell which reflects as oethat, the purchaser shall be given possession of the aforesaid residential apartment on or about mid of 2009 when the building is expected to be completed and ready for use and occupation provided that the purchaser has paid to the party No.1 entire consideration of the residential apartment as agreed hereinabove and all the deposits to be made and money to be deposited by the purchaser with the party No.1 under the terms of this agreement?. Although the figure 2009 is corrected by overwriting, the Forum has rightly accepted the typed figure as 2009, and, therefore, the complaint filed in the month of August,2008 undisputedly, results

into prematured filing of complaint. For the foregoing reasons, we find no error, illegality infirmity in the order passed by the Forum and the appeal is devoid of merit. In the result we pass the following order.

ORDER

- i. Both the appeals are dismissed.
- ii. No order as to costs.
- iii. Copies of the order be supplied to all the parties free of costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com