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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Mar-05-2014

Judge : Gopala Krishna Tamada, President & the Honourable Mr. R. Lakshminarasimha Rao, Member

Appeal No. : F.A.No. 189 of 2013 against C.C.No. 82 of 2010 District Forum, Ranga Reddy District

Appellant : C. Premraj

Respondent : M/S. Indu Eastern Province Projects Private Ltd., (Spv of Embassy Unity Consortium) and Another

Judgement :

Oral Order: (GopalaKrishna Tamada, President)

The complainant is the appellant and this appeal is directed against the order of the District Forum, Ranga Reddy District made in C.C.No.82/2010 dated 30-3-2012 whereby the District Forum has come to the conclusion that the complaint is mis-conceived for the reason that there is no deficiency of service on the part of the opposite parties and accordingly dismissed the complaint. For the sake of brevity, the parties will be referred to as they were referred to in the District Forum.

The opposite party No.1 is a registered company engaged in real estate business and opposite party No.2 is a bank which finances for purchase of houses/house development. The complainant entered into an agreement of sale on 25-7-2008 to purchase villa No.211 admeasuring 200 sq. yds. in a total built up area of 1840 sq.ft. situated at INDU ARANYA in Sy.No.117, Bandlaguda, Tattiannaram (V), Hayathnagar Mandal, Ranga Reddy District and paid an amount of Rs.11,87,000/- towards advance and the balance amount of Rs.46,36,000/- was to be paid by opposite party No.2 as per the Tripartite agreement between the parties. Subsequently as the said villa is not according to vaasthu, the complainant changed his village from 211 to 225 by paying additional charges of Rs.3,50,000/- to opposite party No.1 and by cancelling the original agreement of sale dated 25-7-2008, both parties entered into a fresh agreement of sale on 27-7-2009. Though most of the sale consideration was paid either by the complainant or by opposite party No.2, as opposite party No.1 did not hand over possession of the said villa, i.e. villa No.225 even by 2010, he was constrained to approach the District Forum and file the present complaint U/s.12 of the Consumer Protection Act, 1986 on 29-4-2010 complaining deficiency of service

The said complaint was resisted by opposite party No.1 by filing written version stating that there is no deficiency of service and as per the terms of agreement of sale, the possession of the villa shall be handed over within 24 months with a grace period of 180 days from the date of obtaining the required permissions from the concerned authorities. As the villa was made ready, they addressed a letter dated 07-6-2010 requesting the complainant to occupy the villa No.225 as it is ready and in liveable condition and requested the complainant to get the said villa registered by paying the required registration charges and other charges including the balance sale consideration. As the complainant has not come forward, the said villa could not be registered in his favour and in those circumstances, the complainant cannot complain any deficiency in service against it.

Opposite party No.2 also resisted the complaint by filing written version stating that as per the terms of the loan agreement dated 31-7-2008, the liability of the complainant is absolute and the complainant has not filed the Loan agreement between himself and opposite party No.2. As per clause 2.6(b) of the loan

agreement, the complainant shall pay the Pre EMI interest every month. The Tripartite agreement dated 27-7-2009 is subject to the loan agreement dated 31-7-2008 and therefore both have to be read together. As per clause (K) of the Tripartite agreement, the complainant irrevocably undertook that subsequent to the disbursements, there would not be no repayment default. As per clause (c) of the Tripartite agreement, the obligation to pay the Pre-EMI interest on the developer i.e. opposite party No.1 is upto 31-7-2009 or date of possession whichever is earlier and the obligation of opposite party No.1 came to an end by 31-7-2009 and therefore the complainant is bound to pay the subsequent amount to it and accordingly paid Rs.2,09,004/- and it is not bound to refund the same. As per clause 13 of the Tripartite agreement, irrespective of the fact that the developer i.e. opposite party No.1 has acknowledged its obligation to pay the pre EMI, the liability of the complainant shall continue to subsist and the Tripartite agreement is an interim arrangement to secure its interest till the receipt of sale deed from the developer and having gone through the agreements, the complainant signed the agreements and cannot now raise any objection and submitted that there is no deficiency of service on its part.

The complainant filed his affidavit evidence and documents filed on his behalf are marked as Exs.A1 to A17. Similarly the opposite parties 1 and 2 also filed affidavit evidence and opposite party No.2 got marked Exs.B1 to B5. The District Forum having considered the entire material on record including the affidavit evidence and also the documents came to the conclusion that there is no deficiency of service and thus dismissed the complaint.

As stated supra, the said order is under challenge before us.

The only point for consideration is whether the said finding of the District Forum that there is no deficiency of service? is justified or not?

The learned counsel for the complainant vehemently argued before us stating that the said action on the part of opposite party No.1 in not handing over possession within the stipulated period would amount to deficiency of service and in those circumstances, the District Forum is not justified in dismissing the complaint.

He placed some more documents before this Commission and requested this Commission to accept them as additional documents. This Commission has given its anxious consideration to the said documents which are filed before us for the first time. From a perusal of the said documents, we are of the view that the said documents have nothing to do with the case on hand and in those circumstances, the said I.A. is dismissed.

Mr.V.Gourisankara Rao, the learned counsel for opposite party No.1 submitted that the District Forum is justified in holding that there is no deficiency of service and thus the order is perfectly justified and according to him it is in accordance with law.

There is no dispute so far as the facts are concerned. The complainant initially agreed to purchase villa No.211 and entered into agreement of sale on 25-7-2008, thereafter for obvious reasons, he cancelled the said agreement of sale and purchased villa No.225 and entered into another agreement of sale and the same is dated 27-7-2009 which is marked as Ex.A8. As per clause 7 of the said Ex.A8, the time that has been stipulated is 24 months and grace period of 180 days from the date of permission from the concerned authorities. From that the builder i.e. opposite party No.1 is having a period of 30 months from the date of the said agreement of sale to hand over possession. In addition to that it is specifically mentioned that this 30 months period comes into operation from the date of permission from the concerned authorities. The said permission was obtained by opposite party No.1 on 18-2-2008, which is established under Ex.B6. When we calculate the said period, in our considered view, opposite party No.1 has completed the entire project within the stipulated period whether it is from Ex.A8 dated 27-7-2009 or Ex.B6 i.e. permission granted by the competent authority which is dated 18-2-2008. In view of Ex.B5 letter dated 07-6-2010 wherein it is clearly stated that villa 225 is made ready, it is clear that it is within the stipulated period as per the agreement of sale which was marked as Ex.A8. In those circumstances even by a stretch of imagination, it cannot be construed that there is deficiency in service on the part of the opposite party No.1 in completing the construction and handing over possession of the said villa. These aspects were taken into consideration by the District Forum in holding that there is no deficiency

of service which in our considered view is a well considered order.

Accordingly we see no merits in this appeal and thus this appeal is dismissed.
There shall be no order as to costs.

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