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Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Mar-04-2014

Judge : The Honourable Mr. R. Lakshminarasimha Rao, Member &Amp; the Honourable Mr. Thota Ashok Kumar, Member

Appeal No. : F.A.Nos. 29 of 2012, 31 of 2012 & 51 of 2012 Against C.C.Nos. 510 of 2009, 520 of 2009 & 522 of 2009 District Forum-II Visakhapatnam

Appellant : Devendar Kumar Gogia and Others

Respondent : Vasudeva Constructions, Rep. by Its Managing Partner and Others

Judgement :

Oral Order: (Thota Ashok Kumar, Member)

1. These appeals F.A.No.29, 31 and 51 of 2012 are filed by the unsuccessful complainants. The appeals arise from the orders passed by the District Forum in complaints wherein the opposite parties to the case and the question decided has been the same and as such they are being disposed of by a common order. The parties are referred to as they arrayed in the complaint. F.A.No.29 of 2012 is taken as the lead case.

2. The brief facts of the case as seen from the complaint are that the along with his father Sri Suraj Prakash Gogia, purchased an undivided and unspecified share of 35 sq.yds out of extent of 1190 sq.yds together with residential flat No.203 with plinth area 1025 sft in the 1st floor, constructed upto lintel level of Neelima Aashirwad Towers in Narasimha Nagar, near NSTL gate, Butchirajupalem village, Visakhapatnam in Sy.No.31/A/2 and Plot No.76 and 77 from the Opposite parties and the original Landlord, Bunga Daniel Babu, for a valid consideration of Rs.2,48,350/- under the Registered Sale deed dated 19.05.2005. The Opposite party no.1 is the Managing Partner and Opposite parties 2 and 3 are the partners of the firm Vasudeva Constructions, the Developers and Builders. In their capacity as Builders, the Opposite party no.1 again entered into an agreement of construction of the Flat No.203, with complainants father on the same day i.e. on 19.05.2005, which was also registered, for a sum of Rs.2,46,000/-. The construction to be made @ Rs.730/- per sft totalling Rs.7,48,250/-. The complainant paid in total Rs.7,49,915/- from 2.12.2004 to 01.04.2009 by way of cheques. The complainant has to pay only Rs.7,48,250/ and thus he made an excess payment of Rs.1,665/- to the Opposite parties. As per the construction agreement, the opposite party should provide the Flat with plinth area 1025 sft (excluding common area) within 11 months period, with specifications mentioned in the schedule, including domestic electrical connection and also car parking in the stilt area, which is a common car parking area and a common facility of the entire flat owners. Contrary to the agreement, the Builder tried to sell away the car parking place to some of the flat owners and also failed to provide fire extinguisher system. Though as per the agreement, he has to hand over the same flat of 1025 sft, the Opposite parties handed over only 905 sft area. It was only unfinished and incomplete works that were done, plastering, repairs at different places in the flat, severe cracks in ceramic tiles flooring and internal plastering of the said flooring, to provide proper painting work with cement primer coats inside and outside of the flat, to supply and application of one coat distemper exterior grade for the flat, improper electrification wiring, switches, socket, indicators etc. All these incomplete works were estimated to cost about Rs.1,65,000/- by Sri P.Nooka Raju, Licensed Surveyor, who inspected the premises on 12.10.2010 and noted down the deficiency in the complainants flat. Though the complainant has been

requesting the Opposite party to complete the said defects there was no response, and hence, the complainant wrote letters on 16.08.2007, 01.12.2007, 17.09.2009, 23.09.2009 and 06.10.2009. The complainant occupied the Flat on 26.11.2007. The Opposite parties failed to handover the flat officially to the complainant as well as the other owners. The land owner, who has to get 12 flats, on the ground of unfinished and incomplete works, filed a consumer case No.383/2009, which is pending before District Consumer Forum-I at Visakhapatnam. The complainant claims that as his father died subsequently, he was the sole owner of the flat. Hence the complainant filed the complaint before the District Forum to pay Rs.1,65,000/- towards repairing charges, for deficit plinth area an amount of Rs.87,600/- and towards damages to a tune of Rs.50,000/- besides costs of Rs.10,000/-.

3. The Opposite party no.1 filed counter which was adopted by the opposite parties no.2 and 3 resisting the claims put forth in the complaint and contended that the Forum has no jurisdiction since the Construction Agreement between the parties provided for reference to Arbitrator in case of any dispute. The total consideration under Sale Deed, Construction Agreement and additional construction agreement would come to Rs.7,68,250/- and admittedly the complainant paid only Rs.7,49,915/- leaving a balance of Rs.18,335/- yet to be paid by him. All the deviations from the approved plan, like balconies, which are shown in the brochure etc are with the tacit approval and consent of all the flat owners, including the complainant and in fact, all of them have benefited from the same. Consequently, all the flat owners themselves, including the complainant paid the BPS amount voluntarily, directly to the corporation. There is no excess amount paid by the complainant. Since the complainant has to pay a sum of Rs.18,335/-, he was not given the handing over letter. The flat owners who have all approved for the violation and purchased the flats, occupied their flats and were drawing power from the common service used for construction, which was a commercial service and was sharing the bill among themselves, till the issue was resolved and domestic power was given to the individual flat owners. The flat sold to the complainant was admeasuring 1025 sft in plinth area, including common area. The sale deed of the complainant, the word œCommon area? was omitted to be typed, which is an obvious typographical error. The sale deeds of other flat

owners admittedly contain the said word. Even the agreement for construction dated 19.05.2005 in favour of the complainant, also used the word (including) œcommon area? in Clause.1. The claim of the complainant for shortage of plinth area and its money value is purely speculative and motivated. The letter dated 16.08.2007 addressed by the complainant lists only three defects, viz. fading of colour, cracks in the balcony, problem with the bed room doors. In the remaining letters dated 01.04.2009 and 23.09.2009 the complainant pointed out the letter dated 16.08.2007 as deficiency. However, the Surveyors report was dated 14.10.2009, was without notice, knowledge and consent of the Opposite parties. The letter with signature of the complainant dated 06.10.2009 contemplates survey on 12.08.2009 and received by the Opposite party on 10.10.2009. The report is one sided, lacks objectivity. The estimate is highly excessive and exaggerated. The builder is not obliged to provide electrical points to the satisfaction/convenience of the individual flat owners, than what was agreed upon. The attempts seem to be to get a brand new flat at the expenses of the Builder. Deficiencies pointed out by the complainant in his letter dated 16.08.2007 have been attended to, and the complainant had erected a grill to the balcony, which might have resulted in cracks to the single brick balcony wall. The stilt floor cannot accommodate 30 cars corresponding to the number of flats, considering the placement of columns, watchmans quarter, stair case area left for set-back etc. Clause.12 of the Construction agreement to which the complainant is a signatory enables the builder to raise necessary funds to meet the cost involved in construction of stilt floor by way of each car parking space, which could be provided to first come first served basis among the members to the extent possible only. The complainant did not book any car parking and cannot claim it now. The other flat owners who booked car parking area were given the same. All the flat owners, who have booked car parking on a priority basis are happy and it is only 2 or 3 flat owners, who did not book car parking in the first instance are disgruntled and are making a speculative and misconceived claim. There is no deficiency in service on the part of the Opposite parties.

4. The complainant filed his affidavit and the documents, Exs.A1 to A60. On behalf of the opposite parties, the Managing Partner of the opposite party no.1 filed his affidavit and the documents, Exs.B1 to B5.

5. Having heard both sides and considering the material on record, the District Forum dismissed the complaint on the premise that there is no proper evidence on behalf of the complainant to prove the latches or defective construction put up by the builder and therefore the complainant is not entitled for the costs for proposed rectification of defects from the builder so also other reliefs.

6. Aggrieved by the order of the District Forum, the complainant filed the appeal contending that the District Forum erred in not considering the order of the same District Forum in C.C.No.383 of 2009 passed on 24.01.2011 wherein the District Forum accepted the defects in the same building and passed the order and that as per the A.P. Apartments (Promotion of Construction of Ownership) Act the builder has no right to alienate the parking area to any person by selling the same for a sum of Rs.30,000/- and it is only a common area of all the flat owners.

7. Heard the counsel for the appellant/complainant and there was no representation on behalf of the respondents/opposite parties.

8. Now the point for consideration is whether the order of the District Forum is vitiated by misappreciation of facts or law?

9. POINT: It is an admitted fact that the complainant purchased flat no.203 under the Sale Deed Ex.A1 dated 19.05.2005 admeasuring 1025 sft with undivided share of 35 sq.yards with semi constructed flat from the opposite parties. Thereafter the complainant entered into the Construction Agreement with the opposite parties, on the same day i.e. 19.05.2005. The complainant contended that the plinth area allotted to him was only 905 sft and thus there is a deficit of 120 sft and as such the opposite party builder has to refund Rs.87,600/- to him being the cost of 120 sft deficit plinth area. Whereas the opposite parties pleaded that the said 1025 sft includes common area and by mistake it was not mentioned in Ex.A1 Sale Deed and in the said context placed reliance upon Ex.A2, copy of construction Agreement wherein it is mentioned specifically the plinth area as 1025 sft including common area and balconies. Ex.A13 additional construction agreement dated 24.06.2005 between the parties with regard to amenities agreed to be provided, the subject flat is described as flat no.203 with common area of 1025 in first floor and as rightly observed by the District Forum it is common

experience and practice that the plinth area would generally include balcony, common area for passage and even stilt area and it does not reflect the plinth area of exclusive apartment only. Discussing the said aspects the forum came to a conclusion that it was a typographical mistake in Ex.A1 sale deed and it is so held on sound reasoning. The complainant did not prove the case otherwise with dependable material on record and therefore question of refund of difference an amount much less Rs.87,600/- by the opposite parties does not arise. It appears that by taking advantage of mistake crept in the sale deed, the complainant claimed for the said difference amount towards deficit area and we see no reason to uphold the contention of the complainant in the said context.

10. As seen from Ex.A5 bunch of letters between 16.8.2007 to 6.10.2009 more particularly latter dated 16.8.2007 there are three deficiencies in construction i.e., the distemper has faded in many places likewise in utility and bedroom, front balcony cracks have come in the walls, doors of both bedroom is also having problem like top ply is leaving the panel and one bedroom door is having hole in it and which was repaired and fixed. According to the complainant though they were brought to the notice of the opposite party builder it was not rectified. Whereas, the opposite party builder pleaded that the defects pointed out were already rectified in response to such a letter dated 16.8.2007. Ex.A4 surveyors report disclose, that the estimations were made for almost replacement of existing works like plastering, flooring, painting etc and it is silent about as to what was provided by the builder as per specifications of the construction agreement. There is no evidence from the side of the complainant that a competent chartered engineer as is done in C.C.No.383 of 2009 on the file the District Forum-I, Visakhapatnam estimated the alleged defects. In the instant case, Ex.A4 surveyors report dated 14.10.2009 is said to have been issued by the surveyor estimating the alleged defects pointed out by the complainant. He did not file any affidavit evidence in support of such a report. No notice was given to the opposite parties before the allege surveyor said to have visited the premises and therefore it has to be held that it is one sided and as such no importance need to be given to the contention of the complainant and Ex.A4 survey report with regard to the alleged defects in construction to direct the opposite parties to pay Rs.1,65,000/- to the complainant towards repairing charges of the flat of the complainant. In such circumstances,

the orders in CC No.383 of 2009 on the file of District Consumer Forum-I, Visakhapatnam is not helpful for the complainant.

11. Now coming to the allotment of car parking slot to the complainant it is discussed as under:

12. According to the complainant the opposite parties builder did not provide any car parking to him and under the provisions of the Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987 car parking it is necessary for the builder to provide car parking.

13. Section 3 of A.P. Apartments (Promotion of Construction and Ownership) Act provides for commons area which includes car parking slot. Section 3 of the A.P. Apartments (Promotion of Construction and Ownership) Act reads as under:

(d) œCommon areas and facilities? unless otherwise provided in the declaration means:

i) the land on which the building is located

ii) foundation, columns, girders, beams supporters, main walls roofs including terrace, halls, corridors, stairs, stairways, fire escapes and entrances and exits of the building;

iii) Basements, cellars, yards, gardens, parking areas, childrens playground and storage spaces;

iv) the premises for the lodging of janitors or caretakers or persons employed for the management of the property

v) installations o general services, such as power, light, gas hot and cold water, heating, refrigeration, air-conditions and incinerating;

vi) elevators, tanks, wells and bore wells, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

vii) such other community and commercial facilities as may be provided for in the building pln and declaration;

viii) all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use?.

14. Section 24 of the A.P. Apartments and Buildings Act reads as under:

24 Prohibition of selling, leasing and misuse of common areas and facilities:- The promoters or the owners of apartments shall not sell or lease out or misuse any common areas and facilities?.

15. In view of the above provisions of the said Act, the opposite parties cannot contend that car parking slot in absence of any agreement thereof cannot be sought for by the complainant as a matter of right. It is the contention of the complainant in the grounds of the appeal that the opposite parties sold car parking slots to other flat owners for a sum of Rs.30,000/- for each car parking slot and therefore in the circumstances of the case and as there is no dependable evidence on record to come to a conclusion that the car parking slot is available to allot the same to the complainant it would be just and reasonable to direct the opposite parties to pay Rs.30,000/- to the complainant in lieu of such a car parking slot.

16. In the result, the appeals F.A.No.29, 31 and 51 of 2013 are partly allowed setting aside the orders of the District Forum. Consequently the complaints are allowed in part directing the opposite parties no.1 to 3 jointly and severally to pay a sum of Rs.30,000/- to each of the complainants of C.C.No.510, 520 and 522 of 2009 on the file of the District Forum-II, Visakhapatnam in lieu of car parking slot and also costs of Rs.5,000/- each to the complainants. Remaining claims of the complainants in all the said complaints stands disallowed. Time for compliance four weeks from the date of receipt of the copy of the order.

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