

P.V. Prasanna Kumar and Another Vs. M/S Balaji Constructions, Rep. by Its Managing Partner, P.V. Bhaskar Reddy and Another

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Jan-20-2014

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

Appeal No. : F.A.Nos. 649 of 2012 & 650 of 2012 Against C.C.Nos. 80 of 2011 & 78 of 2011 District Forum, Kadapa

Appellant : P.V. Prasanna Kumar and Another

Respondent : M/S Balaji Constructions, Rep. by Its Managing Partner, P.V. Bhaskar Reddy and Another

Judgement :

T. Ashok Kumar, Member

Since both the appeals deal with similar facts and arising out of a common order, they are being disposed of by a common order: F.A.No.649/2012 is taken for discussion as a lead case.

This is an appeal preferred by the complainant against the order in C.C.No.80/2011 dated 07-3-2012 on the file of District Forum, Kadapa.

For convenience sake the parties as arrayed in the complaint are referred to hereunder:

The gist of the complaint is that the complainant purchased a flat 503 in 5th floor in Narayanadri Residency after coming across a colourful brochure of opposite party No.1 and registration of the same was done on 18-11-2009 and the said flat was occupied by the complainant on 14-2-2010. The opposite party No.1 had to provide certain amenities compulsorily and it was printed in the brochure that extra amenities would be provided for which the complainant paid Rs.50,000/- for extra provisions like Municipal drinking water, drainage connection, AP Transco Meter connections panel Board charges, transformer charges, generator for common area and another Rs.50,000/- was paid towards car parking. After occupation of the flat, the complainant came to know that the original plan submitted to opposite party no.2 was totally different from what opposite party No.1 finally constructed and deviated it and could not obtain building completion certificate, drainage overhead tank, drinking water sump, generator for 3 points for each flat, Municipal drinking water connections were not upto specifications. The opposite party No.2 has not levied house tax and opposite party No.1 failed to pay building construction tax and therefore, he had paid another Rs.13,000/-. The Municipal drinking water was not provided even after collecting money by opposite party No.1 on the ground that opposite party No.1 had not paid certain amount levied by opposite party No.2 towards building construction charges and this count the complainant was forced to pay Rs.50/- daily towards drinking water.

The complainant paid Rs.50,000/- towards car parking facility and opposite party No.1 collected amount from all the flat owners without leaving any area for car parking and hence it became congested resulting in much inconvenience to the complainant in order to move from the car parking slot. The opposite party No.1 collected Rs.1,00,000/- towards garden site in car parking area which was not mentioned in the brochure issued by opposite party No.1 and he was made to part with the amount as opposite party No.1 refused to register the flat. The opposite party No.1 provided substandard material in respect of flooring, sanitary articles and wood and approached opposite party No.1 along with other flat owners for which opposite party No.1 replied adamantly. Therefore, the complainant and

other flat owners approached opposite party No.2 in respect of levy of house tax and opposite party No.2 had replied that the building construction tax was not paid and hence building completion certificate was not provided and in the absence of building completion certificate, the flat owners are not eligible for getting supply of drinking water. Hence alleging deficiency in service, the complainant filed the complaint for a direction to the opposite parties:

- i) To award a compensation of Rs.1 lakh for not providing drainage, overhead tank and drinking water sump upto specifications.
- ii) To award compensation of Rs. 1 lakh for not providing the generator facility for 3 points in the flat
- iii) To award compensation of Rs. 1 lakh for not providing car parking sketch and also providing excess parking to excess persons thereby resulting the car parking area congested
- iv) To direct the opposite party no.1 to refund the amount of Rs. 1 lakh unnecessarily collected from him towards the garden site
- v) To refund Rs.13,000/- which was paid by him towards flat regularization charges
- vi) To award compensation of Rs. 1 lakh for total deviation of construction of the building
- vii) To award compensation of Rs. 4 lakhs towards the mischief, misrepresentation and gross negligence in not providing basic amenities
- viii) To direct opposite party no.2 to provide corporation drinking water connection and issue flat completion certificate
- ix) To award costs of Rs.50,000/-.

The opposite party No.1 filed counter admitting the purchase of the flat by the complainant, registration and occupation and denied that he purchased the flat as per brochure and paid consideration as fixed by opposite party No.1 and paid for

certain things compulsorily to be provided. The opposite party No.1 denied that the complainant paid Rs.50,000/- for extra provisions like Municipal drinking water connection, drainage connection, AP Transco meter connection and panel board charges, transformer charges, generator for common area and that whoever paid Rs.50,000/- was allotted car parking. The building Narayanadri Residency had five floors with eight apartments in each floor and ground floor was allotted for car parking. The deviation of the construction was only for more space and enjoyment of the flat owners and the width of structure was not reduced but opposite party No.2 observed that there was deviation and did not issue completion certificate. There was no provision for issue of completion certificate for residential apartments and the same was approved by G.O.Ms.No.423 MA dated 31-7-1998 vide reference No.631/G1/2006 dated 17-11-2006 by which date as per Government orders issuing of completion certificate would not arise. It denied that drainage facility, over head tank and drinking water sump were not provided and stated that they were constructed as per approved plan. As per guidelines of engineers, the required water per head per day was 150 litres and accordingly five persons in the family would require 750 litres, 30,000 litres per day to all 40 flats would be required and the tank was constructed with measurements of 7 x 3 x 1.5 metres equivalent to 31.5 cubic meters and besides it there is sintex tank provided with 15000 litres each for total 30,000/- liters for storing of 34,500 litres. The bore-well was fitted with electric motor so that the flat owners would fill the tank twice a day. The water sump was constructed with measurement of 1.5 x 1.5 for 1000 litres i.e.6.75 cbm and would be 6,750 litres. The drainage for septic tank was constructed with measurement of 5 x 3 x 1.5 for the use of flat owners and they have been using the same since four years and it was connected to the main drain of the Corporation. The generator was provided for common area lights for each floor, ground floor, parking area and lift and denied that for 3 points of the flat, it was not provided. Municipal water connection was not provided as the flat owners failed to pay property tax to the Corporation from 2008-2009 and they are liable to pay tax as they became absolute owners of the flat. The opposite party No.2 assessed the tax with effect from 01-9-2008 to 31-3-2009 ignoring legal sanctions and at the time of disposal of the flats, the complainant was informed to represent to opposite party No.2 for mutation of name in the property tax register with the

Municipal records and pay tax and the complainant did not take interest to mutate his name though the flat was registered and pay property tax to opposite party No.2 but since the flat owner failed to mutate his name, opposite party No.2 after completion of structure assessed the property tax in the name of opposite party No.1 and it came forward to pay the tax for the 2nd half year 2008-2009 and requested the complainant to contribute tax for the remaining half year i.e. 31-3-2009 but he failed to pay the tax and hence opposite party No.1 could not obtain drinking water connection. It is incorrect to state that the complainant is only concerned to the extent of purchase of flat and everything should be provided by it and denied as in view of deviation in constructing the flats, opposite party No.2 has not levied tax and not providing drinking water. There was no building construction tax under HMC and there is fee payable by him to opposite party No.2 for approval of plan and submitted that it was paid. The complainant did not pay Rs.50,000/- towards car parking and that the sale deed also discloses the same and the car parking was provided to the flat owners who required the same on payment of Rs.50,000/- and it was so without any inconvenience.

Opposite party No.1 did not collect Rs.1 lakh towards garden site in car parking and also did not provide sub standard material of wood, sanitary article etc. and that the complainant was satisfied with the material provided and occupied the flat and submitted that no notice was issued with regard to substandard material. The brochure is not a legal offering and there is no deficiency in service on its part and thus prayed for dismissal of the complaint.

Opposite party No.2 filed counter admitting that the flat owners approached it for levying house tax and providing car parking, drainage, water facility for which it stated that opposite party No.1 had not paid the building construction tax. The flat owners gave a representation dated 21-9-2010 for levying house tax and providing drinking water and opposite party No.2 issued an endorsement dated 19-10-2010 that house tax was already levied for the entire apartment for 2008-09 and opposite party No.1 failed to pay the same. The arrears due to opposite party No.2 are from 2008-09 and 2010-2011 and 2nd half year was Rs.2,11,726 and the same was also informed to District Collector on 07-12-2010 in connection with representation received under Collectors Grievance cell dated 18-11-2010.

Opposite party No.2 had no objection to levy house tax to each flat provided the arrears amount of Rs.2,11,726/- was paid and unless the arrears are paid, the flat owners are not eligible for supply of drinking water because no building completion certificate was furnished. As per G.O.Ms.No.423 MA, dated 31-7-1998 there was no provision for issuing completion certificate for residency apartments and as the complex of the complainant fell under this GO, there is provision for issuing completion certificate and that there is no deficiency in service and prayed for dismissal of the complaint.

The complainant filed his affidavit reiterating his contention and relied on Exs.A1 to A2. Having heard both sides, considering the material on record, the District Forum vide impugned order dismissed the complaint.

Aggrieved by the said order of the District Forum, the complainant preferred this appeal mainly contending that the District Forum failed to consider that the construction of the flat was not in accordance with the original plan and there is deviation. The District Forum erred in holding that the complainant did not file proof to show that he paid Rs.50,000/- for car parking. The District Forum failed to see that opposite party No.1 failed to provide drinking water facility and he assured to provide drinking water facility and over head tank as per the brochure. The District Forum also failed to consider that opposite party no.1 failed to pay property tax to opposite party No.2 and erred in dismissing the complaint on the ground that sale agreements were not filed by the flat owner. The complainant contended that he paid Rs.50,000/- to opposite party No.1 as per the provisions printed in the brochure and also Rs.13,000/- towards flat regularization charges.

The complainant filed written arguments in support of his case.

The notice sent to opposite party No.1 returned with an endorsement door locked and since it was sent to his last known address, notice is deemed to be served on opposite party No.1. The second opposite party appeared through his counsel and advanced arguments.

Now the point for consideration is whether the order of the District Forum is vitiated either in law or on facts?

There is no dispute that the complainant purchased the subject flat from opposite party No.1 for valuable consideration referred to in the registered sale deed, Ex.A2 dated 18-11-2009 and that the complainant was inducted into possession of the said flat. However, the first opposite party contended that the complaint is barred by time but as seen from the complainant, evidence affidavit etc. of the complainant, it was so occupied on 14-2-2010 and the case was filed on 16-8-2011 and thus we hold that the complaint was filed within limitation, probably for the said reason only in the common order there is no mention in paragraph No. 18 that the present complaint is barred by time and accordingly the limitation point is answered in favour of the complainant.

The grievance of the complainant is that the apartment was not constructed in accordance with the approved plan and that there are deviations in the construction. On the ground that the complainant did not file the approved plan, the District Forum held that it was not possible to appreciate the said contention in favour of the complainant.

In *Fakir Chand Gulati v. Uppal Agencies Pvt. Ltd.*, and another reported in 2008 CTJ 1038 (SC), the Apex court held:

œlf the construction is part of a building which in law requires a completion certificate or CandD forms (relating to assessment, the builder is bound to provide the completion certificate or CandD forms. He is also bound to provide amenities and facilities like water, electricity and drainage in terms of the agreement. If the completion certificate and CandD forms are not being issued by the Corporation because the builder has made deviations/violations, in the construction , it is his duty to rectify those deviations or bring the deviations within permissible limits and secure a completion certificate and CandD forms from MCD. The builder cannot say that he has constructed a ground floor and delivered it and therefore fulfilled his obligations. Nor can the builder contend that he is not bound to produce the completion certificate, but only bound apply for completion certificate. He cannot say that he is not concerned whether the building is in accordance with the sanctioned plan or not, whether it fulfills of the requirements of the municipal bye laws, or whether there are violations or deviations. The builder cannot be

permitted to avoid or escape the consequences this illegal acts. The obligation on the part of the builder is to secure a sanctioned plan and construct a building, carries with it an implied obligation to comply with requirements of municipal and building laws and secure the mandatory permissions /certificates.

In view of the said legal proposition, certainly the opposite party No.1 herein is duty bound to obtain due permissions from competent authority and construct the building in accordance with the sanctioned plan and if he deviates from the plan, he cannot avoid the consequences. The opposite party No.1 did not file and mark any such sanctioned plan and documents evidencing physical features of the existing apartment so as to say that he constructed it in accordance with the sanctioned plan and that there are no deviations. However, he also admitted that there are some deviations, which are negligible. Even to appreciate that the deviations are negligible those documents are necessary and since he did not file the same, adverse inference is drawn against him in the said context. Equally though the complainant contended that he paid Rs.13000/- towards Flat Regularization charges, he also did not file any document evidencing the said payment for the said purpose and in such circumstances his prayer for refund of the said Rs.13,000/- is not sustainable. However, as seen from the common order in CC. Nos. 75/2011 to 83/2011, in some of the cases, receipts were filed evidencing that Rs.5000/- was paid by the respective complainants towards regularization charges to opposite party No.2 and by taking judicial notice of it, we hold that the complainant also paid the same amount and therefore he is entitled for refund of Rs.5000/- on this count.

The second opposite party contended that the arrears of house tax due to it from 2008-09 and 2010-2011 (second half) was Rs.2,11,726/- and that it was so informed to the District Collector on 07-12-2012 in connection with representation received under Collectors Grievance cell dated 18-11-2007 and that the said opposite party No.2 had no objection to levy house tax to each flat provided the arrears aforesaid are paid and that until and unless the said arrears are paid as per Corporation rules, no house tax for each flat can be levied. The complainant contended that completion certificate was not issued by second opposite party since there were deviations in the construction and that house tax for each flat was

refused to be collected by mutating his name in municipal records but opposite party No.2 pleaded that in view of GO Ms.No.423 MA dated 31-7-1998, there was no provision for issuing of completion certificate for the residency apartments since the construction was approved under the above GO, the question of issuing completion certificate would not arise, therefore the said ground agitated by the complainant hold no water. Even if completion certificate is not permissible to be given, it was the duty of first opposite party to obtain CandD forms and furnish the same to the complainant so as to get his name recorded as owner in respect of the subject flat in municipal record and then to pay house tax by him but opposite party No.1 did not choose to do so and it amounts to deficiency in service in the said context. When complainant purchased semi finished flat it could not be appreciated that he was inducted into possession of the flat as on the date of registered sale deed and according to the complainant he occupied the flat on 14-2-2010 and in such circumstances, it is not fair to direct the complainant to pay arrears of taxes. Therefore in the circumstances of the case, a direction need to be given to opposite party No.1 to pay the arrears of tax and facilitate the complainant to get his name mutated in respect of subject flat in his name and then only the complainant would be entitled to get municipal water connection.

As seen from Ex.A1 brochure for car parking, show case, ward robes, shelves/arches, municipal drinking water connection, drainage connection , AP Transco meter connection, panel board charges, transformer charges, generator for common area and 3 points in each flat, registration of flat, VAT and Service tax extra charges have to be paid by the purchaser of the flat. The complainant contends that he paid Rs.50,000/- towards amenities which includes municipal drinking water supply connection and generator facility for three points and the opposite party No.1 has to pay the arrears towards tax proportionately so also charges for municipal water connection to the second opposite party

The complainant contended that he paid Rs.50,000/- towards car parking but in the counter of first opposite party, he admitted that Rs.50,000/- was paid by the flat owner who required car parking. As seen from Ex.A2 sale deed in B schedule, the description of the subject flat No.503 in 5th floor in Narayandri Residency measuring 1045 sft. including common area covered car parking in the stilt,

therefore, even though no receipt is filed by the complainant evidencing the said payment of Rs.50,000/- it can be inferred that he paid Rs.50,000/- towards car parking charges and as such the complainant is entitled for car parking. Merely because the complainant did not file any documents evidencing that he owns a car on the said ground, it cannot be allowed to be contended that he is not entitled for car parking. Even though the complainant contended that the car parking is congested, there is no dependable evidence from his side on the said aspect and as such the complainant is not entitled for any compensation, much less Rs. 1 lakh with reference to congested car parking. If the complainant did not pay any amount towards amenities, opposite party No.1 would not have registered the sale deed and provided the amenities referred to in the counter by giving measurements and specifications. The complainant did not controvert either in affidavit or rejoinder affidavit the said contention of the first opposite party. He did not produce any expert evidence with reference to his objection, in such circumstances, the evidence of opposite party No.1 that he provided amenities as per specifications is accepted. It is much more so when majority of the flat owners did not express their grievance.

There is no clinching evidence from the side of the complainant that he paid Rs.1 lakh towards garden site etc. and therefore his claim for refund of Rs. 1 lakh also could not be appreciated.

In view of the above discussion, the appeal deserves to be allowed setting aside the order of the District Forum and allowing the complaint in part against opposite party no.1 only. The rest of the claim of the complainant is liable to be dismissed for want of dependable evidence. We find no deficiency in service against opposite party No.2.

In the result this appeal i.e. F.A.No.649/2012 is allowed in part and the order of the District Forum is set aside and the opposite party No.1 is directed to reimburse Rs. 5000/- to the complainant paid by him towards BRS charges, pay the arrears of tax proportionately in respect of the flat of the complainant and also municipal water connection charges together with costs of Rs.5,000/- through out. The rest of the claim of the complainant stands dismissed. The complaint against opposite

party no.2 is dismissed without costs. Time for compliance four weeks from the date of receipt of the order.

For the same reasons as stated in F.A.No.649/2012, this appeal, F.A.No.650/2012 is also allowed in part and the order of the District Forum is set aside and the opposite party No.1 is directed to reimburse Rs. 5000/- to the complainant paid by him towards BRS charges, pay the arrears of tax proportionately in respect of the flat of the complainant and also municipal water connection charges together with costs of Rs.5,000/- through out. The rest of the claim of the complainant stands dismissed. The complaint against opposite party no.2 is dismissed without costs. Time for compliance four weeks from the date of receipt of the order.

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