
(2015) 06 NCDRC CK 0026

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: 1375 of 2015

Bhikhubhai @
Vishalbhai Ishwarbhai
Desai Lamgarwad

APPELLANT

Vs

Thakorbhai Kikabhai
Patel

RESPONDENT

Date of Decision: June 2, 2015

Hon'ble Judges: J.M.MALIK J.

Advocate: Petition dismissed

Judgement

1. COUNSEL for the petitioner present. Arguments heard. Both these revision petitions have similar facts and these entail same questions of law. This order shall dispose of both the revision petitions. I will take the facts from R.P. No. 1374 of 2015 titled as "Bhikhubhai @ Vishalbhai Ishwarbhai Desai Vs. Hirabhai Kikabhai Patel and Anr."

2. THE admitted facts of these cases are that Bhikhubhai @ Vishalbhai Ishwarbhai Desai (OP)/the petitioner, transacts the business of building construction in the name of "Visha Construction". He made up his mind of constructing duplex houses in the name of "Vrundavan Duplex Part II, Vimal Park" in the land of the ownership of Dr. Bipinchandra Keshavji Patel (OP -2). Both the complainants booked different bungalows. The total price of each of the bungalow was Rs.14 lacs each. The agreement dated 16.01.2006, was executed between the complainants and the OP. Both the complainants have paid Rs.9 lacs each.

3. ON 22.12.2007, the complainants gave notice to OPs to handover the possession of the house by accepting the remaining amount. This did not evoke any response from the OPs. Both the complainants filed the case before District Forum, praying possession of the premises in dispute.

The defense set -up by the OPs is that the amount was not paid as per the agreement reached between the parties. The District Forum dismissed the complaint.

4. THE appeal was preferred before the State Commission. The State Commission accepted appeals filed by both the complainants and directed that the complainants would deposit Rs.5 lacs each within two months from the date of the impugned order before the District Consumer Dispute Redressal Forum, Navsari and would inform the OPs. Thereafter, the OPs will execute the Sale Deed and put up the complainants in peaceful possession of their respective bungalows. Compensation in the sum of Rs.25,000/- and Rs.5000/- each towards costs of the appeal was also awarded. I have heard the counsel for the petitioner. He invited my attention towards the agreement itself. The relevant portion of which, runs as under:

" Bill will be given as follows: - Making the work upto plinth level, work of construction and lintal filling will be done (30%) Making construction above the lintal level, plaster on inner and outer side on the slab will be done (40%) On completion of tiles and kitchen and doors and windows and plumbing work (20%) Completing color work and all other work, at the time of handing over possession, possession will be given after making full payment (10%) Rs.1,00,000/- (Rupees one lac only) will have to be given towards advance of the building."

5. THE main grievance of the petitioner is that the payment was not made in accordance with the terms and condition of the agreement. My attention has been invited towards receipts which are in the sum of Rs.1 lac dated 25.03.2006, Rs.2 lacs dated 16.05.2006, Rs.1 lac dated 15.09.2006, Rs.1 lac dated 31.10.2006, Rs.2 lacs dated 02.01.2007 and Rs.2 lacs dated 12.02.2007. The payment schedule was never followed. The petitioner

has been accepting the payment as given by the complainants. They were not insisted to make the payment as per the payment schedule. There is no documentary evidence on the record, which may go to show that the petitioner had given notice to the effect that after completion of above said stages of construction (1 to 5), to the complainants and they were asked to make rest of the payment as per payment schedule. The counsel for petitioner submits that there was telephonic conversation only. Such like stories can be created at any time. The story propounded by the counsel for the petitioner does not just stack up. There is stipulation in the agreement, which runs as follows:

"Both the parties have to do the above meeting together and by mutual understanding. If any misunderstanding or any dispute arises between the parties, then none has to take shelter of the Court and both the parties have to enter into settlement through an Arbitrator. Arbitrator will be acceptable to both the parties and if possible, it is necessary that he should be either Engineer or Builder or a person having experience in building construction."

6. THERE is not even an iota of evidence to show that there was any meeting by both the parties. It is apparent that the OPs did not call for the meeting. No documentary evidence, no notice or legal notice is available on the record.

7. THE counsel for petitioner also invited my attention towards the appeal i.e. averment made by the complainants, which runs as follows:

"(3) But, the respondent (opponents) were doing the construction work very slowly and the respondent no. 1 had not made the construction work as per the amounts paid and though repeatedly represented by the appellant (complainant) and though the appellant was always ready and willing to pay the amount of the remaining consideration, the respondent no. 1 was not handing over the actual and peaceful possession of the said bungalow to the appellant (complainant) after completing construction work of the said bungalow and was not executing the Sale Deed also and in that way, there was unfair trade practice and defect in the services on the part of respondents. Hence, the appellant (complainant) had filed the above -numbered complaint in the Hon"ble Navsari District Consumer Disputes Redressal Forum and has prayed to grant relief sought for in the complaint."

8. THE counsel for petitioner submits that it was in the knowledge of the complainants that the construction was complete and even then, the complainants were not paying the rest of the amount. I was surprised to hear such like frivolous argument. I asked the counsel for petitioner that did the OPs give any notice to the complainant that the building is complete, make the further payment and get the possession of the same. The counsel for petitioner replied in negative. This facts shows malafide intention on the part of the OPs. It is admitted case that the complainants have deposited Rs.5 lacs each with the District Forum.

9. BOTH the revision petitions are meritless and same are dismissed. Both the OPs are directed to handover the peaceful possession of the premises in dispute to the complainants and execute sale deed within 45 days from today, otherwise, they will have to pay penalty of Rs.5000/- per day till the needful is done. Both the revision petitions are frivolous and vexatious. Therefore, I am constrained to impose further costs in the sum of Rs.10,000/- on the petitioner/OP which will be deposited with the Consumer Legal Aid Account of this Commission, within 45 days, otherwise it will carry interest @ 9 % p.a., till its realization.

10. THE compliance report be filed by the Registry on 04.08.2015. Copies of this order be sent to the parties immediately, including OP no. 2. Both the OPs are liable jointly and severally and will pay the penalty to the extent of 50% each, if the needful is not done, as the order passed by this Commission in the case of " Prosenjit Sarkar and Anr. Vs. Lav Arunbhai Vaidya and Others" , was upheld by the Apex Court in Special Leave to Appeal (Civil) No. 2545 -48 of 2015 dated 19.01.2015.