

**(2012) 09 NCDRC CK 0098**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

Merridian Promoters Pvt Ltd , P.

S. Mangapathi Raju

APPELLANT

Vs

Harish Narayan Raghani , Dinesh

Narayan Raghani

RESPONDENT

**Date of Decision:** Sept. 5, 2012

**Citation:** 2012 0 NCDRC 510

**Hon'ble Judges:** J.M.Malik , Vinay Kumar J.

**Advocate:** Radha , K.Subba Rao

**Judgement**

1. 1. THE complainants/respondents purchased a flat bearing No. GF-2 constructed by the opposite parties/petitioners under an agreement to sale for consideration of Rs.35 lakh on 16.11.2005. THE sale deed was also executed in their favour.

2. DURING June,-July, 2007, the complainants informed the opposite parties that flat No. GF-2 had started developing seepage in their masters bedroom's bathroom upon which the petitioners rectified the defect at their own cost. The complainants also sent a letter of thanks on 29.12.2008 but again complained the problem of seepage in the same letter. The opposite parties replied that the said problem cropped up because the complainants had carried out certain internal works which fact transpired at the time of their investigation. Legal notice was sent and replied. Ultimately, the complaint was filed before the District Forum at Vishakhapatnam praying that the opposite parties be directed to rectify the seepage problem or to pay a sum of Rs.2 lakh and to pay a sum of Rs.3 lakh towards loss/damages and for mental agony suffered by the complainants and also to pay a sum of Rs.5,000/-

towards cost of litigation. The opposite parties contested this case.

3. THE District Forum allowed the complaint directing the opposite parties to get the defects in the complainant's apartment rectified at their own cost within three months, failing which they shall pay a sum of Rs.1 lakh with interest @9% per annum from the date of order till the date of payment. It also awarded the compensation in the sum of Rs.50,000/- in favour of the complainants.

4. THE State Commission party allowed the appeal preferred by the petitioners. It directed the opposite parties to pay Rs.25,000/- as compensation and Rs. 1 lakh with interest @9% per annum from the date of the order of District Forum till payment with costs.

5. WE have heard learned counsel for the petitioners. She argued that the possession was given to the complainants to their satisfaction, therefore, they cannot turn back and allege the defects thereafter. She further explained that the above said problem cropped up only after the complainants had carried certain internal works and consequently the petitioners cannot be held liable for seepage. She submitted that the order passed by the fora below is perverse and should be set aside.

6. WE clap no importance to these submissions. It stands proved on record that the petitioner has got continuous seepage problem. It is also apparent that when for the second time, the opposite parties refused to attend the repairs, the complainant got damaged value assessed through Chartered Engineer, Soham Consultants. They

visited the flat and submitted the report. It opined that the damage occurred due to ceiling as well as various structures and evaluated the value at Rs.92,195/- . The report further reveals that wall of the kitchen on all four sides had dampness due to water seepage which even caused damage to the wood work in the kitchen. The Chartered Engineer opined that as a measure of rectification the walls would have to be broken alongwith the pipelines as the plumbing is internal. It also opined that the opposite parties/builders could not prove that the dampness and the damage to various structures feasible to the eye were, due to fault of the complainants. It is, thus, clear that the above said expert has supported the case of the complainants. It is also clear that instead of rectifying the problems, the petitioners put off the same on one pretext or the other. No specific reason was given as to why the damage was caused due to internal work carried out by the complainants. The said internal work was never explained. It was also not explained as to how it caused damage.

7. KEEPING in view the facts and circumstances of the case, we find no force in the revision petition and the same is therefore, dismissed.