

(2003) 03 NCDRC CK 0009

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

A.S. Raman

APPELLANT

Vs

VANTAGE HOMES (P)
LTD.

RESPONDENT

Date of Decision: March 24, 2003

Citation: 2004 2 CPJ 9 : 2004 2 CPR 662

Hon'ble Judges: P.Ramakrishnam Raju , Mamata Lakshmanna J.

Advocate: S.Nageshvar Reddy , A.Ramakrishna Reddy

Judgement

1. THE case of the complainant is that the opposite parties 2 and 3 who are husband and wife are doing real estate business under the name and style of "Vantage Homes". THEy offered plots in S. Nos. 101/A to 12 in Miyapur, R.R. District. THE complainant paid a sum of Rs. 3 lakhs towards sale consideration for two plots bearing Nos. 424 and 425. He also paid Rs. 1,60,000/- towards registration, Municipal development, etc. But the opposite parties could not convey the plots to the complainant as promised on some pretext or the other. Hence he filed this complaint for recovery of the amount paid by him together with interest at 24 per cent per annum and damages of Rs. 2 lakhs.

2. IN the counter-affidavit filed by the opposite parties not only payment of Rs. 4,60,000/- by the complainant was denied, but stated that they have issued receipts to the complainant for the said amount towards security for obtaining loan from the institutions for doing share business. They denied that any cheques were issued by them as alleged by the complainant. There is no deficiency in service and hence the complaint may be dismissed with exemplary costs. The complainant filed his

affidavit besides filing Exs. A-1 to A-20 while the opposite parties filed the affidavit of the second opposite party besides filing Exs. B-1 and B-2.

The point, therefore, that arises for consideration is whether there is any deficiency in service on the part of the opposite parties, if so, to what relief, the complainant is entitled to?

The case of the complainant is very simple. The opposite parties 2 and 3 who are doing real estate business offered plots in S. Nos. 101/A to 12 in Miyapur, R.R. District, Accordingly, the complainant paid a sum of Rs. 3 lakhs towards plot Nos. 424 and 425 besides paying Rs. 1,60,000/- towards stamp and registration charges as well as for development of the land. He also filed Exs. A-1 and A-2 receipts issued by the second opposite party stating that a sum of Rs. 25,000/- is received under each of those receipts for plot Nos. 424 and 425 respectively. They are dated 2.8.1995. On 10.9.1995 the complainant again paid a sum of Rs. 50,000/- towards plot No. 424, and on 15.9.1995 Rs. 75,000/- towards Plot No. 425 and obtained Exs. A-3 and A-4 receipts from the second opposite party. So also on 25.9.1995 a further sum of Rs. 75,000/- was paid towards plot No. 424 and on 10.10.1995 Rs. 50,000/- was paid towards plot Nos. 424 and 425 and the second opposite party issued Exs. A-5 and A-6 receipts. All these receipts are stamped receipts and they are issued from the receipt book of Vantage Homes Private Limited, Hyderabad, the first opposite party. Added to this by their letter dated 2.8.1995 the first opposite party informed the complainant that plot No. 425 was allotted to him. The payment of Rs. 25,000/- under Ex. A-2 was also referred to therein along with receipt number. So also under Ex. A-8 dated 2.8.1995 the complainant was informed about the allotment of plot No. 424 and Ex. A-1 receipt bearing No. 077 was also referred to in the said letter. Thus there is ample proof for payment of Rs. 3/- lakhs by the complainant.

3. IT is the case of the complainant that as the complainant went on demanding refund of the amount as the opposite parties failed to convey the plots as promised, the opposite parties issued two cheques dated 14.12.1996 for Rs. 1 lakh each and Rs. 2,60,000/- under cheque dated 6.1.1997. Exs. A-9 and A-10 are two bounced cheques for Rs. 1 lakh each dated 14.12.1996 and Ex. A-13 is the bounced cheque for Rs. 2,60,000/-. These cheques issued by the second opposite party as proprietor of Vantage Homes clearly show that as the opposite parties failed to convey the plots as agreed, the second opposite party agreed to refund the amount of Rs. 3 lakhs paid towards the consideration for the two plots as well as Rs. 1,60,000/- paid towards stamp, registration and development charges as contended by the

complainant. Exs. A-10, A-12 and A-14 show that the cheques were dishonoured when presented. These documents amply support the version of the complainant.

The learned Counsel for the opposite parties vehemently urged that the complaint is filed against M/s. Vantage Homes Private Limited but the cheques were issued by Vantage Homes. Therefore there is no connection between the issuance of the cheques and the first opposite party. We cannot accept this contention.

4. IN Exs. A-7 and A-8 letters, it is mentioned that the project is Vantage Homes. Therefore Exs. A-1 to A-6 receipts were issued in the name of Vantage Homes Private Limited while Exs. A-7 to A-9, A-11 and A-13 were issued in the name of the Vantage Homes. Sometimes the third opposite party signed as Director for Vantage Homes and sometimes the second opposite party signed as proprietor, Vantage Homes besides himself signing as "for Vantage Homes Private Limited". Therefore there is no uniform procedure adopted by the opposite parties and the opposite parties alone have adopted different names like name of the proprietary concern or the name of the Project. Though receipts are issued, the opposite parties admitted that they are issued in the name of Vantage Homes Private Limited. The opposite parties also admitted that they started the project under the name and style as Vantage Homes Private Limited and again stated that the opposite parties 2 and 3 are its directors.

In the affidavit filed by the second opposite party he described himself as Director of the first opposite party Company. He however stated in the same affidavit that the first opposite party is a registered concern dealing in real estate and started a project under the name and style as Vantage Homes Private Limited. Therefore all these dubious methods are adopted by the opposite parties 2 and 3 in either issuing the receipts or in their correspondence or while issuing the cheques in different names at different times. Therefore we are the view that it is the opposite parties that adopted different names at different times while issuing receipts, letters and cheques and yet raised an objection that inasmuch as the cheques are issued "for Vantage Homes" and they are not issued on behalf of the first opposite party. That apart this plea is not raised in the written version but only raised for the first time in the arguments. For all these reasons, this objection in our view need not be countenanced.

It is next contended by the learned Counsel for the opposite parties that the receipts and cheques were issued for security purpose. We are at a loss to understand what type or security the opposite parties want to provide to the complainant. They have issued stamped receipts Exs. A-1 to A-6 besides issuing letters of allotment Exs. A-7

and A-8 wherein receipt numbers are also mentioned. Later cheques were also issued not only for Rs. 3 lakhs but also for Rs. 1,60,000/- which were collected towards stamp, registration and development charges. The plea that all these receipts, two letters and three cheques were issued towards security is unbelievable. It is not explained why the opposite parties issued so many items on several dates towards security instead of executing one letter or one cheque. The explanation is far from convincing. It is only a vain bid to somehow avoid payment and wriggle out of the liability.

5. IT is further contended by the learned Counsel for the opposite parties that as per the judgment in CD No. 198/1997 marked Ex. B-2, the learned XVII Metropolitan Magistrate, Hyderabad found that the opposite parties are found not guilty for the offence under Section 138 of N.I. Act on the ground that the complainant failed to show an agreement of sale between the complainant and accused and the amount was paid towards sale of flats (the word "flats" is a mistake for "plots"). The judgment of the Criminal Court regarding the existence of the agreement is not binding on this Commission. The allegation of the complainant that there existed agreement between the parties has been amply established by both oral and documentary evidence before us. That apart the judgment of the Criminal Court is the subject-matter of appeal before the High Court and it is pending and hence no finality to the order of the Criminal Court can be attached.

6. FOR all these reasons we are satisfied that the opposite parties having collected huge money from the complainant failed to allot plot Nos. 424 and 425 to him as promised. Even after an agreement to pay back the money, the opposite parties failed to honour the cheques issued by them. Hence there is deficiency in service on the part of the opposite parties.

In the result, the complaint is allowed by directing the opposite parties to refund a sum of Rs. 4,60,000/- to the complainant with interest at 24 per cent per annum from the date of respective payment till realisation together with a sum of Rs. 25,000/- towards damages and costs of Rs. 10,000/-. Time for payment six weeks. Complaint allowed.