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(2000) 12 NCDRC CK 0012

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SADHU M.SHETTY

APPELLANT

Vs

TUSHAR G.UPPIN

RESPONDENT

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Date of Decision: Dec. 8, 2000

Citation: 2001 1 CPJ 310

Hon'ble Judges: T.Jayarama Chouta , B.H.Kamalamma , Abdul Perwads J.

Final Decision: Appeals dismissed

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Judgement

1. THESE three appeals arise out of a single order by different parties in the said complaints and hence, they are disposed of by this common order.

2. APPEAL No. 266/97 is by the complainant against the order dated 19.3.1997 passed by the District Forum, Belgaum, in Complaint No. 16/ 94 for the same reliefs which have not been granted, whereas APPEAL No. 299/97 is by opponent Nos. 9 to 15 against the same order, While APPEAL No. 274/97 has been filed by opponent Nos. 1 and 2 and 4 to 8.

The necessary facts for the purpose of disposal of these appeals are these : Opponent No. 2 is a partnership firm registered under the Indian Partnership Act and carrying on its business under the name and style of M/s. Neha Promoters and Builders at No. 5351, Risaldargalli, Belgaum and opponent Nos. 1 and 3 to 8 are the partners of the abovesaid firm. Opponent No. 3, one Sri Nazir Ahamed Ibrahimsaheb Dharwadkar is the owner in actual possession of the open space property bearing Nos. 5945 and 5946 situated at M.G. Road, Tilakwadi, Belgaum. The said opponent No. 3 applied for the building construction permission before the

Belgaum Urban Development Authority and they have issued a Commencement Certificate on 20.9.1989 in favour of the owner of the C.T.S. Nos. 5945 and 5946 to construct a flat over the said properties. Subsequently, the said opponent No. 3 had executed a General Power of Attorney in favour of opponent No. 2-Firm to construct flats over the said properties and also to sell the flats to the intending purchasers. He has also become one of the partners of opponent No. 2-Firm. As per the G.P.A., the Deed of Partnership, opponent Nos. 1 and 7 were the authorised persons to enter into construction agreement for and on behalf of opponent No. 2- Firm and also to execute the registered sale deed in favour of the intending purchasers.

The complainant has mentioned in his complaint that after obtaining the legal opinion and satisfied himself that the opponents were legally authorized to construct residential flats in those landed properties agreed to purchase a flat on the terms and conditions mentioned in the construction agreement dated 16.4.1990 entered into between him and respondent Nos. 1 to 8. In the said agreement it was stipulated that the opponents have to built the construction of Flat No. 1 on the 1st Floor of C.T.S. Nos. 5945 and 5946 within 18 months from the date of execution of the agreement and have to intimate him to enable him to occupy the flat. It was also stipulated under the agreement that in the event of failure to construct a flat by the opponents within 18 months as agreed, the bidder shall pay 18% interest p.a. from 16.10.1991 till the date of handing over possession of the flat to him.

3. THE complainant has obtained a housing loan from Vijaya Bank, where he was working to the tune of Rs. 2,19,500/- and the instalment amount was paid by his Bank as per the understanding and the construction work was going on smoothly upto December, 1990. In all a sum of Rs. 1,10,000/- was paid by the Bank to the Firm, besides the cash payment of Rs. 27,700/- paid by the complainant to the opponents. THE grievance of the complainant was that thereafter opponent Nos. 1 to 8 have not at all intimated any progress of construction of flat No. 1 to him and they have also not demanded any further instalment. Later, he came to know that there was some dispute among the partners i.e., opponent No. 3 had taken the matter to the Civil- Court and got seized the Bank account of the firm. In spite of repeated requests and reminders sent by the complainant, the construction of flat had not completed as per the agreement.

The complainant further reads that on 19.12.1992 he received a letter dated 12.12.1992 from M/s. Divine Promoters and Developers, informing him that the firm M/ s. Neha Promoters and Builders (opponent No. 2) which had undertaken to construct the flats was dissolved due to certain difference of opinion among the

partners. It has also informed that they have undertaken the work of construction of building left by M/s. Neha Promoters and Builders. But, the complainant had not received any letter from M/s. Neha Promoters & Builders regarding the dissolution of firm and entrusting the work of completing the flats to M/ s. Divine Promoters & Developers. In spite of request, M/s. Neha Promoters and Builders have not given the complainant a consent letter to enter into construction agreement with M/s. Divine Promoters & Developers, though the said Promoters have agreed to construct the flat at the prevailing market price. Under those circumstances the complainant could not have entered into an agreement with M/s. Divine Promoters & Developers. Hence, having left no choice for him, he has approached the D.F., Belgaum for his redressal. He has further stated that since opponent Nos. 9 to 15 are claiming some ownership rights over C.T.S. Nos. 5945 and 5946 and continuing further work left by M/s. Neha Promoters & Builders and also to avoid technical defects he had impleaded them as opponent Nos. 9 to 15.

4. ON receipt of the notice from the D.F., opponent No. 1 filed his version admitting that the complainant had entered into construction agreement with M/s. Neha Promoters and Builders, but denied the other contentions raised by the complainant. It has admitted the fact that there was dissolution of the firm and there is a suit pending between the partners. That being so, he was enabled to continue with the work taken by the firm. Opponent Nos. 4 and 5 also filed their separate written objections bringing to the notice of the DF about the pendency of the civil suit. Opponent No. 9 filed its objection contending that it has no direct or indirect dealing or transaction with the complainant. Opponent Nos. 10 to 15 filed their separate objections statement. According to them, there was no privity of contract between the complainant and themselves. However, they admitted that M/s. Divine Promoters and Developers had undertaken the work of developing the property at present at the request of the owner of the said property, as the earlier promoters and developers i.e., M/s. Neha Promoters and Builders had transferred the property in question and as there was an understanding and in order to meet out the possible obstacles the said M/s. Divine Promoters & Developers had provisionally agreed with M/s. Neha to continue the construction entered into on the same terms and conditions which they have already committed.

Both the sides have produced voluminous documents and have filed their affidavits in support of their contentions.

The DF on the basis of the material placed by the parties has come to the conclusion that there was deficiency in service on the part of the opponents and

accordingly, passed the following order:

"The complaint is allowed with costs. The opposite Nos. 1 to 8 and opposite No 10 being successors of opposite No. 2, should hand over vacant flat No. 1 situated in C.T.O. Nos. 5945 and 5946 situated at M.G. Road, Tilakwadi, Belgaum, after completing the construction as agreed, within 30 days from the date of receipt of this order, after receiving the balance consideration amount as agreed, failing which the complainant is entitled to recover Rs. 1,10,000/- with interest at 18% pa. from 16.10.1991 and Rs. 25,000/- as compensation for mental torture and agony and about Rs. 50,000/- as compensation for having caused loss to the complainant by not handing over the flat as agreed in view of the present rise in the prices and for having deprived him the enjoyment of living in his own flat for all these years within 60 days from the date of receipt of this order. Advocate's fee is fixed at Rs. 500/-."

5. AS mentioned above Appeal No. 266/97 has been filed by the complainant in person. He has also submitted his written argument. At the time of hearing the matter Mr. N.P. Kumar, learned Counsel filed his memo of appearance on behalf of the appellant and adopted the written argument submitted by the original complainant. We have gone through the written argument. The main grievance of the appellant in this appeal is that the DF ought to have granted compensation of Rs. 60,000/- towards mental torture undergone by him during the last 9 years and compensation of Rs. 50,000/- awarded to him was too meagre and the DF ought to have awarded compensation of Rs. 2,40,000/-. We have perused the written argument in the light of the judgment passed by the DF. The DF has taken into consideration the various circumstances in passing the said order. It has placed reliance on the materials placed by the parties and the order passed by the DF does not suffer from any legal infirmity. Hence, we see no merit in the contention raised by the appellant. In A.No. 266/97, opponent Nos. 9 to 15 have contended that the DF was not justified in making them also liable alongwith other opponents. AS mentioned above the DF has directed opponent Nos. 1 to 8 and opponent No. 10 being the successor of opponent No. 2 to hand over vacant flat No. 1 situated in C.T.S. Nos. 5945 and 5946 after completing the construction or else to refund the amount collected from the complainant. Even in the version filed by these appellants, they have admitted that they have undertaken to complete the remaining work from opposite party-2 and that being so, it cannot be said that the order passed by the DF is illegal.

6. NOW coming to the appeal filed by the other opponents, the learned Counsel for the appellant had not appeared before this Commission to argue the said appeal. However, we have gone through the grounds of appeal raised in the appeal memo. All these grounds have been (sic.) by the DF while passing the impugned order. None of the grounds raised in the appeal memo deserves any consideration. The DF on the basis of the materials placed by the parties has come to the correct conclusion. That being so we see no merit in these appeals. Accordingly, all these appeals are dismissed. However, having regard to the facts and circumstances of the case, we direct the parties to s bear their own expenses.

The original judgment passed in these appeals shall be kept in Appeal No. 266/97 and a copy thereof shall be kept in the rest of the appeals. Appeals dismissed.