
(2003) 02 NCDRC CK 0060

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

S.Krishna

APPELLANT

Vs

S.Malla Reddy

RESPONDENT

Date of Decision: Feb. 14, 2003

Citation: 2003 3 CLT 611 : 2003 4 CPJ 271 : 2004 1 CPR 215

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

Final Decision: Complaint partly allowed

Judgement

1. THE complainant entered into an agreement for sale with the opposite party for purchase of Flat No. C7 in second floor admeasuring 987 sq. ft. including 213 sq. ft. of common area together with undivided share of 22 sq. yards of land on 15.7.1996 for a consideration of Rs. 2,65,000/- and paid the entire consideration including registration charges of Rs. 35,000/-. Though the opposite party promised to hand over the finished flat in the second floor with all amenities including lift, marble flooring, separate electrical transformer, 3 phase power supply, etc., in November, 1996 itself, but failed to hand over the same and started demanding escalation charges. However, instead of entering into a quarrel and litigation with the opposite party the complainant agreed to pay an additional sum of Rs. 2,45,000/- towards marble stone, teakwood in bed room and wardrobe, kitchen and sliding shutters to cover the loft with plywood, and granite kitchen platform as well as drinking water. Even then the opposite party provided only country wood and the windows without panes. Windows and doors are left without bolts, hinges etc. Though it is promised plastering of the wall with cement and sponge finish, the opposite party plastered the walls with lime. THE opposite party similarly provided mosaic flooring of different shades and uneven finishing and some places were left without flooring and sanitary fittings are broken. Even the municipal water though promised is not provided. Lift and transformer though promised not provided. Though sale deed was executed but it was without the knowledge of the complainant and without giving him an opportunity to check the building. Hence this complaint is filed claiming a sum of Rs. 4,75,000/- received by the opposite party, as well as Rs. 35,000/- towards registration charges and damages of Rs. 5 lakhs.

2. IN the written version filed by the opposite party he denied the execution of the agreement including provision for lift, marble flooring, electrical transformer, etc. It is further stated that he is the owner of 444 sq. yards plot in Sy. Nos. 152 to 154 of Thokatta Village and after obtaining necessary permission he proposed to construct flats named as "M.R. Towers". The complainant showed interest to purchase Flat No. C-7 in second floor comprising of 774 sq. ft. with 213 sq. ft. common area and accordingly an agreement was entered into on 15.7.1996. The complainant agreed to pay the balance and get the registration done. The complainant paid the balance only on 13.3.1997 and got the sale deed registered on that date. The brochure issued by the opposite party clearly spells out the material to be used and the facilities to be provided. There is no promise to provide lift either in the brochure, agreement of sale or in the sale deed. It is clearly stated that flooring will be with white mosaic and skirting. Regarding separate electrical transformer an amount of Rs. 22,940/- was deposited with APSEB on 6.2.1998 being the 10 per cent of the estimated value and the opposite party installed the transformer incurring huge expenditure of Rs. 2,65,000/- and the complainant is drawing supply from the transformer. Though 3 phase supply was provided the complainant got fixed single phase meter to his flat. If he wants, he can switch over to 3 phase power supply. The allegation in para 3 of the complaint that with a view to avoid quarrel, the complainant agreed to pay an additional amount of Rs. 2,45,000/- for certain works are false. There is no such agreement. The complainant agreed to purchase the flat for a sale consideration of Rs. 3,75,280/- and Rs. 35,000/- was required for stamp duty and registration and he paid the said amount only. Even the receipts filed by the complainant disclose that the amounts were paid for providing flooring with marble stones, wood work with teakwood and plywood, for providing granite for kitchen platform and municipal water for drinking. As per the promise a bore-well was dug. All other allegations that wood work was not done, window panes not provided, bolts and hinges not fixed to the door, etc., are not correct. There is no agreement to provide municipal water for drinking but he promised to supply water through overhead tank. As promised a sump was provided for storing municipal water. The purchasers have to apply for water connection in their names. Hence, the complainant is not entitled to any relief.

The complainant besides filing his affidavit filed Exs. A-1 to A-6A. The opposite party filed Exs. B-1 to B-3 besides filing his counter affidavit and also through third party.

The point that arises for consideration is whether there is any deficiency in service on the part of the opposite party.

3. EXECUTION of agreement of sale entered into between the complainant and the opposite party on 15.7.1996 marked Ex. A-1 is not in dispute. As per the said agreement the vendor agreed to sell flat No. C7 on second floor with a built-up area of 774 sq. ft. in M.R. Towers situated at Thokatta Village near Park View Enclave, Bowenpally, Secunderabad Cantonment along with undivided share of land measuring 22 sq. yards or 20 sq. metres for a consideration of Rs. 1,70,280/-. The opposite party received an advance of Rs. 10,000/- and balance of Rs. 1,60,280/- on sanction of loan from Railways i.e., at the time of registration. The opposite party also agreed to provide cement mortar plastering with sponge finishing, white mosaic flooring and skirting, Sal/Assam wood frame with solid flush shutters for doors and the main door shutter of decolam finish, windows of Sal/Assam wood frame and shutters glazed, lofts in both bed rooms and kitchen, concealed pipelines and showers, white ceramic tiles up to 5 feet height in bath rooms, in kitchen polished Cuddapah stone platform and 2 feet height white ceramic tiles on the walls, concealed electrical wiring, interior painting with oil bound distemper and exterior with snowcem and enamel painting to doors and windows, water supply with bore-well from overhead tank 24 hours and sump for municipal water.

It is agreed that sale deed was executed on 13.3.1997. But the complainant issued a registered notice on 25.9.1997 and filed this complaint on 6.3.1998 contending that the sale deed was executed without his knowledge and without allowing him to inspect the premises. Though he has paid the entire consideration including registration charges, the opposite party did not complete the construction but demanded escalation charges. The complainant with a view to purchase peace, paid an additional sum of Rs. 2,45,000/- towards escalation as well as the difference of cost for teakwood, flooring, grill works in the apartment etc. However the opposite parties do not admit any such excess payment.

4. HENCE the question that falls for consideration is, what is the sale consideration for the flat in question ?

In agreement Ex. A-1, the sale consideration of the flat is mentioned as Rs. 1,70,280/-. But the sale deed Ex. A-2 shows the consideration as Rs. 2,63,500/-. The difference of sale consideration in those two documents accounts for either subsequent changes that are brought about in the construction or specification or escalation. While the complainant says that he paid Rs. 2,45,000/- but the opposite party denies any such escalation or improvements as contended by the complainant and states that the actual sale consideration is Rs. 3,40,280/-. The opposite party has admitted that a sum of Rs. 3,75,280/- was received by him, as there is ample documentary proof for this sum, out of which Rs. 35,000/- is paid towards registration charges. If Rs. 35,000/- is deducted out of the admitted amount of Rs. 3,75,200/- the opposite party conveniently claimed that Rs.

3,40,000/- is the sale consideration which is neither shown in the sale agreement nor sale deed. Therefore, this contention cannot be accepted.

The sale deed was executed later. Hence we have to adopt the figure mentioned in the sale deed because by then the construction is over and the flat was ready for delivery. Hence the difference of Rs. 93,220/- between the agreement of sale and sale deed accounts for either escalation or for improvements as contended by the complainant.

5. EVEN then it is admitted by the opposite party that he received a total sum of Rs. 3,75,280/- and if the sale consideration of Rs. 2,63,500/- plus Rs. 35,000/- towards registration is deducted, still a balance of Rs. 76,780/- is left excess in the hands of the opposite party. Perhaps this accounts for improvements in the building as suggested by the complainant which was not done by the opposite party. Hence there cannot be any impediment for giving a direction to the opposite party to refund the sum of Rs. 76,780/-. However we have to see whether the complainant is entitled to any amount exceeding this figure.

6. AS already seen, the opposite party contends that there is no agreement for improvements like replacement of flooring with marble stones, using teakwood instead of country sal-wood etc., as referred to by the complainant. Hence it is clear that the opposite party did not make any changes or alterations as desired by the complainant from the original agreement. The Commissioner who inspected the premises along with the Engineer filed his report dated 18.12.2002 stating that a sum of Rs. 1,02,448/- is required for repairs, the details of which are given in the abstract filed along with his report. The Commissioner himself is an Engineer-Advocate besides he also took the assistance of another Engineer to arrive at the estimate. Under these circumstances we have no hesitation in accepting the estimate given by the Commissioner.

The complainant sought for refund of the entire amount paid by him to the opposite party. We are of the view that he is not entitled to this relief, inasmuch as sale deed was already executed and registered pursuant to the agreement entered into by the parties. Hence we cannot hold that there is any deficiency in service on the part of the opposite party in conveying the property to the complainant. As such this relief cannot be granted.

However as we found that there are defects in the construction, deficiency in service is writ large to the extent pointed out by the Commissioner.

7. THERE is also dispute with regard to the handing over of the possession of the flat. But the document Ex. A-2 contains the clause that the vendor has delivered physical possession of the schedule property to the vendee at the time of execution of the sale deed. However, the complainant contends that physical delivery was not given to him. The Commissioner also has reported that the flat was not in use for the past three years. The Commissioner also reported that both parties claimed that they did not lock the premises and that they have no objection to broke open the lock. Accordingly, the Commissioner broke open the lock in the presence of both parties and their Counsel. From this we can infer that the flat was not physically delivered to the complainant, as otherwise the complainant would not have left the flat unoccupied for such a long period of three years having paid not only the total consideration but something more also. Had it been true the opposite party would have given notice when the flat is ready for possession of and that the complainant can take possession, otherwise he would not be responsible for any consequences. The fact that no such notice was given also supports the contention of the complainant that possession of the flat was not delivered to him. Whatever is the reason, the disputes between the parties have come to the surface and even to the extent of keeping the flat empty for such a long time which is certainly not to the benefit of either of the parties.

Having regard to the circumstances, instead of granting main relief i.e., refund of the entire amount paid by the complainant, we are inclined to grant the relief of estimated damages of Rs. 1,02,448/- required for repairing the premises as discussed in detail in the Commissioner's report.

8. IN the result, the complaint is allowed in part to the extent indicated above by awarding a sum of Rs. 1,02,448/- against the opposite party in favour of the complainant with interest at 18 per cent per annum from the date of filing of the complaint i.e., 6.3.1998 till payment, with costs of Rs. 5,000/- as well as Commissioner's fee of Rs. 8,000/-. It is open to the complainant to collect the key which was deposited by the Commissioner in this Commission.

Six weeks" time is granted to the opposite party for payment. Complaint partly allowed.