

(1994) 01 NCDRC CK 0036

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

HAPPY HOME

APPELLANT

Vs

RAWAL BUILDERS And
REAL ESTATE
DEVELOPERS

RESPONDENT

Date of Decision: Jan. 31, 1994

Citation: 1994 1 CPR 759 : 1994 2 CPJ 262

Hon'ble Judges: G.G.Loney , Atanasio Monteiro , Subhalakshimi Naik J.

Final Decision: Complaint partly allowed

Judgement

1. THE complainant is a Society formed by flat owners of the building which is identified as Happy Home Apartments constructed by the O.P. THE construction of the building was completed and the possession delivered to the Members of the complainant's Society in the year 1987.

2. THE complainant states that the O.P. had entered into independent agreements with all the members/flat holders of Happy Home Apartments for the sale of the respective flats to the purchasers upon certain terms and conditions incorporated therein.

The complainant further states that clause 16 of the said agreement provided for the sale and conveyance of the building comprising of the 8 flats along with the land beneath in favour of the then proposed Happy Home Apartments Housing Co-operative Society Ltd., or in the alternative, in the absence of formation of the Society, the O.P. had agreed to sell and transfer unto the different flat owners their respective flat together with undivided right, title and interest to 1/8th part of the

plot in which the building was constructed.

The complainant Society was registered under No. MSG-(b) 59/South Goa/92 on 20.3.92 and had requested the O.P. to provide NOC for sale from the Southern Planning & Development Authority and Tax Clearance Certificate under the Income Tax Act as required under the prevailing Law at the time of registration of the sale deed. A lot of correspondence was exchanged between the complainant and the O.P. and since the O.P. allegedly failed to comply with the requirement of clause 16 of the agreement, the complainant complained to the Society Registrar of Co-operative Societies, South Zone, Margao.

3. THE Society Registrar of Co-operative Societies, South Zone, Margao vide their letter No. 5-452-1992/ARSZ-HSG dated 12.11.92 requested the O.P. to take appropriate action to execute the sale deed before 30.11.92. THE O.P. replied to this letter on 28.11.92 under reference No. RBRED/92-93 and conveyed their willingness to execute the sale deed.

Subsequently, on 9.1.93, the complainant requested the O.P. to remain present at the Sub-Registrar's office at Margao on 20.1.93 at 4 p.m. to execute the sale deed and to furnish the copies of Tax Clearance Certificate and NOC from the Southern & Development Authority as well as the Power of Attorney of Shri Manoj Rawal who was supposed to execute the sale deed.

4. THE O.P. conveyed to the complainant Society by their letter No. RBRED/93-94 dated 19.1.93 that they, the O.P. have applied for Tax Clearance Certificate.

The complainant Society states that since the O.P. failed to produce the tax clearance certificate till the end of February 1993 they issued a notice through the lawyer on 5.3.93 calling upon the O.P. to execute the sale deed within 15 days from the receipt of the notice. The O.P. having failed to comply, the complainant has filed this complaint on two grounds : (1) Praying for direction to the O.P. for registration of the sale deed; and (2) For compensation for having to spend money for the repairs of the pipeline and access road.

The O.P. have filed their written version stating that the flats were ready and occupied by the flat owners in the year 1987 and as such the complaint is barred by

limitation. The O.P. feigns ignorance of the leakage in the toilet pipeline and states that the O.P. cannot be held responsible for maintenance of the buildings six years after the possession is delivered. The O.P. further affirms that the leakage and breakage of the pipeline is not due to faulty material used by the O.P. The O.P. states that the pipeline/plumbing system ought to be properly maintained by the complainant Society. The O.P. confirms that they have provided the road to the complainant Society which is also being used by the neighboring buildings.

5. THE O.P. states that the execution of the sale deed has been delayed on account of non-approval of the draft sale deed.

6. THE complainant has produced on record agreement of sale dated 22.2.1991 between the O.P. on one part and one Mr. Blasco Quadros as Promoter/President of the proposed Happy Home Apartments Housing Co-operative Society wherein the O.P. has admitted that they have received the total consideration of Rs.12 lakhs from the flat owners of the complainant Society.

The O.P. has neither filed any evidence nor remained present on the subsequent dates of hearing. We have heard the arguments of the complainant. We have also perused the affidavit filed by the President of the complainant Society.

Admittedly, there is no default in payment of consideration on the part of the complainant Society and, admittedly, the O.P. has failed to execute the sale deed though agreed under clause 16 of the respective agreements executed with the various flat owners of the complainant Society. This non-compliance of the agreement positively amounts to deficiency in the services of the O.P.

7. ON payment of the total consideration, it is mandatory for the title of the built up premises along with undivided right, title and interest to the proportionate share of the land beneath to be transferred to the respective purchasers or to the Society

which comprises of these purchasers. The O.P. has failed to fulfill this requirement. Hence, the order. ORDER

The O.P. is directed to execute the sale deed concerning the building. Happy Home Apartments, comprising of the 8 flats along with the plot beneath in favour of the complainant Society within one month from the date of receipt of this notice. The claim for compensation for repairs is positively beyond the limitation provided under the Act. Hence, no relief. Complaint partly allowed.