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**(1997) 12 NCDRC CK 0018**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

R.Ramachandran

APPELLANT

Vs

GOKUL ESTATES

RESPONDENT

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**Date of Decision:** Dec. 3, 1997

**Citation:** 1999 1 CPJ 248

**Hon'ble Judges:** E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

**Final Decision:** Complaint dismissed

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**Judgement**

1. THIS complaint is by 26 persons. They have all got flats constructed for them by the opposite parties 1 to 5 on payment of consideration therefor. For construction of the flats the opposite party entered into an agreement with each of the flat owners/complainants. The case of the complainants is that the opposite parties have got a sanction plan for construction of the building of flats on an extent of 4 grounds and 603 sq. ft. based on which the cost of the flats was determined. The flats have been delivered to some of the complainants during October, 1993 and to others in April, 1994. On taking delivery, the complainants found to their horror that the side set back on the eastern side which should have been 21 to 27 ft. width for car parking had been violated and actually a set back less than 3 ft. width has been left and a compound wall has been constructed. The opposite parties have surreptitiously shown lesser extent in the building agreements and the sale deeds. The opposite parties 1 to 5 have duped the complainants. THIS amounts to fraud and deficiency in service on the part of the opposite parties. The complainants are entitled to have a set back on the eastern side of the building as per the sanctioned plan. In spite of several representations made to opposite parties 1 to 5 in this regard and also the 6th opposite party the M.M.D.A., nothing was done.

2. IT is the further case of the complainants that there are several defects in the building (the alleged defects have been enumerated in the complaint). Alleging these the complaint has been filed for directing the opposite parties 1 to 5 to provide a set back on the eastern side of the building as per the sanctioned plan failing which to pay a compensation of Rs. 16,00,000/-, and also to direct the opposite parties to rectify the defects and to pay a sum of Rs. 3,00,000/- as compensation for mental agony.

The opposite parties 1 and 2 filed a written version, but it is seen from the records that the opposite parties 3 to 5 did not file any written version. The opposite party No. 6, M.M.D.A. has filed a separate written version.

The opposite parties 1 and 2 in their written version denied that the cost price of the flat was fixed on the basis of the extent given in the approved plan. It contended that the complainants had taken delivery of flats in accordance with the building agreements and the sale deeds wherein the undivided share of the land to which each of the complainants were entitled to and the plinth area of the respective flats have been mentioned. It is further contended that in the said agreement and in the sale deed the total extent of the land has been given as 3 grounds and 1470 sq. ft. Having obtained the flat as per the terms and conditions of the agreement and sale deed it is not open to the complainants now to say that they together will be entitled to more extent of land and they cannot complain that there is lesser extent of set back on the eastern side of the building. They also contended that the allegation of defects in the building are not true.

3. THE 6th opposite party M.M.D.A. in their written version have submitted that there was a violation regarding the set back on the eastern side of the building, and regarding this action had already been taken. THEREfore there is no question of any deficiency in service on the part of this opposite party.

The point that arises for consideration is whether there was any deficiency in service on the part of the opposite parties 1 to 5 and if so, what relief can be granted to the complainant.

4. POINT : The only point argued before us is with regard to the alleged extent of the land set apart for set back on the eastern side of the building. In this connection it is pointed out that as per the building plan (Ex. A1) the measurement of the set back on the eastern side must be 21 ft. to 27 ft. width but actually there is only a set back of less than 3 ft. width has been left. The question is whether this amounts to deficiency in service on the part of the opposite parties 1 to 5 vis-a-vis the complainants. It is not in dispute that as per the building agreements (Ex. A2) and the Sale Deed (Ex. B5) the complainants will be entitled to 1/34 undivided share of the land of the measurement of 3 grounds and 1470 sq. ft. and it is not the case of the complainants that they have got any extent lesser than this. It is also not in dispute that they have got the plinth area as mentioned in the said documents. Therefore they cannot complain that the opposite parties have not satisfied the terms of the agreement or the sale deed. There is no contract between the complainants and the opposite parties that the opposite parties would provide a set back on the eastern side as stated in the plan Ex. A.I. Therefore there is nothing for the complainants to complain that there was no deficiency in service on the part of the opposite parties. If no set back has been set apart as per the approved plan it is for the 6th opposite party M.M.D.A. to take action against the opposite parties 1 to 5 and in fact as stated in the written version filed by the 6th opposite party action had been in fact initiated against the opposite parties 1 to 5.

As regards the defects alleged in the complaint, as seen above, that has been denied in the written version and there is absolutely no evidence let in by the complainants. As stated supra during the arguments before us no submission was made in this regard.

Thus we find no merit in the complaint. Therefore the complaint is dismissed. However, there will be no order as to costs. Complaint dismissed.