

Somasundara Vs CHAIRMAN MYSORE URBAN DEV. AUTHORITY

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: July 9, 1992

Citation: 1992 3 CPJ 185

Hon'ble Judges: D.R.Vithal Rao , K.R.Ramaswamy Iyengar , Susheela Cheluvvaraju J.

Judgement

1. IN this complaint, the complainant, has sought the reliefs as follows :

As a result of this delay, I have incurred the following losses: 1. 2 By way of interest on the money deposited with MUDA and my investment of

Rs. 1.00 lakh @ 18% for 18 months (calculated upto 3-2-1992) amounting to Rs. 85,725-00; 2. Loss incurred by way of rent now in occupation

@ Rs. 750/- per month Rs. 13,500/-; 3. Loss of staying in a smaller house rather than the house that would have been given possession to me @

Rs. 750/- p.m. amount to Rs. 13,500/- (It would cost me at least Rs. 1,500/- per month if I had to pay for similar accommodation) Based on the

above, I request you to kindly award me Rs. 1,12,725/- towards compensation by MUDA. To the extent the handing over of the house extends

beyond 18 months period the compensation now I have requested should be increased proportionally. IN addition, I also request you to direct

MUDA to pay as a penalty for all the harassments they have caused a sum of Rs. 10,000/- and cost of filing this case".

2. THE complainant made an application, in pursuance of a Notification dated 8-4-1987 issued by the opposite party, i.e., the Mysore Urban

Development Authority, for the allotment of a house and made payment of a sum of Rs. 72,500/- on 20-7-1987, as an initial payment for the

allotment of "A. 1" type house on the site measuring 40" x 60" costing Rs. 2,90,000/-.

The opposite party allotted house No. 15 on site No. 55 in Vijayanagar Layout, Mysore, in favour of the complainant on 3-8-1987. The balance

amount was to be paid in 3 equal instalments of Rs. 72,500/- at different stages. The 2nd instalment of Rs. 72,500/- was paid on 17-8-1988 and

the 3rd one was paid on 1-6- 1989.

Under clause 2 of the Notification, dated 8-4-1987, as per Ex. C-1, it is stated that the construction of the houses would be completed within

about 2 years from the date of allotment and arrangement would be made for handing over the possession of the house. The complainant further

averred that though 3 instalments, amounting to Rs. 2,17,500/- were paid to the opposite party by 1-6-1989, the opposite party failed to

complete the construction, the opposite party should have completed the construction within a period of 2 years from 3-8-1987, the date of

allotment, as per Clause 2 of Ex. C-1.

3. THE complainant further averred that he was to vacate the house in which he was residing on rent and to secure a separate house paying higher

rent as the construction of the house allotted was not completed within the stipulated period of 2 years. THE complainant nextly submitted that he

incurred loss by way of interest on the money invested and in payment of higher rent and the loss that he sustained by occupying a smaller

accommodation.

The complainant, on the basis of these averments, sought the reliefs as narrated above.

4. THIS complaint came to be filed on 14-1-1991.

The opposite party filed statement of objections and contended that this Commission has no jurisdiction to entertain the complaint under the

provisions of the Consumer Protection Act, 1986.

The opposite party further averred that the period of 2 years stipulated under Clause 2 of Ex. C-I, the Notification, calling for the applications was

only approximate period under which the houses were stipulated to be constructed but not any definite period under which a commitment was

made by the opposite party to construct the houses.

5. THE opposite party nextly averred that due to non-availability of building materials and failure of supply of electricity by the K.E.B., the

construction of the building could not be completed within the period stipulated under Ex. C-I.

6. THE opposite party repudiated the claims made by the complainant towards, interest and rent and sought the complaint to be dismissed.

During the enquiry, the complainant filed his affidavit. By the consent of the parties, documents Ex. C-1 to C-8 and Ex. R-1 to R-3 came to be

marked. The complainant and the opposite party did not lead any oral evidence.

Before considering the evidence, it is necessary to notice a preliminary objection raised by the learned Counsel for the opposite party. He

contended that the type of service which the opposite party renders is not a "service" within the meaning of the C.P. Act, 1986 and allottees of the

house are not "consumers" within the meaning of Section 2(1)(d) of the Act. This objection has to fail as the opposite party, i.e., MUDA, when it

has engaged in serving the public in the matter of providing housing by acquisition of land, development of site, construction of houses thereon and

allotment of plots and houses to the public, it is clear that it is engaged in rendering the service for consideration to the public and, therefore, those

who are allotted plots and houses from the opposite party are clearly consumers falling within the definition under Section 2(1)(d)(ii) of the C.P.

Act, 1986. The latest judgment of the National Commission, reported in I (1991) CPJ 1 (NC). U.P. Avas Evam Vikash Parishad (Housing and

Development Board) v. Garima Shukla and Others, covers this point

7. IT is not disputed that the opposite party did issue notification as per Ex. C-1 and in pursuance of which the complainant did make an

application and a house was allotted in favour of the complainant as per Ex.C-2. IT is also not disputed that the complainant did make payment of

Rs. 2,17,500/- in 3 instalments of Rs. 72,500/- each on different dates as referred above.

Clause 2 in Ex. C-1 - i.e., Notification, reads as under:

xx xx xx xx ""The construction of the houses will be completed within about 2 years from the date of allotment and arrangements will be made for

handing over of possession of houses. If the cost of the houses after their construction exceeds the present approximate cost mentioned, the

allottees before taking possession are directed to pay the excess amount"".

8. THIS shows that the period of 2 years stipulated therein is only an approximate period and not a definite and specific commitment made on the

part of the opposite party. By 2-6-1989, as referred above, only 3 instalments amount was collected and the amount of 4th instalments of Rs.

72,500/- was yet due by the complainant.

The order sheets maintained by this Commission show that the opposite party delivered the possession of the house to the complainant on 20-9-

1991. There was on that day, no supply of electricity and water to the said house. The affidavit filed by the complainant, in this regard reads thus:

But actually, the possession of the house was given to me only on 20-9-1991 i.e., after I filed this complaint. Even then the services of water

supply and electricity were not available and the water supply was provided only on 27-4- 1992"".

The order sheet dated 28-5-1992 of this Commission shows that by that time, the electricity was also supplied to the house.

9. THE opposite party collected only a sum of Rs. 57,500/- from the complainant towards the 4th and final instalment on 13-9-1991 and not the

amount of Rs. 72,500/- as stipulated in the allotment order, Ex. C-2. THE opposite party handed over the possession of the house to the

complainant on 20-9-1991.

10. THE allotment of me house was made in favour of the complainant as referred above on 3-8-1987 and the possession of which was delivered

to the complainant on 20-9-1991. THE Notification, i.e., Ex., C-2 provides that the value of the house of Rs. 2,90,000/- was only approximate

and provisional and at the time of delivery of the possession of the house, if the cost of construction were to exceed the present approximate value,

the allottees were to pay the said excess amount. In the present case, though the construction continued till about September 1991, the opposite

party did not collect any excess value but on the other hand collected Rs. 15,000/- less than the value as notified in Ex.C-1 and allotment, order

Ex. C-2. This shows that the opposite party has taken all the care to see that the value of the cost of construction did not exceeded and was fair

and reasonable,

Having regard to these facts and in the circumstances, the only point that arises for consideration is whether there was any deficiency in service

rendered by the opposite party and in consequence of which whether the complainant did suffer any loss or injury and, if so, what is the

compensation for which he is entitled to?,

As referred above, the allotment of the house was made by the opposite party in favour of the complainant on 3-8-1987 Clause 2 of the

Notification Ex. C-I, stipulated the approximate period of 2 years for the construction of the house from the date of allotment. The circumstances,

in the present case do show that there has been some delay in completing the construction, On 20-9- 1991, though the possession of house was

delayed on that day, the opposite party could not supply water and electricity to the house, it was done only in the month of April-May, 1992. This

would show that there was some delay in completing the construction of the house.

11. THE complainant in his complaint itself has stated thus:

I attended the office of the Commissioner, MUDA on 10-1-1991 and met the concerned case worker and the Executive Engineer. THE

Executive Engineer advised me orally that the work of power supply will now be entrusted to some agency duly calling for tenders, since KEB

authorities are not taking up the work. On receipt of power supply, the building will be completed and handed over early"".

This shows that the work of construction was delayed due to non-supply of electricity. That is the averment made at para 6 of the statement of

objections which reads as under: ""Temporary electrical connection has been obtained to complete the top polishing work as soon as this is

completed the building will be ready for being handed over to the respective allottees"".

12. THESE circumstances would show that the construction work was considerably hampered due to non-supply of electricity and so there was

some delay in completing the construction.

Having regard to these facts, and particularly having this fact in view that the opposite party did complete the construction well within the cost of

construction as stipulated in Ex.C-1 and C-2, it is very difficult to say that there was any deficiency in service rendered by the opposite party.

The complainant has claimed several sums of money towards interest on the amount invested by him and also towards rent.

13. IT may be referred herein that the opposite party did complete the construction even without collecting the 4th and final instalment amount from

the complainant. As it is evident that the final instalment amount of Rs. 57,500/- was paid by the complainant on 13-9-1991 and the opposite party

delivered the possession of the house to the complainant on 20-9-1991. Therefore, it is clear that the opposite party the complete the construction

by investing its own funds.

14. THE complainant though has claimed, as referred above, several sums of money towards interest and the rent, but did not place on record any

material to substantiate the said claims. THERE is absolutely no material placed on record by the complainant to show the expenditure incurred or

loss or injury sustained by the complainant except his bald assertion in the affidavit and the averments in the complaint.

The matter may be looked at from another angle. According to Section 14 of the C.P. Act, 1986, the complainant will be eligible for compensation

only if the loss or injury has occurred due to the negligence of the opposite party. In this case, the complainant has failed to prove any negligence

on the part of the MUDA. His only grievance is that there was delay in giving possession of the house due to which he has suffered loss. It is an

admitted fact that the delay in occupying the house was because there was delay in getting water, sewerage and electric connections. Even if there

was no delay in completing the house, the complainant would not be in a position to occupy the house without these facilities. No doubt the

Notification says that the house will have these connections and in fact they have been provided. But the delay in getting them was not due to any

negligence on the part of MUDA. If the water supply authorities and the K.E.B. delay in providing these facilities, MUDA cannot be held

responsible for the consequences. If that is so, the complainant would not be entitled to any compensation.

Having regard to this material, we are of the opinion that the complainant failed to substantiate his claim of having sustained any loss due to the

negligence of MUDA. So the point raised for consideration is answered in the negative.

15. IN the result, therefore, the claim for compensation fails and it is rejected. The parties are directed to pay and bear their own costs. Complaint

fails.