

(2003) 01 NCDRC CK 0060

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

K.SANDHYA RANI

APPELLANT

Vs

BHAVANAM ESTATES PVT. LTD.

RESPONDENT

Date of Decision: Jan. 29, 2003

Citation: 2003 2 CPJ 115

Hon'ble Judges: P.Ramakrishnam Raju , C.P.Suresh J.

Final Decision: Complaint allowed with costs

Judgement

1. THE first opposite party is the construction company of which opposite parties 2 and 3 are the Director and Managing Director respectively. THEy offered to construct a flat for the complainant. Accordingly, the complainant entered into an agreement for sale in respect of 52.90 square yards undivided share of land out of 1260 sqare yards from the owners on 18.3.1991. On the same day, a separate agreement was executed by the first opposite party agreeing to construct a flat of 1280 square feet inclusive of common areas on the fourth floor of Bhavanam Mansion, Navodaya Colony, Yellareddiguda, Hyderabad. THE complainant agreed to purchase the same at a total cost of Rs. 2,56,000/- and paid a sum of Rs. 2,35,000/- by instalments. Though, opposite parties promised to complete the construction within eighteen months, the same was not done as they failed to obtain permission from the Municipal Corporation. Of course, the complainant by a supplementary agreement dated 9.6.1993 extended the period of completion of flat by another six months from 9.6.1993. As there was no progress, she issued a registered notice on 19.5.1997 for which there was no response. As there was no necessary permission from the Municipal Corporation, the complainant has realised that the opposite parties have adopted unfair trade practice by inducing her to enter into this transaction. Hence, she filed the complaint claiming refund of the amount paid together with damages sustained by her as well as for mental agony.

2. THE opposite parties 1 and 3 in their written version, while admitting the execution of the agreements mentioned above, stated that the opposite party No. 1 merely undertook to make the construction of flats as a contractor. THE owners also requested opposite party No. 1 to obtain necessary permission and construct 28 flats. THEy also agreed that if at all Municipal permission is not obtained, they would seek relaxation of the excess constructed area from the Government of Andhra Pradesh. Due to the efforts made by the first opposite party, the Government by their memo dated 22.2.1992 and letter dated 21.9.1992 directed the owners to submit the particulars, but the owners failed to do so. THEREfore, there is no deficiency on their part.

The second opposite party filed a separate written version stating that he entrusted the construction work to the third opposite party contractor earlier for construction of a building in Ranibagh, Sanjeevareddy Nagar, Hyderabad and thus had acquaintance with him. The third opposite party with that acquaintance included the name of the second opposite party started a Private Limited Company and registered it in the name of M/s. Bhavanam Estates (P) Ltd. His name was included without his knowledge and he has been totally unaware of the activities of the said building construction, acquisition of land, entering into contracts with purchasers, etc., and hence, he is not responsible for any deficiency of service.

The complainant besides filing her affidavit, filed Exs. A-1 to A-64.

3. THE opposite parties filed the counter affidavit of the second opposite party. No documents are filed.

The only point that arises for consideration is whether there is any deficiency in service on the part of the opposite parties, and if so, to what extent ?

4. THERE is no dispute that the complainant purchased 52.90 square yards of undivided share of land out of 1260 square yards of site in Survey Nos. 97/1, 100 and 101 situate at Yellareddiguda village, Hyderabad as evidenced by Ex. A-1 sale

deed from the owners namely, Talakshi and Popatlal. The complainant also entered into an agreement of sale dated 18.3.1991, marked as Ex. A-2, with the first opposite party represented by the third opposite party, the Managing Director for purchase of a flat in an extent of 1280 square feet inclusive of common areas on the fourth floor of Bhavanam Mansion, Navodaya Colony, Yellareddiguda, Hyderabad for a sum of Rs. 2,56,000/-. It is also not denied that the complainant has paid in all Rs. 2,35,000/- leaving a balance of Rs. 21,000/-.

It is seen that the second opposite party has taken a plea that his name was included in the Private Limited Company i.e. M/s. Bhavanam Estates (P) Ltd. without his knowledge and as such he is not aware of the activities of the company. We cannot accept this contention. Without the knowledge and consent, his name cannot appear as one of the Directors of a registered company. Therefore, this contention has no force and is accordingly rejected.

It is contended by the opposite parties 1 and 3 that the complainant along with 28 others approached the first opposite party for construction of flats at the premises in Navodaya Colony, Yellareddiguda, Hyderabad, and the first opposite party only undertook to make construction of the flat as contractor, and it has nothing to do with title. This contention cannot be accepted. The first opposite party company is a party to the agreement of sale, Ex. A-2, wherein it is clearly mentioned that the said company shall construct the complex as per the approved plan at the rate of Rs. 200/- per square feet of the built up area. The said company which is the second party to the said agreement agreed to develop the land to construct the apartments in the complex with all amenities within a period of 12 months and hand over the flats. The second part alone shall bear and pay the labour payments and material payments payable during the construction period. Having regard to these clauses, the first opposite party represented by its Managing Director, the third opposite party agreed to construct the apartments at their cost and deliver possession to the complainant and other purchasers at the rate of Rs. 200/- per square feet of the built-up area and as such the plea of the opposite parties 1 and 3 that they merely agreed to undertake the construction of flats and not agreed to sell the flats, cannot be accepted.

5. FROM the above discussion, it is seen that the opposite parties failed to construct the fourth floor and deliver possession of the flat to the complainant. Having collected Rs. 2,35,000/- out of Rs. 2,56,000/-, failure to construct the flat and deliver possession after collecting substantial amount on the promise of constructing the building, is deficiency in service. We have no hesitation in coming to the conclusion

that the opposite parties 1 to 3 have committed deficiency in service.

6. THE next question is what are the damages that should be awarded to the complainant ?

It is admitted that the Municipal Corporation has not granted permission for construction of fourth floor on the building. The opposite parties failed to obtain permission from the Municipal Corporation. Therefore, we cannot direct the opposite parties to construct fourth floor contrary to the approved plan. The only other alternative is to grant damages to the complainant for the loss suffered by her together with the amount paid by her. Accordingly, we direct the opposite parties 1 to 3 to refund Rs. 2,35,000/- paid by her with interest at 24% per annum from the respective dates of payment till realisation. Besides this we are of the view that the complainant, who has paid the entire amount as agreed, except a paltry sum of Rs. 21,000/-, could not get possession of the flat and reside therein for all these years, though the opposite parties promised to deliver the constructed flat on the fourth floor by the end of 1993. For these nine years, the complainant has been deprived off the enjoyment of her flat and also compelled to pay rents for the premises rented for her residence. A sum of Rs. 1,00,000/- is awarded towards the loss suffered by her as well as towards mental agony. Time for payment six weeks. If the amount is not paid, the same shall carry interest at 24% per annum. Accordingly, the complaint is allowed to the extent indicated above with costs of Rs. 10,000/-. Time for payment six weeks. Complaint allowed with costs.