

(1994) 08 NCDRC CK 0033

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

K.K. AGARWAL

APPELLANT

Vs

BLUE WATER POOL SYSTEM PVT.
LTD

RESPONDENT

Date of Decision: Aug. 11, 1994

Citation: 1995 3 CPJ 107 : 1995 3 CPR 268 : 1996 1 CLT 370

Hon'ble Judges: S.A.Kader , Ramani Mathuranayagam J.

Advocate: V.Illanchezhian , K.Madavan

Judgement

1. THIS is a complaint under Section 17 read with Section 12 of the Consumer Protection Act.

2. THE complainant entered into an agreement with the Opposite Party for the construction of a swimming pool in the farm house at New Mahabalipuram Road at a cost of Rs. 5,75,000/- on turnkey basis. A sum of Rs. 1,43,750/- has been paid as advance on 13.5.92 and the Opposite Party has to complete the work on or before 7.8.92. THE Opposite Party failed to complete the construction within time. Even the part of the work carried out was done with inferior quality materials. THE vinyl flooring of the swimming pool developed cracks. THERE was improper functioning of Jacuzzi motors. THE quality of water was bad and turned green. THE complainant issued a notice to which the Opposite Party sent a reply denying liability for the quality of materials used. THE complainant has filed this claim for rectification of deficiencies or in the alternative to pay a sum of Rs. 6,00,000/- for re-doing the work and to pay a sum of Rs. 2,00,000/- towards compensation for mental pain and agony.

The claim is resisted by the Opposite Party. It is admitted that the Opposite Party has entered into an agreement with the Opposite Party at a cost of Rs. 5,75,000/-. The Opposite Party gave a three years guarantee for all systems except brought out items such as pump, starter, underwater lights, panel boards, etc. According to the Opposite Party, the work could not be commenced due to the fact that the construction of the main building of the complainant was going on. There was a large amount of construction materials lying in and around the premises besides movement of men and materials, which had to be cleared before the swimming pool have to be constructed. The preparation of the site for the pool which was the sole responsibility of the complainant and it was considerably delayed. The Opposite Party completed the pool and handed over the same to the complainant. The complainant informed the Opposite Party that the vinyl lining was torn. According to the Opposite Party it must have happened due to improper usage or due to construction activities of the complainant. The Opposite Party not responsible for the loss of colour in respect of the water. The quality of water in Madras is hardly consistent nor can Madras boast of good quality water. In respect of Jacuzzi, it is averred that the motor was brought from outside and the manufacturer of Jacuzzi motor has to rectify it. The Opposite Party is not responsible therefor. The cracks developed in the Jacuzzi motor should have been caused by something dropped probably during the house construction. There can be no responsibility or liability on the part of Opposite Party in respect of Jacuzzi system. It is denied that the delay was on the part of the Opposite Party. The complainant wanted the paving around the pool to be laid with Cobble Stones. After the material was despatched to the site, the complainant changed his mind and requested that the paving be done with Spartek Brand Ceramic Tiles. Subsequently the complainant wanted an extra area around the same to be paved. This extra work was done by the Opposite Party. It is thus the complainant who contributed to the delay. According to the Opposite Party the complainant still owes a further sum of Rs. 1,39,335/-. It is only with sole intention not paying the said amount, the complainant has filed this complaint. The complainant is also liable to pay interest for the balance due. The claim has to fail. Exhs. A1 to A3 and B1 to B9 are marked by consent. Proof affidavits are filed. No oral evidence has been let in.

3. THE point that arises for determination is whether there has been any deficiency in service on the part of the Opposite Party and to what relief if any is the complainant entitled.

It is admitted on both the hands that the complainant entered into an agreement with the Opposite Party for the construction of a swimming pool in his farm house at new Mahabalipuram Road at a cost of Rs. 5,75,000/-. Exh. B1 is the quotation given by the Opposite Party. It is averred by the Opposite Party that the work has been completed and handed over to the complainant and this is not disputed before us. We shall now deal with several allegations and deficiencies alleged by the complainant.

(i) According to the complainant the Opposite Party ought to have completed the work on or before 7.8.92 and it failed to do so. It is not stated in the complaint as to when the work was completed and handed over to the complainant. In the counter filed by the Opposite Party it is clearly stated that the swimming pool has been completed and handed over and this is not disputed. But the time when the pool was completed and handed over is not available. We are, therefore, unable to hold what was the period of delay in completing the construction. According to the Opposite Party, the complainant was carrying out construction of the main building work and building materials were scattered all over and hence it could not start the construction of swimming pool. There is some substance in this contention. It is the responsibility of the complainant to prepare the site for the installation of swimming pool. It is further contended by the Opposite Party that the complainant originally wanted the pavement around the pool with Cobble Stones. But subsequently after materials were despatched, he wanted the paving to be done with Spartek Brand Ceramic Tiles. The complainant wanted some extra area also to be paved and thus the complainant has contributed to the delay. We are inclined to accept this explanation of the Opposite Party and held that there was no actionable delay on the part of the Opposite Party.

(ii) It is alleged by the complainant that the vinyl flooring of the pool has developed cracks. This is not disputed by the Opposite Party. According to the Opposite Party this must be due to the improper use and due to the construction activities in connection with the main building. This explanation is unsound. We hold that mere has been deficiency in service on the part of the Opposite Party in doing vinyl flooring and it has to be rectified by the Opposite Party.

(iii) According to the complainant, the Jacuzzi motors did not function properly. This is also not disputed. But according to the Opposite Party, it is not responsible for malfunctioning of Jacuzzi motor which has been purchased by the Opposite Party from the manufacturer and the manufacturer alone can be held liable therefor. This contention is unacceptable. The agreement is on turnkey basis and the contractor has to procure the standard materials for the completion of the work. If there is any defect in the material, the contractor has to take the responsibility therefor. The further contention of the Opposite Party that cracks must have developed on Jacuzzi motor probably during the house construction activities by falling of some articles on it is an unsubstantiated we hold that the Opposite Party is responsible for the

malfunctioning of Jacuzzi and it is duty to rectify the deficiencies.

(iv) It is alleged by the complainant that the quality of water was bad and it turned green. As per Exh. B1 quotation, water for filling the pool has to be provided by the owner. Whatever it may be the Opposite Party cannot be held liable for the quality of water available at the place. We find no deficiency in this matter.

4. ACCORDING to the Opposite Party there is still a sum of Rs. 1,39,335/- due to it from the complainant and Exh. B6 is a statement of account. This is not seriously challenged before us by the complainant. In fact, in the affidavit filed by the complainant, the complainant has stated that he had no intention of evading payment. We hold that this amount is due to the Opposite Party from the complainant.

In the result, we order as follows:

(i) The Opposite Party shall attend to the vinyl flooring of the swimming pool and rectify the defects and make it perfectly alright for swimming purposes. (ii) The Opposite Party shall rectify the Jacuzzi motor and make it work satisfactorily and properly. (iii) The Opposite Party shall complete these works within 3 months from the date of this order. (iv) On the completion of this work, the complainant shall pay to the Opposite Party the balance amount of Rs. 1,39,335/- within one month thereafter. (v) The Opposite Party shall also pay costs of Rs. 2,000/- to the complainant

Complaint allowed with costs.