

(2015) 02 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

A P Raji Swagruha Corporation Ltd

APPELLANT

Vs

Seela Krishna Rao

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 02 NCDRC CK 0081

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Final Decision : Petition disposed

Judgement

1. BY this order, we propose to dispose the above noted revision petitions arising out of common order of the State Commission Andhra Pradesh dated 10.02.2014 involving similar question of law and facts.

2. BRIEFLY stated, the facts relevant for the disposal of the above noted four revision petitions are that the respondents / complainants in the respective revision petitions filed separate consumer complaints alleging that pursuant to an advertisement issued by the petitioner/ opposite party, respective complainants booked houses in the construction project undertaken by the opposite party. They also entered into the respective agreements of sale in the year 2009 -10. The case of the complainants in their respective complaints are that although they had parted with the substantial amount of money towards the consideration amount, the opposite party has failed to deliver possession of the houses even after the expiry of stipulated period of delivery of possession which was 24 months. The complainants pleaded that they had raised funds for payment against consideration amount by obtaining housing loan for which they are paying huge EMIs and interest and also that they have been forced to stay in rented house for want of delivery of possession. Claiming the delay in delivery of possession to be deficiency in service, the complainants filed respective complaints.

3. THE petitioner/ opposite party filed written version to the complaints preferred by the respondents. It was alleged that the opposite party is a public sector corporation. The construction project known as "Anamitra Project" was conceived

for providing low cost houses at no profit -no loss basis. The petitioner denied that it was agreed to deliver the possession of the houses within 24 months. It was also alleged in the written statement that the project had got delayed because of financial constraints due to non payment of instalments by various other allottees and also because the project site is located in a hilly region and considerable time was consumed in removing the rocks and levelling the ground. It was alleged that opposite party has been making efforts to complete the project as early as possible and there is no deficiency in service on its part. The District Forum on consideration of the pleadings and evidence produced, allowed the respective complaints and directed the petitioner/opposite party to complete the construction and hand over the possession of respective houses as early as possible and in the meanwhile pay rents @ Rs.2500/ - per month to the respective complainants from the specified dates till the handing over of the possession of the houses in Complaint Case Nos. 35 of 2013, 41 of 2013 and 45 of 2013 and pay rent @ Rs.3000/ - in Complaint Case No. 51 of 2013. It was further directed that if the construction is not completed and possession is not handed over to the complainants by the end of September 2013, the complainants shall get the rents at the enhanced rates. Besides this compensation of Rs.4000/ - was also awarded and complaint was allowed with cost of Rs.3000/ - in Complaint Case Nos. 35 of 2013, 41 of 2013 and 45 of 2013. Compensation of Rs.25000/ - was awarded and complaint was allowed with cost of Rs.5000/ - in Complaint Case no. 51 of 2013.

4. BEING aggrieved of the order of the District Forum, the opposite party preferred appeals against the above noted order. The said appeals were dismissed by the State Commission observing that the petitioner / opposite party has failed to complete the construction within the stipulated period of 24 months and, therefore, the impugned order of the District Forum cannot be faulted.

5. LEARNED Shri Abhijeet Sinha, Advocate for the petitioner has contended that the impugned order of the foras below are not sustainable because both the foras below have failed to appreciate that as per the Agreement of Sale executed between the parties, no time period for completion of construction and delivery of possession was stipulated and the time was not the essence of the contract. Learned counsel further contended that foras below have also failed to appreciate that the delay in construction has been caused because of the reason not within the control of the petitioner, namely, that several other allottees in the project had failed to pay the instalments against the consideration amount and also that the project is located at a hilly area. Therefore, quite some time was taken in removing the stones and levelling the field so that construction work could be undertaken.

6. LEARNED counsel for the respondents / complainants on the contrary has argued in support of the impugned order. She has contended that foras below have rightly relied upon the clause 13 Ex.A -2 to conclude that the construction work was to be completed within a stipulated period of 24 months and since the

opposite party has failed to perform its part of contract, the foras below have rightly held the opposite party guilty of deficiency in service and their orders cannot be faulted.

7. WE have considered the rival contentions and perused the record.

8. ON perusal of the impugned order, we find that State Commission has observed that as per the terms of the agreement Ex.A -2 clause 13, a specific time period of 24 months for completion of construction and delivery of possession was agreed between the parties and, therefore, the order of the State Commission in Bangalore Development Authority Vs. Syndicate Bank, 2007 6 SCC 711 is not applicable to the facts and circumstances of the case in hand. Aforesaid observation of the State Commission is against the facts. Photocopies of Agreement of Sale between the parties duly signed by the respective complainants and the General Manager of the Opposite Party are on the record. We have gone through the said agreement wherein nowhere time period for completion of project is stipulated. Clause 13 of the Agreement of Sale states that it is sole responsibility of the vendee to update his contract information with the opposite party in writing and there is no whisper of the stipulated time period for completion of contract in this clause. Learned counsel for the respondents during the course of arguments contended that actually in clause 13 of the brochure, it was provided that the project will be completed within 24 months. Therefore, now the petitioner cannot get out of the aforesaid clause by taking shelter of the agreement. We do not find merit in this contention because after applying for the houses, the complainants had entered into written Agreement of Sale with the petitioner/opposite party containing the terms and conditions agreed to between the parties. In the said agreement, there is no stipulation as to time frame for completing the construction. Instead in para 11, it is mentioned that parties to agreement agree and consent that the specifications etc. in the brochure are subject to change for the reason not within the control of the vendor. The case of the petitioner vendor is that the delay in the project was caused because the project is located at a hilly region and it consumed sufficient time to remove the rocks and levelling the ground and also because of financial constraints due to non -payment of instalments by various other allottees. Thus, the opposite party cannot be held to be deficient in service only because the construction has not been completed within 24 months particularly when the time is not the essence of the contract. In our aforesaid view, we are supported by the judgment of the Apex Court in the matter of Bangalore Development Authority . Thus, in our view the impugned orders are not sustainable.

9. WE may note that although no time frame has been stipulated in the agreement, the petitioner opposite party is supposed to complete the project and deliver possession of houses to the complainants within reasonable time. Undisputedly, the parties had entered into an agreement in the year 2009 -10. Almost five years have gone by but project is not completed. In our view, the petitioner opposite party by no means can retain the consideration amount

received from the respondents without performing its part of contract within a reasonable time. Therefore, while allowing the revision petitions and setting aside the impugned orders, we direct the petitioner opposite party to complete the construction of houses expeditiously and deliver the possession to the respective complainants within six months from today, failing which the petitioner/opposite party shall be liable to pay 18% interest on the respective amounts deposited by them from the date of this order till the delivery of possession of houses. Revision petitions are disposed of accordingly.