
(2015) 03 NCDRC CK 0145

In the National Consumer Disputes Redressal Commission

Ashoka Investment Co

APPELLANT

Vs

United Tower India Pvt Ltd

RESPONDENT

Date of Decision : 16-03-2015

Acts Referred:

Citation : 2015 3 CPJ 79

Hon'ble Judges : J.M.MALIK , S.M.Kantkar J.

Advocate : JANENDRA LAL , YASMIN TARAPORE , B.S.NAGAR , MITHILESH KUMAR , Kuldeep Kaur

Judgement

1. THE instant complaint was filed by M/s. Ashok Investment Co., the complainant, through its Partner, Sh. K.L. Rajgarhia, against M/s. United Tower India Pvt. Ltd, the Builder and Promoter, OP, for possession of two flats at Bangalore, on 29.11.2000. After going through the brochure, the complainant applied for two flats which were to be constructed at 13, Ali Asker Road in Corporation Division No.59, Civil Station, Bangalore, to be known as "Krishna Apartments". The complainant paid a sum of Rs.2,00,000/- on 12.05.1980 in the sum of Rs.1,00,000/- for each flat. An agreement of sale was executed on 17.05.1980 in respect of the flat Nos. 501 and 502.

2. THE complainant paid a sum of Rs.50,000/- , on 10.06.1980 and a sum of Rs.1,00,000/- , on 20.08.1980. On 10.09.1984, the complainant requested the OP to send him the agreement to purchase as the same was required to be produced by the complainant before the Income Tax Department at the hearing of his case. However, the needful was not done. Reminder letters were sent on 25.11.1985 and 10.11.1986. In the meantime, the OP received a letter of demand dated 01.01.1991 informing that the occupation certificate with respect to the building had been received from the Bangalore Mahanagar Palika and requiring the complainant to make payment of an additional sum of Rs.3,60,796/-. The said letter was replied on 17.01.1991, wherein the OP was informed that the complainant was not liable to pay the said demands detailed in Annexure G, by the OP. It was explained that the stamp duty was payable on the purchase

price of the flats only and not on Rs.8,55,000/- as was calculated by the OP. It was also objected that the legal charges in the sum of Rs.15,000/- were extorted. Since the property was not transferred in favour of the complainant, therefore, he was liable to pay house tax and it would pay an amount of Rs.4,000/- towards the share amount for the Apartment Owner's Association, that too, if the same amount was payable by every flat owner and that he was not liable for general expenses or for any amount towards alleged additional work. It was contended that the complainant had paid entire amount and, therefore, the question of payment of any security did not arise.

3. THEREAFTER, the OP vide letter dated 19.03.1991, informed the complainant that it had not, at the time of addressing the letter dated 01.01.1991, got the actual break-up of expenses. They had, therefore, required the complainant to make the payment on account. A sum of Rs.1,56,046/- was demanded. The details of the expenses, run as follows : - Conveyance Deed Stamp duty | AS PER registration charges | ACTUALS/ RULES Deposit for Taxes -Property,Transfer etc| Property tax|

b) Khata transfer fee | B. Formation of Apartment Owners " Association Share amount Rs. 3,000/- Association Formation and Documentation Rs. 2,500/- Consultant "s fee Rs. 2,500/-

C. General Expenses/Outgoings Insurance for One year @ 0.50 per Sft. Rs. 855/- Electricity and Water (Deposits) Rs. 1,000/- Maintenance and Management charges/ expenses for three months @ 0.50 per Sq.ft per monthRs. 2,565/- _____ Rs. 4,420/-

D. Additional works and expenses thereof Fire fighting installation @ Rs. 4/- per Sft Rs. 6,840/- Generator sets installation @ Rs. 6/- per Sft.Rs.10,260/- Telephone wiring @ 0.60 per Sft Rs. 1,026/- Escalation charges @ Rs. 50/- per Sft Rs.85,500/- Karnataka Electricity Board (Prorata) Rs. 8,000/- Water and Sewerage Board (Prorata) Rs.12,000/- Incidentals Rs. 10,000/-

E. Security deposit Interest free Rs. 10,000/- _____ Rs. 10,000/- _____ Rs.1,56,046/-

F. Balance due of the total value of the flat Rs._____ Total amount payable Rs.1,56,046/- (Rs. One lakh fifty six thousand and forty six only) For UNITED TOWERS INDIA PVT. LTD. Sd/- (TECHNICAL DIRECTOR) "".

The OP, again, vide letter dated 04.06.1991 required the complainant to make the payment of the amount, demanded above. On 25.06.1991, the complainant replied that they were ready to take possession of the flats, but were not ready to pay the exorbitant charges demanded by OP.

4. ON the other hand, the complainant received two bills, dated 15.12.1991 from OP, for Rs.1,57,072/- and Rs.1,62,202/- demanding from the complainant towards maintenance charges and other miscellaneous amounts. The complainant also received further bills dated 01.01.1992 for Rs.1,65,280/- ,

each. The complainant protested and requested the OP to handover the possession of the premises in dispute.

5. THE complainant visited the flat on 21.01.1999, i.e., after a delay of about 7 years and it transpired that his flat No.502 was occupied by some other person and it also came to light that, as a matter of fact, that flat and flat No.501 were new purchasers. The complainant lodged a complaint with the police, which did not take any action. A legal notice was sent to OP and ultimately this complaint was filed before this Commission, with the following prayers : - a) To direct the Opposite Party to forthwith hand over to the Complainant vacant and peaceful possession of the flats allotted to it being Flats No. 501 and 502, Krishna Apartments, Corporation No.13, Ali Asker Road, in Corporation Division No. 59, Bangalore and to further pay a sum of Rs.22,50,000/- towards delayed delivery till the date of the application together with damages in the sum of Rs.3,00,000/- as specified in para 22 of the application;

b) In the alternative to pay to the complainant a sum of Rs.48,27,000/- as detailed in Paras 21 and 22 above, with pendente lite and further interest at the rate of 18% per annum.

c) Costs of and incidental to these proceedings be provided for AND

d) Such other and further orders as this Hon'ble Commission may deem fit and proper in the circumstances of the case be passed.

6. THE OP has contested this case, mainly on three grounds. First of all, the complainant is not a consumer. The complainant applied for two flats. It is well settled that a consumer is entitled to only one flat. Secondly, the case is barred by limitation. Thirdly, the registration certificate of the partnership firm was not produced.

7. WE have heard the counsel for the parties. Counsel for the OP vehemently argued that the complainant is not a consumer. It is a partnership firm. He has cited the following judgments (1) Ved Kumari and Ors. Vs. M/s. Omaxe Buildhome Pvt. Ltd., 2014 2 CPJ 146 ,

(2) Sunil Gupta Vs. Today Homes and Infrastructure Pvt. Ltd., 2014 2 CPJ 1

(3) Ms. Saavi Gupta Vs. M/s. Omaxe Azorim Developers Pvt. Ltd.,CC No.208 of 2012, decided on 01.10.2012

(4) Satish Kumar Gajanand Gupta Vs. M/s. Srushti Sangam Enterprises (India) Ltd.,2012 95 ALR 451

(5) Chilukuri Adarsh Vs. M/s. Ess Ess Vee Constructions, cc No.111 of 2012, decided on 02.07.2012

(6) Birla Technologies Ltd. Vs. Neutral Glass and Allied Industries Ltd.,Civil Appeal No. 10650 of 2010, decided on 15.12.2010 and

(7) Jag Mohan Chhabra and Anr Vs. DLF Universal Ltd., 2007 4 CPJ 199 (NC).

Again, another authority reported in Contempt Petition No.55/1992 in Writ Petition (C) No.1249 of 1989, titled S. Nagaraj and Ors. Vs. State of Karnataka and Anr., with SLP (C) Nos. 4760 -62 of 1989 and Writ Petition (C) No.254 of 1992, titled Chikka Channaiah and Ors. Vs. State of Karnataka and Ors. And Writ Petition (C) No.356 of 1992, titled S. Ramaiah and Ors. Vs. State of Karnataka and Ors., And Writ Petition (C) No. 390 of 1992, titled M. Shankaraiah and Anr. Vs. State of Karnataka and Ors., 1993 Supp4 SCC 595, decided on 26.08.1993, has also been cited.

8. THE learned counsel for OP submits that this Commission has already taken this view, in few cases, therefore, it should be held that the complainant is not a consumer.

9. IT may be mentioned here that all these judgments except Jaganmohan Chhabra were decided after the amendment of the Consumer Protection Act, 1986, which came into force, w.e.f. 15.03.2003.

10. LEARNED counsel for the OP still insisted that the case of the complainant is covered by the last line of the definition of consumer under Section 2(1)(d)(i) which mentions, as under : - "but does not include a person who obtains such goods for resale or for any commercial purpose".

11. IT may be mentioned here that in Jagmohan Chhabra , the facts clearly go to show that it was used for commercial purposes because a certain sum was claimed due to loss of rentals. Consequently, there was sufficient inkling that it was for "commercial purposes". In the instant case, no such pleading or evidence was led to rebut the claim of the complainant. In Economic Transport Organisation Vs. Oriental Insurnace Co. Ltd. and Anr., 2010 AIR(SC) 720, a Bench consisting of 5 -Hon''ble Judges, in para No.25, was pleased to hold, as under : - "We may also notice that section 2(d) of Act was amended by Amendment Act 62 of 2002 with effect from 15.3.2003, by adding the words "but does not include a person who avails of such services for any commercial 4purpose" in the definition of "consumer". After the said amendment, if the service of the carrier had been availed for any commercial purpose, then the person availing the service will not be a "consumer" and consequently, complaints will not be maintainable in such cases. But the said amendment will not apply to complaints filed before the amendment.

12. CONSEQUENTLY , we hold that the complainant is a "consumer", as per the law, prior to the amendment.

13. THE second submission made by the counsel for the OP was that the complainant is not authorized to file the complaint. It was argued that no certificate regarding partnership firm was filed. However, the record shows that the certificate has been filed, which stands proved on record, vide Ex.P -1, placed in paper -book, at Volume -II. It may also be mentioned here that during the pendency of this case, Sh. K.L. Rajgarhia, passed away. His son, being partner of the partnership firm, is pursuing this case, which is quite legal. This

objection has to be eschewed out of consideration.

14. THE last submission made by the counsel for the OP was that the case is barred by limitation. In this context, first of all, he has invited our attention towards the agreement of sale. Its para No.29, runs as follows : - "29. Any notice or letters to the Buyer from the Builders is deemed to have been sent duly served if sent to Buyer to their addresses mentioned in this agreement under Certificate of Posting" .

15. LETTER dated 20.11.1992 was sent by OP to the complainant through registered post AD, relevant extract of which, runs as follows : " .. Your negligence to settle the account and take possession of your flats which were ready for occupation since April, 1991, is certainly not in any body's interest. After giving you sufficient time, we feel that we are left with no other option except to give you a FINAL NOTICE to settle the outstanding payment and take possession of the flat before 15th December, 1992. In case, you do not respond to this notice, we shall be forced to take proper actions as per the company's rules and cancel the allotment of the subject flats".

The AD Card shows that it was received by the addressee.

16. THE counsel for the complainant vehemently argued that he did not receive this letter. He further explained that this letter bore the wrong address. It is mentioned M/s. Ashoka Investment Company, B -38, Greater Kailash, New Delhi. The words "Greater Kailash -I" is conspicuously missing. Secondly, it is not proved as to who had signed that notice because the signatures are not legible.

17. WE are unable to locate substance in these arguments. It is true that there are Greater Kailash -I and Greater Kailash -II. Greater Kailash II has got only one or two Blocks. There is no Block B in Greater Kailash II. The Post Office officials can understand for which part, i.e. I or II, this document is meant. Again, it is signed by some body. Why should a stranger accept the letter in the name of Ahoka Investment Company and sign the same. Consequently, it stands proved that this letter was served on the complainant. The complainant and nobody else has to carry the ball in proving, who had received the same.

18. THEREAFTER , there is letter dated 07.01.1995, sent by Certificate of Posting, wherein it was mentioned, as under : - "In view of your failure to respond to our notices, we hereby CANCEL THE ALLOTMENT OF THE ABOVE FLATS, WITH IMMEDIATE EFFECT. Please note that no correspondence whatsoever will be entertained in this regard, in future. With this cancellation of allotment, we are at our liability to sell these flats to any person, as per our choice.

However, you may authorise any of your representative to collect the compensation amount which will be determined as per our sole discretion. Please note that the said compensation amount will not carry any interest, in case it is not collected by you, immediately".

The complainant has also filed the certificate of posting, issued by the Post Office.

19. THE learned counsel for the complainant first denied having received this letter and strenuously argued that they have paid the entire amount and they were to pay the additional amount at the time of execution of the sale deed. The OP has no authority to cancel the same, vide termination letter dated 17.01.1995. He contended that the termination is illegal and the complainant is entitled to have both the flats, immediately.

20. ON the other hand, the counsel for the OP contended that they are ready to refund the amount. They have sold those flats to somebody else, after the termination vide letter dated 17.01.1995. The counsel for the complainant, argued that the complainants are interested in flats only and if the OP have sold those flats to somebody else, they should give alternate flats in the same area, to the complainant. The counsel for the complainant has invited our attention towards few letters which clearly go to show that they have been asking the OPs to handover the possession of the flats, as soon as possible.

21. WE find merit in the arguments urged by the counsel for the complainant, in a measure. This is an indisputable fact that the complainant had paid the entire amount of the flats. The following extracts from a very lengthy notice, dated 12.11.1998, at internal page No.11, (pg 75 of the paper -book), are reproduced, as under : - "Our client/ M/s. Ashok Investment Company received a letter dated Feb. 5th, 1992, wherein the Estate Officer, for M/s. United Towers India (Pvt.) Ltd. demanded and informed that M/s. Ashok Investment Company does not clear the said dues (M/s. Ashok Investment Company though had denied its liability to pay the same) of Rs. 3,30,560/ - shown/demanded under bills No. 109, dated 1 -1 -1992, and bill No. 110, dated 1 -1 -1992, within 15 days, it will be compelled to disconnect the electricity/water and other allied services provided to flats 501 and 502. Again Our client/ M/s. Ashok Investment Company received one more bill, dated 20 -10 -1992 from you/Estate officer, for M/s. United Towers India (Pvt.) Ltd., demanding Rs. 2,03,785.80 per flat".

This document is of infinite importance. It brings the "cat out of the bag". It also shows that the complainant did not approach this Commission, with clean hands. They have denied having received the registered letter dated 20.11.1992. The counsel for the complainant vehemently argued that this notice was not received by them. However, the above said admission made by the complainant itself, goes to disprove their contention. This must be borne in mind that this case pertains to the year 1980 - 1991 -92. Without payment of the stamp duty, it is difficult to fathom, how, the deeds of execution could have been written / typed?. The property tax and maintenance amount were demanded, as per the agreement. It, therefore, appears that the complainant was not interested to have the execution of the documents done, at that stage. The complainant is guilty of negligence, inaction and passivity. The complainant did not make an attempt to approach the OP and straighten out the problem. It approached the problem in a lackadaisical manner.

22. NOW , let us turn to the conduct of the OP, which is also not above board. Vide letter dated 17.01.1995, the allotment was cancelled, but no refund was sent to the complainant, either by cheque or Demand Draft. It was merely mentioned that "the complainant may authorize any of his representative to collect the compensation amount which will be determined as per our sole discretion". The words "sole discretion", smacks of arbitrariness, arrogance and highhandedness. The conduct of the OP, till 17.01.1995, was correct and proper. The matter was delayed by non -else, but the complainant, itself. The complainant should have paid the amount and got the premises in dispute, for which no fault can be attributed on the part of the OP.

23. HOWEVER , the OP is directed to refund the amount of Rs.4,95,000/ -, being the total sale consideration, to the complainant, with interest @ 9% p.a., w.e.f. 17.01.1995, till the date of refund/compliance. The said amount be paid to the complainant, immediately. No costs. The complaint stands disposed of.