

(2015) 04 NCDRC CK 0126

In the National Consumer Disputes Redressal Commission

C B S Property Development Pvt Ltd

APPELLANT

Vs

P V S Raghupathy

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Citation : 2015 2 CPR 379

Hon'ble Judges : V.B.GUPTA , SURESH CHANDRA J.

Advocate : V.MOHANA , Asmita Singh

Judgement

1. PETITIONERS /Opposite Parties being aggrieved by order dated 11.1.2008 passed by State Consumer Disputes Redressal Commission, Chennai (for short , "State Commission") have preferred this revision petition.

2. BRIEF facts are, that a common consumer complaint was filed by Five Individuals and Two Companies Complainants/ Respondents against the Petitioners. Complainants' case is that they purchased constructed residential flats from the petitioners, which could not be used for commercial purpose. Each of them purchased an undivided 1/24th share in the entire 50 cents of the land and occupied their respective flats in July 1996. They found out shortfall in the area of land recorded in their agreement and the sale deed. It is alleged, that Petitioners arbitrarily executed the sale deeds without notice to the complainants, resulting in shortfall in the land. The complainants found, that Petitioners have obtained revised approval plan from Coimbatore Municipal Corporation, after a lapse of 14 months from the original plan that was obtained on 20//12/1993. As per the approved plan, basement floor was meant and earmarked exclusively for car -parking, office room, recreation hall and other amenities. Petitioners have no right to make use of any portion in the entire 50 cents of land or in the basement area, after the construction was over and possession handed over to the individual flat owners. Further, petitioners could not remain in the basement area or run their office or store building materials in the area meant for car parking. It is alleged that petitioners have converted the basement area into their office room, computer room, store room, dining hall

and parking area for their use. This was against the original agreement entered into between the parties. Further, as per Tamil Nadu Apartment Ownership Act, 1994 (For short, "Apartment Act") the common areas and facilities should remain undivided and no apartment owner or any other person could bring any action for partition or division of any part thereof and any covenant to the contrary, would be null and void. Thus, petitioners have grossly committed serious infringement of the provisions of law and it amounts to unfair trade practice. Lawyer's notice dated 13/5/97 in this regard was also issued calling the Petitioners to vacate the premises. In reply, petitioners stated that recreation hall and office room, formed part of common amenities exclusively belonged to them and complainants knew, that petitioners were putting up their office in the basement. Hence, complaint was filed for direction to the petitioners to remove and vacate the office and other rooms put up by them in the basement area, which belonged to the complainants and pay compensation of Rs.4,50,000/ - towards damages and mental agony besides cost.

3. PETITIONERS in their counter statement took the plea, that relief sought for is for recovery of possession, therefore complaint with regard to immovable property is not maintainable before the Consumer Forum. Only a civil suit could be maintained. On merits, it is stated that building plan was originally approved as per approval dated 23/2/95, whereunder additional built up area was sanctioned and constructed. The area of share in the land to be conveyed in favour of each purchaser, would depend upon the total built up area of the building. The complainants were made aware of the fact, that a lesser extent of land was being conveyed which would be evident from Form No.13 signed by them. Petitioner No. 1 without prejudice, offered to convey the shortfall on payment of stamp duty and registration charges. The complainants did not come forward to pay and purchase the same. It is further stated, that Clause No.4 of agreement entered into between the parties, contemplate variations and alterations in the approved plan as might be suggested by the architect and decision of architect was final. Further, Clause No. 17 of the agreement, clearly stipulated that only such of those owners who specifically paid and purchased the parking place would be allotted a car parking in the basement area. Others could park their vehicles only in the common parking area. The car parking area in the basement area was not intended to be a common amenity but an amenity to be purchased on payment of charges. Naturally, unsold car parking area would belong to the builder. The area in the basement in occupation of Petitioner No.1 was not a car parking area originally approved on 20/12/93, but it only represented the additional basement area approved under the revised plan dated 23/2/1995. Petitioner No.1 purchased undivided share in the land as evidenced by sale deed dated 22/2/1996. The Petitioner No.1 was co -owner in the land and also owner of the portion of the building viz., their office in the basement and not a trespasser as alleged. The claim of the complainants as regards shortfall in the share of land is barred by limitation, as admittedly the sale deeds were executed on 19/8/94, 3/11/95, 6/11/95 and 6/12/95. The complaint having been filed on

15/5/98, after a lapse of more than 2 years is barred by limitation.

4. DISTRICT Consumer Disputes Redressal Forum, Coimbatore (for short, "District Forum") after considering the plea of both parties, dismissed the complaint vide order dated 20.12.2000.

5. COMPLAINANTS preferred appeal before the State Commission, which vide its impugned order allowed the same. It directed the petitioners to remove and vacate the premises in the basement area belonging to the association and members thereof.

6. HENCE , present petition.

7. WE have heard the learned counsel for the parties and gone through the record as well as the written submissions.

8. IT is submitted by the learned counsel for the petitioners, that all owners have purchased undivided share in land only after recalculation of the same, pursuant to the revised plan which clearly demonstrate that they were aware of the revised plan. Such being the case, now complainants cannot belatedly seek any relief. The complainants were aware, that undivided share in the land had been reduced due to additional built up area and had entered into a registered sale deed for the reduced area, thus, have clearly acquiesced to the same and now could not maintain a consumer complaint.

9. ON the other hand, it is submitted by the Id. counsel for complainants that as per plan dated 10.12.1993 and agreement for sale, the basement floor was earmarked exclusively for car parking, office room, recreation hall and other amenities. Therefore, petitioners had no right either in the 50% of the land or in the basement area. As per agreement, it was specifically agreed that apartment complex was exclusively for residential purposes. Petitioners without the knowledge of the complainants, had clandestinely obtained a revised approved building plan dated 22.2.1995.

10. IT is further submitted that even as per revised sanction plan, basement area was earmarked only for car parking, lumbar room and generator room. Having an office in the basement area, is in violation of the sanction plan.

11. THE State Commission, in its impugned order observed; "12. From the above, it would be clear that there was a revised plan applied for. As per the rules and regulations, the revised plan had to be presented to the DT&CP to find out whether the revised plan conformed to the rules and whether deviation or additions/alterations could be there. Apparently this has not been done. And the opposite parties cannot act on the basis of the revised plan stated to have been given by the Corporation. Again, the revised plan provides for only 24 apartments and there is no 25th unit. The opposite parties may claim that the basement area was earmarked only for car parking, lumber room, and generator room. But the conversion of the basement area meant for car parking etc, as commercial premises is not permitted even as per the alleged revised plan. If

this kind of maneuvering is allowed, there can be scope for increasing the built - up area without any increase in the land area and admittedly there is no built -up area for the 25th apartment. When there is no built -up area, one cannot be an owner as per Section 3 (c) and 6(2) of Tamil Nadu Apartment Ownership Act. A point was made on behalf of the opposite parties that the Act would not be applicable. In our view, the Act, would be very much applicable. Even otherwise it is sheer common sense that one cannot be an apartment owner without a built -up area. He cannot enjoy the property by converting the basement area into his office, store room etc. in violation of the approved building plan. A clear case of unfair trade practice has been made out. The entire undivided share ought to have been divided only among the 24 apartment owner proportionately, taking the individual plinth area with reference to the total extent of the plinth area of the building. If this had been done, there cannot be a balance of undivided share of 1147 sq. ft.. Even this can be sold only to the 24 apartment owners and not to any stranger. Talking away the car parking or the generator room, lumber room also amounts to deficiency in service. It is not open to the opposite parties to say that the complainants are in no way affected.

13. We are coming across complaints against several promoters/ builders in these parts and elsewhere including in unethical, illegal, improper and irregular practices, motivated by sheer avarice. At the time of promoting their projects, they promise the ultimate in comfort, convenience and aesthetics. The prospective buyers are lured by the wild promises and perhaps to start with, are happy with the prospect of having a roof over their head but later on they wake up to realize that they had been taken for a ride the plans are not approved, even if approved, the constructions have not been put up as per the approved plan, there are unauthorized deviations, they have been charged for more than the area sold to them, the carpet area found in the document includes the common area which is a myth, the promoters/builders retain undivided interest in the site though the entire area should have been divided in proportion to the number of flats and sold to individual buyers and the promoters/builders retain an eternal right to put up additional floors and more flats and spread their wings nether wards, heavenward and in all directions. It will be quite an effort to list all the illegalities and irregularities indulged in by them. The builders/promoters exploit the situation and take undue advantage of the fact that though each flat owner is owner of some undivided interest in the site, the stark reality is that he cannot ask for partition and separate possession of his undivided interest in the land. Then the demolition notices start arriving the promoters hope to thwart their efficacy by means dubious and foul and also invariably succeed in obtaining revised approved plans or getting the violations condoned thanks to the system which is mired in corruption, greasing the palm being the order of the day and panacea for all such ills.

14. In view of the above discussion the appeal is allowed. The order of the District Forum dismissing the complaint shall stand set aside and there will be a direction to the opposite parties to remove and vacate the premises in the

basement area belonging to the Association and members thereof. We are however not inclined to award any compensation to the complainants as in our view the relief granted itself is sufficient. The complaint shall stand allowed as indicated above."

12. CLAUSES No.12 and 17 of agreement dated 6.7.1994 executed between the Petitioners and Complainant P.V.Raghupathy are reproduced as under; "12. The purchaser shall not use the building or any portion thereof or his apartment for any business nor commit any act of waste or nuisance or injustice to the other Owners or occupants of the Building.

17. The purchaser shall not object or obstruct the usage of specified car parks marked and allotted by the Builder to the other co -owner in the building either in the basement floor or in the open car park area in the ground floor level. The Owners who have not been allotted specific car parks by the builder shall park their vehicle only in the space marked for common parking and nowhere else in the premises."

13. AS per Clause No.12 of the above agreement, the purchaser shall not use the building or any portion thereof , for any business. Whereas, Clause No. 17 states, that purchaser shall not object or obstruct by usage of specified car parks marked and allotted by the Builder to the other co -owners in the building, either in the basement floor or in the open park area on the ground floor level.

14. THUS , it is manifestly clear that basement floor has to be used only for car park and open area has also to be used as car parking area. Further, as per petitioners own case, no business can be run in any area of the building or in the basement.

15. SECTION 3(h) of the Apartment Act, define "common areas and facilities". It read as under; "(h) "Common areas and facilities" unless otherwise provided in the Deed of Apartment, means the land on which the building is located; the foundations, columns, girders, beams, supports, main walls, roofs, halls corridors, lobbies, stairs, stairways, terrace, compound walls, fire escapes, wells and sumps and entrances and exits of building; the basement, cellars, yards, gardens, parking areas and storage space; xxxxxxxxxxxxxxxx"

16. THEREFORE , as per above section, basement is a common area and facility. Hence, petitioners have no right to allot the basement to an individual to set up his office or business establishment.

17. ACCORDINGLY , after going through the entire record, we find no reasons to disagree with the findings given by the State Commission. The State Commission, rightly allowed the complaint of the complainants. Present revision petition is nothing but abuse of the process of law. As such, the same stand dismissed with cost of Rs.10,000/ -(Rupees Ten Thousand Only).

18. PETITIONERS are directed to deposit above cost by way of demand draft in the name of "Consumer Legal Aid Account" within four weeks from today. In

case, petitioners fail to deposit the cost within the prescribed period, then they shall be liable to pay interest @ 9% p.a. till realization.

19. LIST on 15th May, 2015 for compliance.