

(1994) 02 NCDRC CK 0080

In the National Consumer Disputes Redressal Commission

C. NARASIMHA RAO

APPELLANT

Vs

K.R. NEELAKANDAN

RESPONDENT

Date of Decision : 08-02-1994

Acts Referred:

Citation : 1994 1 CLT 580 : 1994 1 CPC 460 : 1994 1 CPJ 160 : 1994 1 CPR 459

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the order of State Consumer Disputes Redressal Commission, Tamil Nadu at Madras dated 15th May, 1992 passed in O.P. No. 21 of 1992. The said Original Petition, i.e., the complaint was filed by the present respondents against appellant herein. By the impugned order, the State Commission ordered the appellant to pay Rs. 76,000/- with interest at the rate of 12%. Feeling aggrieved, the opposite party in the complaint, i.e., the present appellant has come before this Commission in appeal.

2. THE facts are that the complainants, who are brothers, are the owners of a piece of land situated at Madras. THERE was a small tiled house in the said land. THE complainants entered into an agreement with the opposite party for the construction of two flats in the ground floor for the complainants. THE flats to be constructed on the first floor were to be taken by the opposite party or his nominee. THE complainants had to execute a Deed of Sale in respect of the undivided share in the land in favour of the opposite party or his nominee. THE construction was to be completed within one year from the date of demolition of the old building on the site. THE complainants gave possession of the land to the opposite party on 18th May, 1990. THE building was thereafter demolished by the opposite party but he failed to finish the construction and handover the flats to the complainants. THE complainants cancelled the contract vide noticed dated 7th May, 1991. THE complainants in the complaint claimed the value of the malba of the old building said to have been removed by the opposite party. THE complainants valued the malba at Rs. 94,000/-. THEY also claimed Rs. 26,980/-

towards rent paid by them for the house occupied by them after the demolition of the old building. The opposite party in his counter admitted the agreement made with the complainant but denied other allegations contained in the complaint. According to him, the complainants were to deliver possession within two months from the date of agreement, i.e., on or before 12th September, 1980 but they failed to do so. It was further the case of the opposite party that the complainants themselves engaged the services of a contractor, demolished the house and cleared the debris, and handed over possession of the vacant site in May, 1990. Thus, according to the opposite party, the malba of the old building has been removed by the complainants themselves. It was further the case of the opposite party that he wanted the complainants to execute registered deed of sale in respect of undivided share of the land, but the complainants refused to do so and hence the work could not be started. He (i.e., the opposite party) never agreed to pay rent for the accommodation occupied by the complainants after the demolition of the old building.

The State Commission has expressed the opinion that because possession had been delivered by the complainants to the opposite party in May, 1990 and the opposite party had failed to complete the construction within one year from the date of getting possession there was a deficiency in service on the part of the opposite party and the complainants were entitled to be granted suitable relief. The State Commission assessed the value of the malba alleged to have been removed by the opposite party at Rs. 76,000/-. It, however, held that the complainants were not entitled to claim rent for the period for which they occupied alternative accommodation after the demolition of the old building as there was no stipulation for the same. In the result, the State Commission ordered the opposite party to pay to the complainants the price of the malba with interest.

3. WE have heard the parties and have gone through the records. Learned Counsel for the appellant vehemently argued that in the present case the claimants have not claimed any compensation for the alleged deficiency in service and on the other hand, they have claimed price of the malba of the old house said to have been removed by the opposite party, i.e., the appellant and for recovery of rent. According to him, the State Commission has disallowed the claim for recovery of rent as there is no provision in respect of it in the agreement executed between the parties and, therefore, the complainants' claim simply remains for the price of the malba of the old house. He argued that the contract had already been terminated by the complainants before the filing of the complaint. According to learned Counsel for the appellant even if the malba has been removed by his client, though that fact is not admitted on his behalf, even then the present dispute between the parties does not fall within the ambit of the Consumer Protection Act, 1986. WE are of the opinion that the said argument has force. As noticed above, the Complainants' claim is not based upon deficiency of service and in reality they are seeking to recover money being the value of the malba said to have been removed by the appellant. Such a claim

will fall outside the four corners of the above Act and therefore, the complaint is not cognizable by the Forums constituted under the Act. For the foregoing reasons, we accept the present appeal, set aside the order of the State Commission and dismiss the complaint. The appellant will be entitled to costs of the present proceedings, which we assess at Rs. 4,000/-. Appeal allowed.