
(2016) 06 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

Case No : 622 of 2015

CHAYA PRADEEP BAVADEKAR & 2 ORS.

APPELLANT

Vs

M/S. KAMLA ANKUR DEVELOPERS

RESPONDENT

Date of Decision : 27-06-2016

Acts Referred:

[Maharashtra Ownership Flats Act, 1963](#), Section 3(2)(i)

Citation : 2016 3 CPR 181

Hon'ble Judges : V.K. Jain

Advocate : Salim A. Inamdar, Adrija Thakur, Vikas Singh Jangra

Judgement

1. The complainants entered into an agreement with the opposite party for purchase of a flat bearing No.703 in a building which the opposite party was to construct on a plot of a land owned by Avadhut Cooperative Society, after demolishing the structure existing on the said plot. The total sale consideration was agreed at Rs.1,82,40,000/- and the respective rights and obligations of the parties were incorporated in the agreement for sale executed on 20.1.2011. In terms of the aforesaid agreement, the opposite party was required to deliver possession of the flat, complete in all respects, to the complainants by 31.3.2012. The complainants having made payment to the opposite party in terms of the aforesaid agreement, the flat in question was made available to them for the purpose of fit outs, on 17.1.2013. However, the requisite Occupancy Certificate/Completion Certificate from the Bombay Municipal Corporation has not been obtained till date by the opposite party. As a result, the complainants are unable either to occupy the said flat. Being aggrieved from the failure of the opposite party to deliver legal possession of the said flat by obtaining the requisite Occupancy Certificate, the complainants are before this Commission, seeking a direction to the opposite party to deliver said legal possession after obtaining requisite Occupancy Certificate and pay compensation quantified at Rs.49,88,024/- to them along with interest.

2. The opposite party was served with the notice of admission of this complaint

on 27.8.2015. The statutory period of 30 days from the date of service expired on 26.9.2015. Since reply/written version was not filed by the opposite party, this Commission vide order dated 18.11.2015 granted two weeks to it for the aforesaid purpose subject to payment of Rs.10,000/- as cost. However, neither the cost was paid nor the reply/written version was filed in terms of the order dated 18.11.2015. Therefore, vide order dated 13.1.2016, this Commission, relying upon the decision of the Hon'ble Supreme Court in Civil Appeal Nos.10941-10942 of 2013, New India Assurance Co. Ltd. vs. Hilli Multipurpose Cold Storage Pvt. Ltd., dated 04.12.2015, closed the right of the opposite party to file its written version.

3. I have perused the affidavit filed by the complainants by way of evidence and have also considered the documents filed by them. a perusal of the agreement dated 20.1.2011 shows that the opposite party was under obligation to give possession of the flat, complete in all respects, with the specifications and amenities set out in Annexure-G to the agreement, on or before 31.3.2012. It was further stipulated in para 14 of the agreement that upon full payment having been made to him and the purchaser having been offered possession, the developer shall deliver all necessary applications etc. to the society for accepting and recognizing the purchaser as a member of the said society. It is thus evident that it was for the opposite party to obtain the requisite Occupancy Certificate. Even otherwise, it is a legal obligation of the developer to obtain the requisite Occupancy Certificate before delivering possession of the flat to the buyer. No flat can be legally offered for being occupied by the purchaser without obtaining the requisite Occupancy Certificate nor can the purchaser legally occupy the flat without such a certificate. In this regard, section 3(2)(i) of the Maharashtra Ownership Flats Act, 1963 expressly provides that a promoter who constructs a block or building of flats shall not allow any person to enter into possession until an Occupancy Certificate where such certificate is required to be given under any law, is duly given by the local authority and no person shall take possession of a flat until such Occupancy Certificate has been duly given by the local authority. Therefore, neither the opposite party could have allowed the complainants to occupy the flat, subject matter of the agreement between the parties nor can the complainants occupy the said flat without issue of requisite Occupancy Certificate by Bombay Municipal Corporation. Though the opposite party did hand over the flat in question to the complainants for the purpose of fit outs, in the absence of issue of Occupancy Certificate by Bombay Municipal Corporation, the complainants cannot occupy the said flat for the purpose for which they had purchased it from the opposite party. It is thus not only a contractual, but also a legal obligation of the opposite party to obtain the said Certificate.

4. By not obtaining the requisite Occupancy Certificate on or before 31.3.2012 which was the last date for delivery of the possession of the flat to the complainants, the opposite party committed a deficiency in the services rendered to the complainants. Hence, they are liable to pay suitable compensation to the complainants till the time the said Occupancy Certificate is obtained from

Bombay Municipal Corporation.

5. There is no documentary evidence as regards the rental value of the flat which the opposite party has constructed for the complainants and which the complainants are unable to occupy in law on account of the failure of the opposite party to obtain the requisite Occupancy Certificate. However, in their affidavit by way of evidence the complainants have claimed that the prevailing rent was Rs.72,000/- per month in the year 2012, Rs.80,000/- per month in the year 2013 and Rs.90,000/- per month thereafter. Considering that the above-referred rent does not constitute even 5% per annum of the entire sale consideration paid by the complainants to the opposite party, in my opinion, the claim for payment of aforesaid rental value as compensation is eminently justified.

6. The learned counsel for the opposite party submits that they have already applied to Bombay Municipal Corporation for regularising the deviations made in the building and it is for the Corporation to now take an appropriate decision on the said application. In my opinion, the complainants are not concerned with the aforesaid issue between the opposite party and Bombay Municipal Corporation. It is their legal right to have the requisite Occupancy Certificate before they occupy the flat purchased from the opposite party and it is a contractual as well as legal obligation of the opposite party to obtain the said Occupancy Certificate as its own cost and responsibility by removing all such objections as have been raised by Bombay Municipal Corporation as a pre-requisite condition for the issue of the Occupancy Certificate.

7. For the reasons stated herein above, the complaint is disposed of with the following directions:- (i) The opposite party shall obtain the requisite Completion Certificate from the Bombay Municipal Corporation in respect of the flat subject matter of the agreement dated 20.1.2011 at its own cost and responsibility, on or before 31.12.2016.

(ii) The opposite party shall pay compensation at Rs.72,000/- per month from 1.4.2012 to 31.12.2012, Rs.80,000/- per month for the period from 1.1.2013 to 31.12.2013 and at Rs.90,000/- w.e.f. 1.1.2014 till the date the Occupancy Certificate is obtained by the opposite party and a copy of the said Certificate is provided to the complainants.

(iii) The opposite party shall pay a sum of Rs.10,000/- as cost of litigation to the complainants.