
(2005) 08 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

DAYA CHAND

APPELLANT

Vs

DLF UNIVERSAL LTD

RESPONDENT

Date of Decision : 16-08-2005

Acts Referred:

Citation : 2006 1 CLT 519 : 2006 1 CPC 366 : 2006 1 CPJ 84

Hon'ble Judges : K.S.GUPTA , RAJYALAKSHMI RAO J.

Judgement

1. THIS is an original complaint filed by Shri Dayachand and some members of the Chandralok Maruti Employees Cooperative House Building Society Ltd., Chakarpur, District Gurgaon, Haryana against opposite party No. 1, Chairman - cum -Managing Director, DLF Universal Ltd., New Delhi and opposite party Nos. 2 and 3 who are President and Secretary respectively of the Chanderlok Maruti Employees Cooperative House Building Society Ltd. Brief facts of the case are: The complainants became members of the Chanderlok Maruti Employees Co - operative House Building Society Ltd. with a view to purchase residential houses as per the plans advertised by the office bearers of the society i.e., opposite party Nos. 2 and 3. On 25.3.1992 the O.P. No. 3 being the Secretary of the aforesaid society, entered into an agreement with the O.P. No. 1 wherein the Society agreed to acquire from O.P. No. 1, 35 houses/flats proposed to be constructed on plots measuring about 225 sq.m. of which 32 flats would have an approx. covered area of 233.37 sq.m./225 ft. for Rs. 13 lakh. (approx. rate per unit) as three houses/flats to have an approx. covered area of 133.04 sq.m/1432 s.ft. for Rs. 10,412 lakh (Approx. rate per unit).

2. IT is stated that on 7th September, 1992 a supplementary agreement was also executed between the opposite parties without informing its members (complainants) and this agreement provided that a sum of Rs. 80 lakh was already paid by the opposite party No. 3 to opposite party No. 1 and the agreement was also modified the complainants allege that this agreement between the opposite parties is executed without informing its members and hence it is fraud and criminal breach of trust on the part of O.Ps. The O.P. Nos. 1

and 3 entered into yet another agreement on 18th November, 1992. This agreement inter alia provide for acquisition of more houses/flats on 15 plots measuring about 225 sq.m. having an approx. covered area of 237 sq.m. at the price of Rs. 13.72 lakh (approx. rate per unit). On the same day without the knowledge of the complainants, a subsequent agreement was made between opposite party Nos. 1, 2 and 3 in which price of Rs. 13.40 lakh instead of Rs. 13.72 lakh was mentioned in para 29 of the agreement. It is alleged by the complainants that opposite party No. 1 in collusion with opposite party Nos. 2 and 3 had actually claimed Rs. 13.72 lakh per unit for the flats which is illegal. It is the case of the complainants that excess money of Rs. 1.6 lakh has been charged from them and the opposite parties are liable to return the excess money received by them.

3. IT is further alleged that opposite party No. 1 has failed to hand over the actual and physical possession of the said flats as per the Clause 17 of the agreement dated 25.3.1992 wherein possession of these flats was to be delivered by the builders to the society within one and a half years from the date of the execution of the agreement. The actual possession of the houses was given on 24th February, 1994 instead of 25.9.1993 and the delay of five months is in breach of provisions of the aforesaid agreements. Hence, the complainants claimed damages from the opposite parties.

4. AS per the occupation certificate issued by the Director, Town and Country Planning, Haryana, Chandigarh in favour of the opposite party No. 1 at the relevant portion of the occupation certificate is as follows: (a) grant permission for the occupation of the said building for, (i) 4 bed rooms, 2 living rooms, 2 bath rooms, 2 W.C., 2 kitchens, one staircase, 1 shaft on the ground floor only, (ii) 3 bed rooms, 1 dining room, 1 living room, 1 study room, 1 store, 1 kitchen, 2 bathrooms, 2 W.Cs., balcony in front and back, staircase on the first floor only, (iii) staircase namely on the IIInd floor only.

It is contended that opposite parties colluded and constructed instead of two flats on ground floor and one flat on first floor as per the map plan approved by the Department of Town and Country Planning, Haryana, two flats on ground floor and two flats on first floor were constructed which is illegal. The staircase which is constructed was not in compliance with the statutory provisions as only 2 "6" width was provided making the residential units inhabitable and inaccessible. Further opposite party No. 1 illegally claimed Rs. 2 lakh per year as maintenance charges from the complainants and no maintenance was given and that the opposite parties did not render any service towards the payment for which they were duty -bound to do.

5. ON account of violation of agreements, the complainants suffered loss and injury due to deprivation, harassment, mental agony and financial loss and claimed the following amounts from the opposite parties: (i) Illegal excess escalation charges Rs. 16,39,999.00 (ii) Excess amount for dwelling units. Rs. 18,06,611.00 (iii) Excess payment as electricity connection Rs. 2,00,000.00 (iv)

Payment of Rs. 50,000 as damages per dwelling unit for 120 complainants Rs. 60,00,000.00 (v) Payment as legal expenses Rs. 20,000.00 Total : Rs. 97,66,610.00

6. THE complainants state that the cause of action arose in January, 1994 when they found for the first time the defects and deficiencies in the construction, quality and measurement of houses/flats; when they demanded for the removal of the deficiencies and claiming damages from the opposite parties and a legal notice was served and when the complainants came to know about the excess money collected by the opposite parties in violation of the agreement in a fraudulent manner. As against this O.P. No. 1 denied the above allegation that it has been misconceived and that there was no collusion between themselves and opposite party Nos. 2 and 3. It is contended that the possession was handed over to the complainants after approval of the building plan on 14.9.1992 and the grant of occupation certificate dated 10.2.1994 which were in accordance with the terms and conditions of the agreement and that the completion of these houses was within time after obtaining occupation certificate from the concerned authority. We have perused the record and heard the arguments of the complainant and opposite party No. 1. Opposite party Nos. 2 and 3 have been absent and never responded to the notices sent by the Commission. Complainants have not made any efforts to see that notices are served on opposite party Nos. 2 and 3 even though they all live in the same complex. We have gone through the three agreements which have been annexed. Admittedly, these agreements have been entered into by O.P. No. 1 and M/s. Chanderlok Maruti Employees Cooperative House Building Society Ltd. represented by O.P. Nos. 2 and 3, President and Secretary of the said society who have been authorized by the complainants. As for the alleged fraud of O.P. No. 1 in collusion with O.P. Nos. 2 and 3 the case was registered on 18.7.1995 under Sections 420, 467, 468 and 47 of I.P.C. and it is still pending before the District Court, Gurgaon. This case revolves round the implementation of the agreement made between O.P. No. 1 and the society. We refer to some of the relevant clauses of the agreement which are as under: Clause 22 "That the society upon taking possession or deemed possession of the said house, shall have no claim against the building in respect of any item of work in the said houses/flats which may be alleged not to have been carried out or completed or for any design, specifications, building materials used or for any other reason whatsoever."

7. FURTHER Clause Nos. 11, 16 and 17 refer to the other aspects of price, payments, maintenance charges, delivery of the possession or non -delivery of the possession and entitlement to the reasonable extension of time for delivery of the possession, etc.

8. IT is evident from the record that delivery date of the society was to be within the one and half years from the date of execution of the agreement dated 18.11.1992 and O.P. Nos. 2 and 3 took possession of the flats by the end of February, 1994. The letter of acceptance dated 27.2.1994 was duly signed by

O.P. Nos. 2 and 3 who had accepted the possession on behalf of the members of the society clearly state as follows: "5. I have inspected the construction of the said house and now I do hereby confirm that the houses are complete in all respect and that I have no claim against you in respect of the terms of the work done in the said houses or for defect in any design, specifications, building materials used or for any reason whatsoever. I hereby unconditionally accepted the possession of house in DLF Qutab Enclave Complex."

The above letter confirms that the possession was handed over as per the terms and conditions of the agreement between opposite parties. As for the floor plan, it has been duly approved by the Department for Town and Country Planning. We do not see any deficiency of service by opposite parties in this aspect.

9. REGARDING the staircase it is in accordance with the Rule 69 of the Punjab Scheduled Road and Controlled Area Restriction of Unregulated Developments Rules which reads as follows: "69..... Every building of more than one storey height intended to be used as a single family or two -family residential building shall be provided with at least one staircase having minimum width of 2 feet 3 inches constructed of fire -resisting materials."

This answers the contention raised by the complainants and we find there is no deficiency in this regard by O.P. No. 1.

10. AFTER considering the agreements and the arguments which have been forwarded it boils down to the crux of the case which is a simple agreement between O.P. No. 1 and the society. The present complainants are members of the society and the office bearers of society have acted on their behalf and entered into agreement with O.P. No. 1 which has been executed to their satisfaction. There is no privity of contract between the complainants and O.P. No. 1. This is an admitted fact that the opposite party No. 1 sold for consideration to complainants through the Cooperative Society and they also have rendered proper service to the complainants. This dispute seems to be between members and the management of the society which needs to be settled before different Forum under law. It is totally a misconceived complaint and we dismiss it. No order as to costs. Complaint dismissed.