
(1991) 01 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

DILIP BAPAT

APPELLANT

Vs

PANCHAVATI CO-OPERATIVE HOUSING SOCIETY LTD

RESPONDENT

Date of Decision : 31-01-1991

Acts Referred:

Citation : 1991 1 CPJ 462 : 1991 1 CPR 277 : 1993 1 CLT 697

Hon'ble Judges : G.G.Loney , M.G.Gavai , Elipe Dharma Rao J.

Final Decision : Petition dismissed

Judgement

1. THIS complaint is preferred by two members against the Panchavati Co-operative Housing Society (for short "Society") alleging deficiencies in the service by society in the manner of performance of construction of their flats. The admitted facts are that both the complainants are members of the Society which is the opposite party in this complaint. The Society, on 26.4.84 issued two separate letters to the complainants acknowledging the fact that both of them have been allotted a flat each (500 sq. ft.) at the cost of Rs. 1 lakh on 6th floor; the Flat No. 27-C and 28-C in Building No. A3 proposed to be constructed by the Society at Andheri, Bombay. The letter stipulates the payment of the amount by the complainants by installments. It is stated in the letter that the flat was to be given in possession by December 1985 and the balance payment of Rs. 2,500/- was to be paid to the Society at the time of possession. It is also noted in the certificate that the land on which the flats were to be constructed is free hold and free from any encumbrances. It is also admitted that the complainants each paid Rs. 60,500/- upto August, 1985. Thereafter, the complainants stopped the payment of installments. It is the fact that the flats could not be completely constructed and given possession of to the complainants by the end of December 1985 as there was notice from the Bombay Municipal Corporation dated 1.4.85 for stoppage of work on account of some deficiencies to be cleared by the Society. It is also a fact that the balance payment was not paid by the complainants and that subsequently the Municipal Corporation, Bombay removed the objection by an order dated 10.5.1989.

2. ACCORDING to the complainants they stopped paying the balance installments as the construction work was stopped due to objection from the Bombay Municipal Corporation and that the Society has orally ordered not to pay the balance amount. It is also the say of the complainants that they wanted to raise the loan for the payment of installments to the Society but the Society was not furnishing them the necessary information to facilitate them to obtain the loan from the financing agencies. The complainants further alleged that despite their repeated written requests, the society did not supply the necessary information. On the contrary the complainants alleged that the society attributed the attempts on the part of the complainants as "silly". The complainants, therefore, prayed before this Commission by filing annexure to the complaint that they be granted the compensation of Rs. 2,99,100/- detailed therein. A notice u/s.13 of the Consumer Protection Act was sent to the opposite party, the society to file its version in writing in answer to the claim of the complainants. Inter alia, the Society submitted that this Commission has no jurisdiction to decide the complaint and that the complainant should have referred the dispute to the Co-operative Court u/s.91 of the Maharashtra Co-operative Societies Act. It is further submitted that the society could not construct the building because of the difficulties created by the Municipal Corporation and also for want of funds. According to the Society the complainants defaulted in payment of the installments, which resulted in the delayed construction. However, grievance is made by the Society that the complainants delayed the payment of installments on flimsy grounds which resulted in the delay of construction. Both the parties filed their respective documents and affidavits and did not lead any oral evidence.

We have heard both the complainants in person and Shri D.A. Mandkur, Advocate for the Society. The Chairman and Secretary of the Society were also personally present at the time of the hearing. In the beginning the society had taken a different stand while opposing the claim of the complainants. According to the society for non-payment of the installments membership of both the complainants was discontinued vide Resolution No.8 dated 30.10.88 for anti propaganda and harassing the office bearers of the society. However, at the stage of the arguments; the society changed its stand and submitted that both the complainants are still the members of the society and were not expelled from their membership. Submission was made by the learned Counsel for the society that the construction work of the society commenced after the necessary permission of Municipal Corporation, Bombay by its letter dated 10.5.1989 removing the objection. However, according to the learned Counsel, the construction could not be completed in respect of the complainants' flats for want of "funds. It is further submitted that due to the escalation in the prices, the estimate stood revised and instead of paying the balance of Rs. 39,500/- complainants are required to pay Rs. 1,25,905/- towards the balance. The society has filed a statement of dues dated 6.10. 90 in this case. According to society the cost of the flat including land cost comes to Rs. 1,40,000/- for each flat According to the learned Counsel the delayed balance payment also is liable

to be levied with interest at the rate of 14% p.a. to be paid by me complainants. It has been stated that the society under, its bye-law 74 it can recover interest at the rate of 14% p.a. upto the maximum limit of 21% p.a. According to the learned Counsel, the society has passed a resolution on 2.10.83 in the General Body Meeting of the Society fixing the rate of interest at 14% p.a. Thus according to the society the complainants are liable to pay the balance with interest at the rate of 14% p.a. Unless these demands are satisfied by the complainants, the society will not be able to complete the construction of complainants flats.

3. WE have perused the complaint of the complainant, the reply of the society and also gone through the relevant documents. WE have given our anxious consideration to the contentions raised by both the parties. As regards the preliminary objection of the society that the dispute does not related to the goods and that the complaint falls within the jurisdiction of the Co-operative Court u/s. 91 of the Co-operative Societies Act; we find that there is no substance in this objection. WE have already taken a view in number of complainants that if a consumer has a complaint as regards the services rendered by the society for consideration and as regards the construction of flats, a consumer is entitled to file the complaint under the Consumer Protection Act. Further we find that u/s.2(m) of the Consumer Protection Act, "a person" includes a "co-operative society", Sub-clause (iii) of Section 2(c) provides that any allegations made in writing by complainant as regards the services mentioned in the complaint suffers from any deficiencies in any respect, he has a right as a consumer to file the complaint. The harmonious construction of these two provisions will clearly establish that the complainants in this case have a right to file the complaint under the Consumer Protection Act, 1986. In our view, therefore, the complaint of the complainants is maintainable before the State Commission. As regards the dispute between the complainants and the Society is concerned, it is found that the complainant are the members of the opposite party society and each of them have paid the amount of Rs. 60,500/- towards the construction of the flat which stands allotted to them by the Society. The learned Counsel of the society Shri Mandkur is reasonable in his approach in as much as according to him if the complainants pay the balance with interest the society can undertake the completion of the remaining construction at the earliest. No construction can be made by the Society unless the funds are provided by the members. It is immaterial whether the complainants pay the funds available with them or they obtain it from any institution. But there cannot be any dispute as regards the liability of the members of the society to contribute his share for the construction of the flat. In this case, it appears that due to the stoppage of work on the basis of the letter from the Bombay Municipal Corporation, work was suspended. It is, therefore, legitimate on the part of the complainants to stop the payment looking to the objection of the Municipal Corporation resulting in the stoppage of work. We, therefore, do not attribute any mala fide intention on the part of the complainant not to make the balance

payment to the society. Their apprehension, after the notice was received from the Bombay Municipal Corporation to stop the work was genuine. We also find that it would be reasonable on the part of the society to charge the interest at the permissible rate as decided by the society by resolution under bye-law 74 of the Society. It would be also reasonable and equitable to charge that interest from the date when the objection was removed by the Municipal Corporation. We expect that the complainants will co-operate with the society for payment of their balance amount of Rs. 39,500/- which is admitted by them with interest from the date of the removal of the objection till the date of payment except Rs. 2,500/- which is to be paid on the date of possession.

4. AS regards the escalation of the prices due to delayed construction we find that the society has to take into confidence the members of the society including the complainant to arrive at the actual escalation of prices in relations to a particular item. It would be unreasonable to charge members arbitrarily for the escalation amount without any basis. The society did not place before us any data as regards the escalation and therefore, we are unable to decide the additional amount demanded by the society beside the agreed amount of Rs. 39,500/-. We also feel that these are the difficulties in the construction work which are to be sorted out by the society in consultation and by convincing the members of the society including the complainants. The complainants also indicated their willingness to pay the agreed balance of Rs. 39,500/-. However, they have requested three months time from to-day for payment of the balance amount. Under these circumstances, taken into consideration the rival claims we pass the following order with a view to enable the society to complete the construction of flats and the complainants to get their flats. The complainants shall make the payment of the admitted balance of amount of Rs. 37,000/- with 14% p.a. interest from the date of the commencement of the work after removal of objection by the Municipal Corporation within the period of three months from to-day. The amount of Rs. 2,500/- shall be retained by the complainants and be paid to the society at the time of the possession as per the letter of agreement. As regards the escalation of the prices of material we direct the society to decide this issue in consultation with all the members of the society including the complainants in their General Body Meeting and then recover from each members of balance amount of escalation. Under these circumstances, we do not find any claim of the complainants just for grant of compensation and for payment of cost. We also direct that the society shall strictly follow the bye laws in relation to the police for allotment of flats. The society is, therefore, directed to follow the bye laws 78 of the society and shall issue the letters of allotment of flats to the complainants in the prescribed form which are at Appendix XIII of the bye-laws. The society is also directed to comply with the bye laws 24 and 29 as regards supply of copies of bye-law and inspection of books and record to the complainants. The complainants have made a grievance that the management of the society was not co-operating with them as regards the showing of bye-laws and to reply to their queries. We find from the bye-laws of the society that a

member of the society has a right to get the copies of the bye-laws of the society and also has a right of inspection of documents and getting of copies thereof under bye laws 24 and 25. Similarly, we find that as regards the allotment of flats there is clear cut provision in the bye-laws of the society. We, therefore, direct that the society shall follow the relevant bye-laws No. 26, 78 of the society. This complaint stands decided in terms of our observations made above. No costs. Petition dismissed.