
(1993) 03 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

DINESHBHAI DAHYABHAI PATEL

APPELLANT

Vs

GANESH HOUSING CORPORATION

RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Citation : 1993 2 CPR 432 : 1993 3 CPJ 1627

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Complaint allowed with costs

Judgement

1. THE complainant No. 2 is wife of complainant No. 1. That the opposite party is the organiser and developer of land and has floated a scheme known as "Ganeshnagar" at Ahmedabad. THE opposite party has started booking of the tenements in the year 1981. THE complainant appears to have booked the tenement and has paid Rs, 10,000/- on 25.4.81 and Rs. 6,500/- on 11.6.81 and Rs. 6,500/- on 23.11.81. Mr. Kapil Bhatt, the learned Advocate appearing on behalf of the complainants submits that "1991" written in the complaint is a mistake and he, therefore, draws our attention to the receipts given by Ganesh Housing Corporation. On perusing the receipts there remains no doubt that the opposite party has booked this tenement and has taken this amount towards the booking price and by way of instalments from the complainants. THE receipts also mention that the complainants have been allotted tenement No. 36, Type A in Final Plot No. 16/1/P. THE tenement has not been delivered till the date of the complaint and the complainants have therefore prayed that they may be allotted the constructed tenement in accordance with the agreed price. Mr. Bhatt has shown his willingness to pay the remaining price as and when the same is ascertained and informed. 2. In the alternative the complainants have also prayed that if it is not possible to allot them the constructed tenement as promised by the opposite party, they may be awarded Rs. 23,000/- with 18% interest and cost. 3. THE opposite party has filed its version and has raised the legal contention which we will discuss at the appropriate place and on merits it has been stated that the scheme was made under T.P.S. No. 1 F.P. No. 16 belonging to the institution known as Panjara Pole and, therefore, they have put up the

proposed scheme for the public. But, they could not get the permission from U.L.C. Authority for a long time and in consequence thereof, the Institution of Panjara Pole have relieved them from their agreement. A very curious argument has been made that the complainants knew that ULC Act was in force and that the opposite party cannot construct the building without permission. We fail to understand this argument. If a person floats a scheme and accepts booking and thereafter instalments, it is presumed that he has a valid and marketable title. That he has made all preparations and was fully prepared for construction and ultimately allotment of the tenaments. THE obligation is not on the person who books the tenament. THE opposite party has also stated that in tenaments of A type. the purchase cost was Rs. 2.18 lakhs and there was a clause regarding rate difference and general cost. THE opposite party has made a grievance that the complainants have not paid regular instalments. However, he has not produced any evidence to show that any instalment was ever demanded. According to his own statement, they were waiting for the permission of U.L.C. authorities which was not granted to the original owner and that is exactly the reason why the scheme could not be floated by the opposite party. THE opposite party has not produced any iota of evidence to show that they had ever informed the complainants or any other person that they are unable to make the scheme or that they have demanded any instalment which the complainants have not paid. It appears to us that after recovery of huge amounts from number of persons who are in dire need of tenaments, the opposite party has completely disappeared. It will not be exaggerated if we say that they have pocketed the money of gullible consumers who had rushed to book tenaments, relying upon the reputation, at that time, of the opposite party. To our opinion, such type of defence is not honest and may amount to unfair trade practice by the opposite party. It had neither the land nor the permission to construct and has not only published the scheme but has collected money but thereafter never cared to inform any of the consumers that they were not able to make out the scheme or that they may come and collect the deposit with interest. It cannot be doubted that the opposite party has used the money of gullible purchasers, have not asked for any instalment and thereby have not acted honestly and in business like fashion. This, to our opinion, is also unfair trade practice adopted by the builders. We are, therefore, of the opinion that the opponents are under legal obligation to allot the tenament and if that is not possible, they are also liable for the damages which might be much more than what is alternatively demanded by the complainants. 4. So far the legal contention raised by the opposite party is concerned, it has been admitted by the opposite party that they were developers and organisers of the scheme. THEy had booked the tenaments and thereby rendered service to the complainants. It is their responsibility to construct the same and after the construction is completed to deliver the same to the complainants which they have failed to do. Here the scheme has been published by the developers and organisers which has been considered as service and it is practically a settled law as decided by the Hon"ble National Commission. We, therefore, need no authority to quote. 5.It is true that one of the decisions given

by us in the case of Amita Corporation is pending before the Hon''ble Supreme Court but the Supreme Court has not granted any general stay and, therefore, no question arises not to hear this matter. So far the question of limitation is concerned, limitation starts only on the date when the complaint is filed because after the booking of the tenement, the opposite party has not produced any evidence to show that they had demanded instalment'' or that the scheme has been abandoned by them. Till such an information is given, the right to demand the deposit or booking charge does not arise. THEREfore, there is no merit in the contentions raised by the opposite party and the same are rejected. 6. We are of the opinion that the opposite party is liable to deliver the tenement as booked by them at the cost of Rs. 2.18 lakhs. THE complainants are prepared to pay the difference amount. However, there being neither the land nor the tenement it will not be possible to pass an order directing the opposite party to deliver a particular tenement. However, we can award damages. Though the complainants have demanded the damages, in the alternative they are prepared to accept the amount with interest and cost and since the opposite party is absent, we feel that it will save the interest of both parties if an order is passed to return of money with interest and cost. ORDER THE opposite party is directed to return Rs. 23,000/- to the complainants with running interest @ 18% p.a. from the date of payment till the actual payment is made with cost. THE cost is quantified at Rs. 2000/-. THESE amounts may be paid within 4 weeks from the date of receipt of this order. Complaint allowed with costs.