
(2016) 06 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Case No : 157 of 2015

DR. NARAYAN GANPATRAO GAWANDE & ANR.

APPELLANT

Vs

MILIND K. MHATRE & 5 ORS.

RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Citation : 2016 3 CPR 191

Hon'ble Judges : V.K. Jain, Prem Narain

Advocate : Nagaraj V. Hoskeri, Dr. N.G.Gawande, S.N. Gawande

Judgement

1. The complainants, who are husband and wife, entered into a Memorandum of Understanding dated 30.11.2012 with late Shri Milind K. Mhatre, proprietor of Sukushal Builders and Developers, for purchase of a residential flat measuring 1100 Sq.ft. in a building which he was seeking to develop on the land belonging to Parijat Co-operative Housing Society Ltd. and situated at Siddharth Nagar, Goregaon (West), Mumbai. The sale consideration was agreed at Rs.8,000/- per sq.ft. and the complainants agreed to pay 65% of the sale consideration in advance. The balance 35% was payable as per slabs and requirement of the developer. The case of the complainants is that the developer had promised to deliver possession of the flat to them by 31.7.2014. Later on, the area of the flat which the developer was to sell to the complainants, was increased to 1200 sq.ft. The complainants have already paid a sum of Rs.69,78,000/- to the developer who has since expired and is represented by his legal representatives. This is also the case of the complainants that instead of constructing the flat subject matter of the Memorandum of Understanding between them and the developer, he was intending to assign the development rights to the OP No.2 - White Water Developers. Being aggrieved, the complainants are before this Commission seeking the following reliefs:- "(a) To hold and declare the opposite parties to be guilty of deficiency in service and unfair trade practice as per the provisions of the Consumer Protection Act. To direct the opposite parties to execute registered agreement for sale in respect of a flat, area admeasuring 1100 sq.feet as per M.O.U or 1200 sq.ft. as per the letter dated 17.7.2013 situated on 10 floor of the

building to be constructed by the opposite party on th the said property bearing Plot No.4, CTS No.348(P) situated at Siddharth Nagar, Goregaon (W), Mumbai-400 062 at the rate of Rs.8,000/- per sq.foot, in favour of the complainants and on accepting the balance consideration amount of the said flat, the vacant and peaceful possession of the said flat be handed over to the complainants along with proper documentation and do the incidental things thereafter.

(c) In the alternative, it is prayed that the opposite parties may be directed to hand over identical flat for same agreed price in the same locality, in case of any technicality in handing over the originally booked flat to the complainants.

(d) In case of failure to hand over the possession of the said flat for any technical reason beyond the control of the opposite parties, as mentioned in prayer clause (b) and (c) above, then the opposite party No.1 may be directed to refund 1.

2. the entire amount of Rs.69,78,000/- along with 18% interest from the date of receipt of the respective payments, and also pay an additional amount of compensation of Rs.31,28,651/- along with 18% interest per annum on the said amount from the date of filing of the complaint as mentioned in para No.13 of the compliant. (e) To pay compensation of Rs.20,00,000/- towards mental torture, harassment, inconvenience etc., caused to the complainants and the legal and other allied expenditure.

To pay Rs.2,00,000/- towards costs of the complaint.

Any other relief/s as this Hon''ble Commission may deem fit and proper may be awarded in favour of the complainants."

2. No reply/written version has been filed by the opposite parties. We have, therefore, heard the learned counsel for the complainants and have considered the evidence produced by them. We would also like to mention here that the opposite parties have not filed even the written synopsis of their arguments despite opportunity having been given for this purpose on the last date of hearing.

3. A perusal of the Memorandum of Understanding dated 30.11.2012 executed between the complainants on the one hand and late Shri Milind K. Mhatre on the other hand, would show that late Mr. Mhatre had entered into an agreement between Parijat Co-operative Housing Society Ltd. for redeveloping their plot bearing No.4 at CTS No.348 (Part) so as to construct residential flats on the said plot. The MOU further shows that the complainants agreed to purchase a flat measuring 1100 sq.ft. from him at the rate of Rs.8,000/- per sq.ft. on the 10 floor of the building th which he was proposing to construct on the said plot. The payment made till the date of the MOU was acknowledged in the document itself. Vide letter dated 17.7.2013 late Mr. Mhatre informed the complainants that the saleable area of their flat had increased to 1200 sq.ft. and requested them to make balance payment of Rs.21,54,000/- accordingly. The complainants have

filed the receipts whereby payment of Rs.69,78,000/- was made by them to the developer on different dates.

4. In the absence of any contest from the opposite parties, we see no reason to disbelieve the case set out by the complainants and accordingly hold that they had agreed to purchase a residential flat measuring 1100 sq.ft. from late Shri Milind K. Mhatre and the size of the flat was later increased to 1200 sq.ft. We see no reason to disbelieve the payments pleaded by the complainants particularly when they have also placed on record the receipts whereby the said payments were made. We, therefore, hold that pursuant to the Memorandum of Understanding dated 30.11.2012, the complainants made a total payment of Rs.69,78,000/- to late Shri Milind K. Mhatre.

5. In the absence of any rebuttal from the opposite parties, we see no reason to disbelieve the assertion of the complainants that late Shri Milind K. Mhatre had promised to deliver possession of the flat to them on or before 31.7.2014. The builder, however, has not been able to keep his promise and the complainants submit that the construction is nowhere in sight.

6. Since late Shri Milind K. Mhatre failed to deliver possession of the flat to the complainants by 31.7.2014, they are entitled to claim refund of the amount paid by them along with appropriate compensation. Though the complainants have sought a much higher compensation, they have during the course of arguments, restricted their claim to refund of Rs.69,78,000/- along with compensation in the form of interest @ 12% per annum from the date of each payment till the date on which the refund is actually made to them along with compensation. Considering the cost of finance during the relevant period, compensation in the form of interest @ 12% per annum is eminently justified. The complaint is, therefore, disposed of with a direction to OP Nos.1A to 1C, namely, Mrs. Sunita Milind Mhatre, Mr. Dhawal Milind Mhatre and Mr. Kushal Milind Mhatre, who are the legal heirs of late Shri Mahtre, to refund the amount of Rs.69,78,000/- to the complainants along with compensation in the form of simple interest @ 12% per annum from the date of each payment till the date the entire principal amount along with compensation in terms of this order is paid. They are also directed to pay a sum of Rs.10,000/- as cost of litigation to the complainants. The payment in terms of this order shall be made within six weeks from today. The complaint stands disposed of accordingly.