
(2012) 10 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Gandikota Subba Rao

APPELLANT

Vs

G. Srinath

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Citation : 2012 0 NCDRC 626

Hon'ble Judges : J.M.Malik , Vinay Kumar J.

Advocate : K.Maruthi Rao

Judgement

1. THE case of the complainants, G. Srinath and G. Sridhar, is that they and their father, are the owners of property bearing 461.5 sq.yds. They sold the said property to one, G. Subba Rao, the petitioner/ opp.party, under Registered Sale Deed, dated 25.11.1996. The petitioner is a Builder. He started a multi-storeyed building venture. He agreed to convey undivided and unspecified 2/80th share, equivalent to 11.52 sq.yds of site along with a shop to be constructed by him in the second floor, which was to be named as "Shyam Sunder Golden Tower ", in the plinth area of 240 sq.ft. for a sum of Rs. 80,000/- i.e. Rs.29,000/- for site value and Rs.51,000/- for construction value.

2. THERE was inordinate delay in construction of the said property. The construction was completed in May, 2006. The Special Power of Attorney of the complainants approached the opposite party and requested him to receive the balance sale consideration of Rs.2,000/- and execute the necessary documents, in favour of the complainants. However, the petitioner did not properly respond to the above said request. A legal notice was given to the petitioner but it did not evoke any response. Consequently, a complaint was filed with the District Forum. The District Forum vide its order dated 05.05.2009 allowed the complaint in the following terms:- "1. The opposite party is hereby directed to execute registered conveyance deed at the expenses of complainant in respect of undivided share of land measuring 11.52 sq.yds in a plinth area of 240 sq.ft constructed on the north eastern corner of second floor of Shyam Sunder Golden Tower as described in item No.2 of schedule of this complaint and deliver vacant possession of the

same by receiving balance sale consideration of Rs.2,000/-. 2. For any reason if the opposite party is unable to sell away the same shall pay Rs.5,00,000/- representing the market value of it to the complainants. 3. Rs.1,000/- is awarded towards legal expenses. 4. The above order shall be carried out within a period of six weeks from the date of receipt of copy of this order ".

3. THE petitioner filed an appeal before the State Commission which dismissed the same vide order dated 09.02.2012.

4. WE have heard the counsel for the petitioner. He argued that the said shop was constructed for commercial purposes and, therefore, the complaint itself is not maintainable. He argued that in the complaint, the petitioner did not explain this fact as to how they are "consumers ". The case of the complainants is clear. It must be borne in mind that an objection was raised by the respondent that they are not "consumers ". The respondent has to carry the ball in proving this fact. There is no inkling on the record that the complainants are business men or they have to re-sell the said office to earn profits, or they are property dealers. It is very clear that they can use the premises for self-employment. They can use this shop to earn their livelihood.

5. THE second submission raised by the counsel for the petitioner was that there was no delay on the part of the petitioner and as such no deficiency on his part can be attributed.

6. WE clap no significance with this argument. The judgment of the State Commission clearly goes to show that the Agreement (Ex.A1), dated 17.01.1998, was entered into between the parties. Its clause 5 runs as follows:- "The VENDOR-CUM-PROMOTER shall deliver possession of the 2nd Schedule Shop within 6 months from the date of commencement of construction. If the VENDOR-CUM-PROMOTER is not in a position to deliver possession of the shop within a stipulated period mentioned above, the VENDOR-CUM-PROMOTER is liable to pay Rs.500/- to the PURCHASER per month until the possession is delivered to the PURCHASER from the due date ".

This clause clearly goes to show that time was the essence of the contract. No other point was raised before us. We find no illegality or infirmity in the order passed by the fora below. The revision petition has no legs to stand and, therefore, it is dismissed.