

(2001) 06 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

GIRDHARLAL MOHANLAL GANGANI

APPELLANT

Vs

SUJAY SUDHAKAR URCHIL

RESPONDENT

Date of Decision : 01-06-2001

Acts Referred:

Citation : 2001 2 CPC 576 : 2001 3 CPJ 31 : 2001 3 CPR 23

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeals dismissed with costs

Judgement

1. THESE two appeals are filed by the builder who was opposite party No. 1 before the Goa State Consumer Disputes Redressal Commission (State Commission). THESE appeals are against the orders dated 22.12.2000 in complaint No. 16/2000 and dated 10.12.2000 in complaint No. 15/2000 of the State Commission. Though these appeals arise out of two different orders of the State Commission but they relate to same building; similar agreement; same type of two complaints and judgments of State Commission proceeding in the same vein giving similar reliefs. In F.A. No. 46/2001 there were two complainants husband and wife and in F.A. 48/2001 complainant was first respondent only. Other two respondents in both these appeals are the owners of the land on which building was to be constructed by the appellant. State Commission found that there was deficiency in service by appellant-builder and issued various directions for completion of the building within a fixed time-frame. It also awarded damages to the complainants. To decide these two appeals we will refer to the facts in the case of F.A. No. 48/2001.

2. THE complainant Mrs. Juliet Coutinho entered into an agreement on 1.3.1998 with the appellant for sale of a flat in the building project known as "Jay Kamal Complex" to be constructed on the land by the appellant which land belonged to respondent Nos. 2 and 3. THE amount of consideration agreed was for Rs. 6.00 lakhs. This amount was paid as per the schedule in the agreement. THERE is no dispute that as per terms of agreement complainant paid Rs. 5,45,000/- to the appellant leaving a balance of Rs. 55,000/-. A further amount of Rs. 23,500/-

was also agreed to be paid by the complainant to the appellant towards cost of legal charges, taxes, maintenance deposit, etc. THE amount of Rs. 55,000/- which was due to the appellant from the complainant was payable on the delivery of the possession of the premises. Appellant agreed to deliver possession of the premises to complainant within 12 months from the date of the agreement. He defaulted. Complainant made various visits to the premises and also met the appellant on many occasions. Ultimately she knocked at the door of the State Commission seeking a direction to the appellant to deliver possession of the premises complete in all respects. She also prayed for payment of an amount of Rs. 3,000/- per month from March, 1999 till the date of possession along with interest @ 18% per annum. This amount was claimed being rent of the premises presently occupied by her. She also claimed compensation of Rs. 2,55,000/- with interest for delay in possession and yet further sum of Rs. 2,50,000/- was claimed for mental agony and torture. On notice being issued to appellant as well as to other two respondents being owners of the land only appellant put in his appearance. His defence was that complaint was premature; no notice was served by the complainant making any demand; agreement was not enforceable, it being not registered and no stamp duty had been paid. Appellant also raised the plea that disputes have to be referred to arbitration as per clause in the agreement. State Commission considered if there was failure on the part of the appellant to deliver possession of the premises within the stipulated period; whether the parties should be referred to arbitration; and whether it was necessary for the complainant to send any notice of demand. Affidavits in support of their respective case were filed by the parties. After considering the case as set up by the parties State Commission in Complaint Case No. 16/2000 issued following directions : "(1) The opposite party No. 1 is directed to deliver possession of the suit premises complete in all respects to the complainant, within 30 days. (2) The opposite party No. 1 is directed to pay to the complainant interest @ 18% p.a. on the amount of Rs. 5,45,000/- from 1.3.1999 till the date of delivery of possession. (3) The opposite party No. 1 is directed to pay to the complainant an amount of Rs. 1,00,000/- for mental torture and agony within 30 days, failing which the amount shall carry interest at 18% p.a. till the date of payment, and (4) Opposite party No. 1 is directed to pay to the complainant an amount of Rs. 500/- as costs of this litigation. Order accordingly."

We may note that in the case of F.A. 46/2000 in direction No. 2 the amount mentioned is Rs. 8,65,000/- agreed amount of consideration under the agreement.

3. AGGRIEVED of the order of the State Commission appellant, the builder has filed these appeals. On 21.3.2001 when these appeals came up for admission we directed notice be issued to the caveator in the appeals. On the next date i.e. 16.4.2001 on the request of the Counsel for the appellant the matter was again adjourned to 30.5.2001. We were told by Mr. Naik, learned Counsel for the appellant that building was almost complete and the possession will be delivered

within 3-4 months" time. We wanted both the parties to file photographs of the stage of construction as it was disputed by Mr. Furtado, Counsel for the respondent (complainants) that the statement made by Mr. Naik was not correct. We have seen the photographs filed by the appellant which show that the whole property is in a deserted condition and no work is being carried on. There is no labour at the site. Rather the photographs by the complainant the respondent No. 1 before us show that the state of construction is in quite bad shape. Though external construction is complete, a great deal of work is yet to be done. Bath rooms, stairs, etc. are incomplete. There are no windows, no doors and it could not be said that premises could be completed within 3-4 months" period. It would appear to us that even from the date of the order of the State Commission, appellant has not taken any steps to comply with the order and to push the construction. We have heard learned Counsel for the appellant as well as the complainant. There is no appearance on behalf of the owner of the plot. As noted above, they also did not contest the proceedings before the State Commission. We have examined the pleadings, the affidavits and agreement on record. There is no dispute that as far as the complainant(s) are concerned, they performed their functions under the agreement and full payment as per schedule of payments has been made to the appellant. Except for raising some preliminary objections appellant could not dispute the factual averments of his having entered into agreement, got the amount as per agreed schedule and his failure to construct the premises within the time schedule. In our view, State Commission rightly rejected the preliminary objections raised by the appellant. There is no substance in these objections.

4. DURING the course of hearing we were informed by Mr. Furtado, learned Counsel for the complainant that respondent Nos. 2 and 3, the owners of the land, filed a suit in the Civil Court at Mapusa, Goa against the appellant seeking a restraint on the appellant from entering the building. He said it was a collusive suit filed between them in order to make the order of the State Commission infructuous and its implementation difficult and to subvert the whole process of justice. Mr. Furtado said this suit has been filed prior to 16.4.2001 and about this Mr. Naik did not mention when he appeared on 16.4.2001 before us. He also pointed out that owners never took interest in these proceedings and their sudden interest would show collusive nature of the suit,. Mr. Furtado also produced copy of the plaint filed by the owners as plaintiffs against appellant as defendant. Certainly this speaks volumes of the conduct of the builder and the owners of the land. We have ourselves examined the whole matter. Conduct of the appellant does not appear to be honest. Photographs of the property tell a different story than what was projected before us by the appellant. Complainants have abided by all the terms of the agreement and made payments to the appellant as and when these fell due on the basis of schedule of payment in the agreement. Nothing more was to be done by the complainants. It is the appellant who failed to provide the flat to the complainants and has been thus deficient in providing service to the complainants which was agreed to. In fact he has no

defence. Civil suit filed by the owners against the appellant appears to be a crude attempt to deflect the process initiated by the complainants which culminated in the orders of the State Commission, now impugned before us. There is nothing on record to take a different view than that taken by the State Commission. These appeals are devoid of merit. Twice the Counsel for the complainants had to come from Goa. Complainants will be entitled to costs. These appeals are, therefore, dismissed with costs assessed at Rs. 30,000/-. One set. Appeals dismissed with costs.