
(2011) 04 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

G.Rajitha

APPELLANT

Vs

DEVI CONSTRUCTIONS

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Citation : 2011 0 NCDRC 175

Hon'ble Judges : R.K.Batta , Anupam Dasgupta J.

Advocate : H.K.Monga

Judgement

1. THIS compliant has been filed by the owner of two adjoining plots of land at a village in Ranga Reddy District of Andhra Pradesh. The complainant has averred that she (Smt. G. Rajitha, owner of two adjoining plots measuring 516 sq.yds in all) and another lady (Smt. M. Sunita, owner of two other adjoining plots measuring 610 sq.yds, in the same village) were approached by opposite party (OP) OP no. 1, a builder/ developer with the proposition that the latter would construct permissible number of flats on these parcels of land, each of which would then be sold at Rs.28-30 lakh. The complainant and OP no.2 (Smt. Sunita) accordingly offered their respective plots of land to OP no. 1, who undertook to construct a residential complex thereon (616 sq.yds).

2. THE complainant has further averred that accordingly she and OP no. 2 entered into a Development Agreement with OP no. 1 with a view to earn her livelihood by means of self-employment. According to this Development Agreement dated 19.11.2004, OP no. 1 would retain 15 out of the 25 flats to be constructed and hand over 10 flats to the complainant and OP no. 2, of which 8 flats would go to the share of the complainant. Under clause 11 of the Development Agreement, the parties agreed that OP no.1 shall complete the construction of the proposed residential complex within 21 months of taking over possession of the land/ plot from the complainant and OP no. 2. THE agreement also provided for penalty of Rs.20,000/- per month per flat in case OP no. 1 failed to complete the construction of the residential complex within the stipulated period. The allegation of the complainant is that though she as well as

OP no. 2 handed over the possession of their plots of land to OP no. 1 on 19.11.2004 in accordance with the Development Agreement, the actual construction/ completion of the flat was not only delayed but the quality of construction was also poor. It is further alleged that the complainant as well as OP no. 2 were coerced by OP no. 1 to sell their respective shares of flats (10 in all) at Rs.12 lakh per flat to one K. Krishnamohan, allegedly an associate/ sleeping partner of OP no. 1. This price of Rs.12 lakh per flat was, according to the complainant, much below the initially assured rate of Rs.28 30 lakh per flat, because of the poor quality construction of the flats of their semi-finished status. The agreement of sale was thus executed, under duress, by the complainant and OP no. 2 with OP no.1. Still, OP no. 1 failed/ ignored to pay even the lower agreed amount. Finally, physical possession of the 10 flats falling in the shares of the complainant and OP no. 2 was handed over by OP no. 1 in semi-finished condition on 02.03.2007.

The complainant has further alleged that OP no. 1 not only failed to construct the flats agreed to (10, 8 flats for the complainant and 2 flats for OP no. 2) within the stipulated time but also engineered a situation in which the above-named Krishnamohan was enabled to enter into a sale agreement-cum-General Power of Attorney dated 2nd March 2007 to purchase the 10 flats from the complainant and OP no. 2. The said Krishnamohan too went back on his assurance and finally agreed to purchase only 5 flats and entered into a modified agreement-cum-General Power of Attorney on 27th December 2007 with the complainant and OP no. 2. Even then, Krishnamohan did not pay the amounts due to the complainant and OP no. 2, which forced the complainant to approach the District Court, Ranga Reddy by way of a civil suit.

3. THUS, alleging that she and OP no. 2 had suffered large financial loss as well as mental and physical agony at the hands of OP no. 1 and the said Krishnamohan, the complainant has filed the present complaint seeking directions to OP no. 1 to pay her Rs. 96 lakh (Rs. 12 lakh per flat for 8 flats on account loss suffered by her due to the sale of her shares of 8 flats) and cost of repairs, finishing, etc., of 5 flats @ Rs. 5 lakh per flats, in all Rs. 1.21 crore. We have heard Mr. H.K. Monga, learned counsel for the complainant and gone through the documents produced on record along with the complaint. It may be noted at the outset that on 4th April 2011, the counsel sought to file a set of documents, purporting to be valuation report (s) without obtaining any permission therefor. Permission was refused by an order of even date with the observation that though the matter was taken up on three previous occasions, viz., 26.11.2010, 21.01.2011 and 09.02.2011, there was no attempt on the part of the complainant to seek permission to file any additional documents. In fact, we are inclined to conclude that filing any such document at this stage without even making an application to seek permission to do so amounts to an after-thought and reflects an attempt to procure and file some documents in furtherance of the complainants case.

4. AMONG the substantive issues in the complaint, the first to be noticed is that admittedly possession of 8 flats falling in the complainants share according to the Development Agreement was handed over by OP no. 1 to her sometime in March 2007. There is no material on record to show the status of completion and quality of construction of the flats at the time when possession was taken over by the complainant. Thus, prima facie, this complaint has been filed (11.10.2010) after over 2 years of the cause of action arising. There is, however, no application seeking condonation of delay. Secondly, among the documents filed with the complaint, there is a copy of a consumer complaint (no. 191 of 2010) filed by one Udayanandan Residency Devi Towers Residents/ Flat Owners Association, through its President P. Yadagiri Reddy before the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (the State Commission) against the complainant, OP no. 2 and OP no. 1 alleging that members of the complainant Association purchased their respective flats from the OPs by entering into individual agreements for sale which were subsequently registered. Though there is an allegation in complaint no. 191 of 2010 before the State Commission regarding semi-finished status of these flats in 2008, it does not help the complainant any way in establishing her own allegation that these flats could have been sold @ Rs.28-30 lakh per flat, or that the price of Rs.12 lakh per flat was because of the status and quality of their construction when they were handed over to the complainant. Thirdly, it is an admitted position that the dispute relating to payment of price of the complainants flats by the above-mentioned Krishnamohan is already before the competent Civil Court. However, the complainant has carefully refrained from filing a copy of the said civil suit, the pleadings in which would have shown if the disputes/ allegations in this complaint are different from those in the said civil suit which was apparently filed well before filing of this complaint. The fact that the complainant has deliberately not filed a copy of the said civil suit and the version of the parties therein leads us to draw adverse inference against her. It is settled law that no person can agitate similar disputes concurrently before two separate Forums with distinct legal jurisdictions. Finally, the transaction between the complainant and OP no. 1 is clearly commercial in nature because she admittedly sold all 8 flats which came to her share. Her entirely unsupported statement that she entered into the Development Agreement with OP no. 1 to earn her livelihood through self-employment cannot protect her from being disqualified as a consumer under section 2 (1) (d) (ii) of the Consumer Protection Act, 1986. On this ground too, the complaint is not maintainable. In view of these reasons, we have no hesitation in dismissing the complaint in limine. No order on costs.