

(2012) 10 NCDRC CK 0074

In the National Consumer Disputes Redressal Commission

Hanshmukh Patel

APPELLANT

Vs

Sunil Kumar Majhi

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Citation : 2012 4 CPJ 669 : 2012 4 CPR 362

Hon'ble Judges : J.M.MALIK , VINAY KUMAR J.

Final Decision : Petition dismissed

Judgement

1. THE complainants, namely, Dr. Sunil Kumar Majhi, Dilip Kumar Mukherjee, Shabbir Alam Khan purchased flats at Deepkiran Apartment against payment of entire consideration amount from the opposite parties, namely, Hanshmukh Patel, Kishore Patel and Keshab Lal Patel. They have got the following grievances against the opposite parties. "a) The Community hall as proposed in the agreement as well as sanctioned plan has been completed into flats without their consent.

b) No underground reservoir has been provided in the apartment though it has been mentioned in the agreement.

c) Two residential flats were let out to Barasad Co -operative Bank on length for commercial use and no maintenance charge has been paid by the bank or the shop owner in the said building.

d) Flats are mortgaged with the said co -operative Bank.

e) Ops have blocked the main entrance to lift compelling the Complainants to use the lift over the safety tank which is very risky and dangerous.

f) The buildings are not ensured as per building rules.

g) The promoter has not yet handed over the documents of title, relating to the property on which building stood. The promoter by constructing office and toilet on the car parking space by violating the Municipal Building Rules."

2. THE complainants filed a complaint before the District Forum. The District Forum allowed the complaint with costs in the sum of Rs.15,000/- payable by the opposite parties to the complainants and directed the opposite parties to provide community hall and the underground reservoir as per schedule "C" of the deed of conveyance. The opposite parties were further directed to demolish the wall causing hindrance in the main entrance leading to the lift and to complete the aforesaid work within six months from the date of judgment delivered by the District Forum. It was further ordered that in case of non-compliance of any portion of the order by the opposite parties, the complainants would be at liberty to put the decree as per provisions of law.

3. AGGRIEVED by the order of the District Forum, the opposite parties filed appeal before the State Commission. The State Commission dismissed the appeal. We have heard the learned counsel for the petitioner -opposite parties. He contended that the present case is barred by time. The flats were transferred in favour of the complainants in the years 2002 and 2003. The complaint was filed by the complainants on 9.10.2007 which clearly goes to show that the instant complaint was barred by time.

4. WE find no force in this argument. This is a continuous cause of action. This Commission in the case of Juliet V. Quadros vs. M/s Mrs. Malthi Kumar, 2005 CTJ 499 was pleased to hold that "cause of action remains continuous till allotment of site or till refusal". Same ratio will apply in this case as well.

5. SAME view was taken in Lata Construction and Ors. Vs. Dr. Rameshchandra Ramniklal Shah and another, 2000 1 SCC 586. Consequently, it cannot be said that the case is barred by time.

6. THE second contention raised by learned counsel for the petitioners was that the learned Additional District Judge, Barrackpore vide its order dated 1.4.2008 modified the order to the extent that parties to the suit shall maintain status quo in respect of community hall (in "C" schedule) till the disposal of the injunction petition by the court below.

7. THE pleadings filed by the petitioner go to show that the application for injunction was filed before the Hon"ble High Court and ad-interim order of status quo was passed for a period of six weeks by Hon"ble High Court of Kolkata in civil order No. 2836 of 2008 filed by M/s Rathtala Deepkiran Residents' Welfare Association, represented by its Secretary, Dilip Kumar Mukhopadhyay vs. Shri Keshablal B. Patel and Ors. It further reveals that on 24.2.2009, the status quo granted on 22.09.2008 was not extended by his Lordship Hon"ble Mr. Justice Sadhan Kumar Gupta. These facts do not establish a clear picture. It is not understood why these documents were not produced before this Court. The order of the Hon"ble High Court should have been produced before this Court. It is now well settled that a litigant can approach the civil court as well as the consumer fora. There lies no rub. (See the law laid down in the case of Hindustan Motors Ltd. vs. Amardeep Singh Virk and Ors. 161(2009) Delhi LT 88(DB). Even if it is

assumed that there is order passed by the civil court, anybody violating the same will do it at its own peril. Learned counsel for the petitioner did not bring to the notice of this Commission that as to what is the latest position of the civil case. Litigant is supposed to abide by the orders passed by the civil court or by this Commission.

8. NO other point was raised before us. It must be borne in mind that agreement entered into between the parties is a document of utmost importance. This is an admitted fact that parties entered into an agreement of sale. The agreement to sell specifies some terms and conditions. The parties are bound by the said agreement. The District Forum also appointed Advocate Commissioner. His report fortifies the case of the complainants. Again, this is an admitted fact that underground reservoir was not provided to the complainants. This is the bounden duty of the petitioners to provide all the facilities to the flat buyers. They cannot have benefit of both the worlds. They must abide by the agreement and do the needful as ordered by the fora below.

9. THE revision petition is without merit and therefore dismissed.