
(2003) 08 NCDRC CK 0113

In the National Consumer Disputes Redressal Commission

KUSUMBEN BABURAV KHEDKAR

APPELLANT

Vs

PROPRIETOR HARISIDH CONSTRUCTION PVT. LTD.

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Citation : 2003 4 CPJ 433

Hon'ble Judges : M.S.Parikh , M.K.Joshi J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal arises from order dated 17th February, 1997 rendered by the learned Ahmedabad City Consumer Disputes Redressal Forum in Complaint No. 1631/1993. Since the complaint came to be dismissed, complainant has filed this appeal.

2. IT was the complainant's case that the opponent floated housing society scheme known as Parshwanath Co-operative Housing Society Division No. 7 and offered row houses in the price of Rs. 74,600/-. Out of the said amount, Rs. 44,600/- had to be paid in cash and the opponent No. 1 had to manage the balance amount by way of loan raised in the name of the complainant. Complainant became a member of the Society and paid Rs. 44,600/- on 24.10.1991 in cash and was allotted the row houses No. C-242 in Division 7 of the Society. Loan for Rs. 40,000/- was applied for and sanctioned. Accordingly the opponent informed the complainant that the row-house is ready. But the opponent did not agree to accept the amount of loan of Rs. 40,000/- by way of instalment and insisted for payment of full amount of Rs. 40,000/- at once. The complainant was accordingly informed to pay full amount of Rs. 40,000/- failing which possession would not be given to him. The complainant, therefore, prayed for relief of possession of the row-house by directing the opponent to accept Rs. 40,000/- by instalment. He also prayed for compensation and cost. The first opponent resisted the complaint inter alia on the ground that opponents No. 2 and 3 being the employees were not liable for the claim in the complaint, that the price of the row-house was fixed at Rs. 74,600/- and that the complainant

was laible to pay cost of light connection and cost of non-agriculture coverage, betterment tax, stamp duty, share fee etc. amounting to Rs. 10,500/- over and above Rs. 40,000/-, that the complainant paid only Rs. 44,600/-, that he expressed to obtain loan of Rs. 40,000/- from Parshwanath Housing Finance Corporation Ltd., that necessary information was supplied for the purpose of raising the loan, that no guarantee for granting of loan was given by the first opponent, that if loan was not granted and full price was not paid the complainant would not be entitled to get the possession and that accordingly possession was not given since the balance amount was not paid.

Learned Forum accepted the stand of the first opponent and dismissed the complaint by holding that the complainant did not inform the first opponent as to whether he desired to continue as the member of the Society and whether loan of Rs. 40,000/- came to be sanctioned in his favour or not. Learned Forum also held that there was no material on the record to show that the opponent No. 1 had to manage for the loan and stand of the complainant requiring the first opponent to accept the balance of Rs. 40,000/- by way of instalment was not proper and legal. Learned Forum also observed that the complainant was silent about payment of Rs. 10,500/- towards light connection etc. and other charges.

3. THE only point that is required to be considered in this appeal is whether the complainant was not entitled to get his money back from the opponent in case the row-house was not allotted to him. On going through the communication dated 22nd July, 1992 we find admission on the part of the opponent No. 1 for return of the amount. However, such admission appears to be conditional. In our considered opinion this precisely is deficiency in service on the part of the opponent No. 1. Learned Forum could have at least directed to return the amount with reasonable interest. The first opponent has been given sufficient opportunity in this appeal time and often to appear before this Commision but he never appeared before this Commission. In that view of the matter this appeal is required to be allowed in following terms : Impugned order dated 17th February, 1997 rendered by the learned Consumer Disputes Redressal Forum in complaint No. 1631/1993 is hereby set aside. Original opponent No. 1 is directed to pay to the complainant/s joined as appellants in this appeal, Rs. 44,600/- with interest @ 12% from the date of deposit that is 24.10.1991 till payment within six weeks from the date of receipt of the copy of this order. There shall be no order as to cost through out. This appeal is accordingly allowed to the aforesaid extent. Appeal allowed.