
(2012) 10 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

Lakshmi Saraswathi Apartments

APPELLANT

Vs

G. Shiva Narayana

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Citation : 2012 0 NCDRC 606 : 2012 4 CPJ 727 : 2012 4 CPR 370

Hon'ble Judges : K.S.Chaudhari , Suresh Chandra J.

Advocate : S.K.Sharma , M.N.Ravikanth Acharya

Judgement

1. THIS revision petition has been filed against the order dated 20.12.2010 passed by the learned Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (in short, "the State Commission ") in F.A. No.1109/2008 in Sri Lakshmi Saraswathi Apartments Welfare Association Vs. G. Shiva Narayana and Ors. by which appeal filed by the petitioner-complainant was dismissed and order of District Forum was upheld.

2. BRIEF facts of the case are that complainant is a welfare association of the apartment owners of Sri Lakshmi Saraswathi Apartments and Opposite Party 1 and 2 are property owners and opposite party 3 is builder and developer, who built flats on the site and the same were sold and purchased under different sale deeds in semi-finished stage. It was alleged that opposite parties have not fulfilled their obligations and not provided amenities and car parking. Opposite parties in their reply submitted that they spent Rs.4,22,000/- for amenities and Block "A " members are to pay Rs.2,43,000/- and Block "B " members have to pay Rs.4,28,000/- besides cost of lift of Rs.52,000/- and prayed for dismissal of complaint. District Forum after hearing both the parties dismissed complaint with cost and appeal filed by the petitioner was dismissed by the State Commission vide impugned order dated 20.12.2010 Heard learned Counsel for the parties and perused record.

Learned Counsel for the petitioner confined his argument only to the extent of providing car parking area. He has drawn our attention to paragraph 17 of the sale deed which reads as under "17. The expression common amenities and

facilities shall mean and include the general passage common passage foundations, columns, wall corridors, roads, lobbies, staircase, besides entrances and gates of the building and common parking area etc. and submitted that common parking area means parking area for 4-wheeler and not for 2 wheeler and further submitted that learned State Commission as well as District Forum have committed error in dismissing complaint. On the other hand, learned Counsel for the respondent submitted that common parking area does not mean parking space for 4-wheeler and further submitted that facility area has not been utilized by opposite parties for any other construction and as there is no space for 4-wheeler parking, learned State Commission has not committed any error in dismissing complaint, hence, petition may be dismissed.

3. PERUSAL of Clause 17 of the sale deed reveals that common parking area will be part of common amenities and facilities. Nowhere it has been provided that 4-wheeler parking will form part of common parking area. As per Advocate Commissioner 's Report, there is no separate car parking area. Learned Counsel for the petitioner could not show that common facility area has been utilized by opposite parties for any other construction and in such circumstances it can be inferred that no 4-wheeler parking was agreed to be given as common amenity and facility. Copy of car parking agreement dated 24.9.2011 executed between M/s. Archana Constructions represented by its Managing Partner Sri G. Vijaya Narayana who is opposite party-2 in the present matter and Sri Viraj reveals that car parking area has been provided after receiving Rs.40,000/-. Thus, it becomes clear that car parking area could have been provided only on payment of additional amount. This Commission in IV (2006) CPJ 123 (NC) *Yash Bir Jaggi Vs. Unitech Ltd.* held that complainant is not entitled to get parking area free of cost. Thus, it becomes clear that as per sale deed, no 4-wheeler parking was provided as common amenity facilities and in such circumstances, complainant members are not entitled to 4-wheeler parking facility and learned State Commission has not committed any error in upholding order of District Forum dismissing complaint. Consequently, petition filed by the petitioner is dismissed with no order as to costs.