
(1992) 09 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

MALAN M.TALAULIKAR

APPELLANT

Vs

A.N.NAIK And ASSOCIATES

RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:

Citation : 1992 2 CPR 746 : 1992 3 CPJ 445

Hon'ble Judges : G.G.Loney , Atanasio Monteiro , Subhalakshimi Naik J.

Final Decision : Complaint allowed

Judgement

1. THE complainant has filed this complaint against the opposite party for non delivery of built up premises in Sunshine Apartment at Karaswada, Mapusa.

2. THE complainant had entered in agreement dated 10th August, 1988 with the opposite party (hereinafter referred as the said agreement) for the purchase of built of premises identified as flat No. 4 having built of area of 78 square metres on the 1st floor of the building Sunshine Apartments being built in the property survey under Chaita No. 19 of P.T. Sheet No. 6 of City Survey Mapusa for a consideration of Rs. 1,65,000/- (Rupees one lakh and sixty five thousand only). The complainant had paid an amount of Rs. 1,45,000/- (Rupees one lakh and forty five thousand only) as per the scheduled of payment contained in the said agreement and the balance amount of Rs. 20,000/- being the last instalment was to be paid on delivery of possession of the said flat.

The opposite party had agreed in the said agreement to deliver the possession of the said flat No. 4 to the complainant within 18 months from the date of execution of the said agreement. The said agreement also provided for additional time of 6 months to the opposite party in case of delay caused due to force majeure.

3. THE complainant alleged that the opposite party having failed to deliver the possession even after the expiry of the period of 24 months called upon the opposite party on several occasion for possession of the said flat No. 4. Since the request of the complainant yielded no result the complainant issued a lawyer's

notice on 18th March '91 to the opposite party. By letter dated 4th April '91 the opposite party promised to hand over the possession of the said flat upto June '91. However the possession was not handed over to the complainant, hence this complaint is filed.

4. THE opposite party vide his reply dated 25.3.92 admitted the claim of the complainant and undertook to complete the construction and hand over the possession of the said flat No. 4 on or before 30.6.92. However, the same was not adhered too. It is mutually agreed by party before us that the construction of the said flat is incomplete and that estimated cost to complete construction is about Rs. 55,000/- (Rupees fifty five thousand only). The parties agreed before us that the complainant shall execute all the incomplete construction work and the opposite party shall reimburse to the complainant the amount of Rs. 35,000/- (Rupees thirty five thousand only) which is over and above the stipulated consideration. This amount shall not include the external drainage system, water proofing and obtaining occupancy certificate which will have to be provided by the opposite party to the complainant alongwith the other flat owners at the cost of opposite party.

5. THE opposite party is hereby directed to reimburse to the complainant the amount of Rs. 35,000/- within a period of 45 days from the date on which the complainant shall submit the relevant bills and accounts to the opposite party. THE opposite party is further directed to make provision for drainage and water proofing and obtaining occupancy certificate from the Mapusa Municipal Counsel for the said flat No. 4 within 3 months from this date at his own cost. Complaint allowed.