

(2010) 07 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Maya Kuldeep Paul , Kuldeep Rai Paul

APPELLANT

Vs

Shri Pankaj J. Shah , Unique Developers

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Citation : 2010 0 NCDRC 71 : 2010 3 CPJ 294

Hon'ble Judges : B.N.P.Singh , S.K.Naik J.

Final Decision : Petition is allowed

Judgement

1. PETITIONERS in this revision petition were the complainants before the District Consumer Disputes Redressal Forum, Thane (District Forum for short). Their grievance against the respondents (developers) was that Flat No. C/202 purchased by them from the respondents/opposite parties suffered from numerous defects, in particular it developed wide cracks and deep fissures in the wall resulting in rainwater seeping inside the house, flooding the floor. Despite full payment towards the cost of the flat and assurance that the flat has been constructed with quality material, the defects were noticed to their horror only after living therein. The matter was brought to the notice of the respondents/opposite parties repeatedly but of no avail. The complainants allege that the respondents after having received the full payment towards the cost of the flat not only did not pay any heed to remove the defects but were totally indifferent and apathetic to the repeated approach in the matter. This forced them to file a complaint enumerating full details of the defects before the District Forum, seeking a compensation of Rs.4,32,272/-. The complaint was resisted by the respondents/opposite parties. Both the parties thereafter filed their respective evidence. The District Forum, on appreciation and consideration of the evidence, held that the respondents/opposite parties were deficient in rendering service but as against the claim of Rs.4,32,272/- it directed the respondents/opposite parties to pay Rs.50,000/- towards the cost of repair works to set-right the defects and in addition awarded a sum of Rs.50,000/- as compensation for mental agony and physical inconvenience. It also awarded cost of Rs.2000/- jointly/severally to be paid within a period of two months from the date of receipt of its order. The onus

for payment of the sums was to devolve jointly/severally on both the respondents/opposite parties.

2. THE respondents/opposite parties thereafter challenged the order of the District Forum before the Maharashtra State Consumer Disputes Redressal Commission (State Commission for short) in Appeal No. 1479 of 1998. THE State Commission, after hearing both the parties, while maintained the finding of the District Forum that the respondents/opposite parties were deficient in rendering service, however, reduced the amount of compensation from Rs.50,000/- to Rs.25,000/-. Aggrieved by this order of the State Commission reducing the award of compensation that the original complainants have filed this revision petition for the restoration of the award in their favour given by the District Forum. Petitioner No.2 has appeared in person while Mr. Manu Beri, Advocate, Proxy Counsel has appeared for respondent no.1. Insofar as respondent no.2 is concerned, he is directed to be proceeded ex-parte in view of the affidavit of petitioner no.2, stating therein that when he visited the premises of respondent no.2, M/s Unique Developers on 08.10.2009 to serve the dasti notice in person, Shri Jayesh Shah, one of the partners of M/s Unique Developers, refused to accept and returned the said notice to him.

We have heard both the petitioner no.2 as well as learned counsel for respondent no.1.

3. THE short point for consideration in this revision petition is as to whether the State Commission was right in reducing the compensation amount from Rs.50,000/- to Rs.25,000/- while in the detailed analysis of the grounds before it, it has almost entirely concurred with the view of the District Forum. We have carefully perused both the orders. Suffice it to say, the defence of the respondents/opposite parties challenging the admissibility in evidence of the photographs taken by one of the relatives of the complainants has been correctly overruled. THE State Commission has also rightly discarded the photographs rendered in support of their case by the respondents/opposite parties as they pertained only to the outer look of the flat. Similarly, the contention of the respondents/opposite parties that no other flat owner has made such complaints has been correctly discarded as the rest of the flat owners were only the relatives of the respondents/opposite parties/builders. After dealing with the contention raised in their defence by the respondents/opposite parties, the State Commission has held as under:- Forum below therefore has rightly come to the conclusion that the construction work is of poor quality. Forum below has considered the entire material in proper perspective and after attaching high probative value to the material placed on record by the complainants, has rightly concluded that the flat purchasers are entitled to get Rs.50,000/- as compensation for the deficiencies in construction work. The Forum below granted additional amount of Rs.50,000/- for mental pain and physical inconvenience suffered by the complainants. This item of compensation is on the higher side. We therefore modify this figure.

4. THUS, the State Commission while concurring with the finding of the District Forum has without any basis held the compensation to be on the higher side. This clearly was not warranted. We also take note of the contention of the complainants that after the order of the District Forum, the respondents/builders had sent an emissary offering a sum of Rs.50,000/- against Rs.1,00,000/- and Rs.2000/- towards the full and final settlement of the dispute. The complainants had then not agreed to the offer with the hope that the appeal of the opposite parties would be dismissed by the State Commission as there was absolutely no merit. This only goes to show that even the respondents/builders were aware of the deficiencies. Therefore, in our view, there was absolutely no reason for the State Commission to have reduced the compensation. The order of the State Commission, accordingly, is set aside and the order passed by the District Forum is restored. The respondents/opposite parties are directed to pay the sum as awarded by the District Forum with interest @ 6% per annum from the date of filing of the complaint till its realization, failing which the award will bear interest @ 10% per annum till its payment. The revision petition is allowed in above terms.