

(2012) 09 NCDRC CK 0091

In the National Consumer Disputes Redressal Commission

Members Of The Atulraj

APPELLANT

Vs

Rajul R Shah

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 517

Hon'ble Judges : Vineeta Rai , Ashok Bhan J.

Advocate : S.J.Mehta , D.M.Soni

Judgement

1. THIS First Appeal has been filed by eight members of Atulraj Owner's Residents' Association (hereinafter referred to as the "Appellants") being aggrieved by the order of the State Consumer Disputes Redressal Commission, Gujarat (hereinafter referred to as the "State Commission") which dismissed their complaint against opposite parties Rajul R. Shah and another, Respondents herein.

2. IN their complaint before the State Commission, Appellants had contended that they had purchased flats from the Respondent and during the earthquake that occurred on 26.01.2001, there was heavy damage to these flats because of the unauthorized construction including penthouse, gallery etc. which had been constructed by the Respondents in violation of the sanctioned building plans and had put extra load on the building causing the damage. Further, the material used in the construction was also of inferior quality because of which the foundation of the building itself was very weak and against the stipulated safety norms. Therefore, being aggrieved because of the deficiency in service and the loss caused due of the damage to the building including the fact that during its extensive repairs, Appellants had to stay in rented accommodation, Appellants filed a complaint before the State Commission and requested that the Respondents be directed to pay Rs.16,20,000/- which included Rs.4 lakhs for physical and mental harassment and Rs.10,000/- as litigation costs. Respondents on being served filed a written rejoinder denying the allegations made in the complaint which was also barred by limitation since it was filed more than 2

years beyond the statutory period of limitation. It was specifically denied that the damage caused to the building in the earthquake was because of any defects or illegal construction as alleged. In fact, the entire construction was done under the guidance of a structural engineer the building plans were also got passed by the Ahmedabad Municipal Corporation. It was further contended that the premises were handed over to the Appellants in 1998 and no complaints were received at that time and till 2001 about any defects or unauthorized constructions. Even the present complaint has been filed by only some of the members of the Association and that too after 4 years to exploit the Respondents. The State Commission after hearing the parties and on the basis of evidence filed before it dismissed the complaint on grounds of limitation as also on merits. The operative part of the order of the State Commission reads as follows: "As it transpires from the facts stated that circumstances mentioned though the possession were handed over to the complainants in 1998, till 2001 neither there were any disputes reported nor alleged for any defects in construction. The complainants averred that the defects were not visible prior to but the damage caused in 2001 earthquake, it came to their knowledge that the damage was only because of irregular and substandard construction and therefore, the cause of action had arisen only after the knowledge of damage. Thus, the complaint which was filed on 28.01.2002 is well within the time limit. We are unable to accept this submission keeping in mind the facts, documents and the statement of the complainants. Moreso, because the complainants have not filed any application for condonation of delay or obtained any order from this Commission thereupon. The complainants had sufficient time and opportunities. Thus, the complaint is obviously time barred. The complainants have admitted that they had obtained possession of the respective flats from the Shivam Non-trading Association and they never complained regarding the substandard work at the time possession or thereafter. Thus, the complaint also suffers from vice of non-joinder of necessary party. The complainants have not produced any expert opinion as to the cause of damage suffered by them. Nothing is mentioned, either in the complaint, rejoinder or in the documents, whether there was any damage to the flat or not, if so, where and upto what extent and what was the nature of damage even that has not been mentioned in the oral evidence also. The complainants have not produced any documents which could convince this Commission. It is also pertinent to note here that most of the bills do not suggest that whether those bills were relating to the flats in question, whether payment have been made or not and (if made) by whom. The complainants failed to prove their allegations, more particularly relating to sub-standard material and defective construction as there were no evidence worth the name and also the statements of the complainants are suspicious because they have observed silence for the amounts of Rs.1,00,000/- having been paid to them as an earthquake-aid by the Government and also did not give effect of the same while claiming in this complaint. The complaint filed by the members of the Atulraj Owners' Residents' Association bears signatures of only 8 members whereas there are 12 members as it appears from the

documents.....It is also not established from the documents that the association of members having resolved with the consent of all the members to file the complaint. Thus, the competence of the said association to file this complaint is definitely not proved and also the alleged losses are not proved."

3. HENCE, the present First Appeal. Counsel for both parties made oral submissions. Counsel for Appellants reiterated that the certificate dated 08.02.2001 from the Ahmedabad Municipal Corporation which is on record clearly indicates that a Technical Team headed by a Structural Engineer who inspected the building in question in 2001 reported large cracks in the walls, columns and pillars and that the building could only be occupied by restoration and strengthening clearly confirming the defects and weaknesses in the building. Thus, an Expert found the building defective, a fact which was overlooked by the State Commission. Further, the Respondents had handed over the flats to the Appellants without getting the completion certificate which is a statutory requirement. The State Commission also erred in concluding that the case was time-barred by not appreciating the facts that the complaint could not be made in 1998 because at that time the defects in the building were not visible and became apparent following the earthquake when the building got damaged.

4. COUNSEL for the Respondents on the other hand stated that the State Commission had rightly concluded that the case was barred by limitation since it was filed about 4 years after the building had been taken possession of and during this period no complaints whatsoever had been received from any of the Appellants. It is also significant to note that at least 4 of the persons who have been allotted flats had not joined in the present complaint. The earthquake of 2001 was of very severe intensity measuring over 8 on the Richter Scale and several buildings in fact were destroyed in this earthquake. Under the circumstances, the report of the Technical Team cited by the Appellants that large and deep cracks had appeared in the walls and columns does not per se indicate that defective material was used or that there were structural defects in the building. If that had been the case, the entire building would have collapsed. No other evidence has been produced by the Appellants on whom there was onus to do so to prove that defective material was used. Therefore, the First Appeal being misconceived and unjustified does not merit consideration.

5. WE have heard learned Counsel for both parties and have carefully gone through the evidence on record. The fact that the flats were occupied in 1998 and no complaints were made by the Appellants till 2002 i.e. for 4 years is an admitted fact. The Appellants' contention that they were not aware that substandard material was used till it became exposed and visible following the earthquake was not accepted by the State Commission and we agree that it does not inspire confidence. If indeed there were defects and unauthorized constructions, this would have come to notice soon after the occupation of the premises in 1998. The earthquake in which some damage was caused to this building does not in the absence of any other evidence, indicate that substandard

material was used or that there were defects in the building and that it had a weak foundation. An earthquake with a severity of over 8 in the Richter Scale almost invariably causes damages if not destruction to the buildings and the havoc that it caused in terms of destruction of life and property in large parts of the Gujarat is well known. Therefore, the evidence relied upon by the Appellants, namely, the report of the Technical Team of the Ahmedabad Municipal Corporation that some large and deep cracks appeared in the columns in the building by itself is not conclusive proof that this was caused because inferior building material was used or that the building had a weak foundation on which unauthorized constructions were made. We find force in the contention of the Counsel for Respondents that if that were so, the entire building would have collapsed. No credible evidence has been produced by the Appellants to prove that substandard material was used and there were defects in the building in the absence of which we are unable to conclude that there was any deficiency in service on the part of the Respondents. Keeping in view these facts, we agree with the finding of the State Commission that both on the grounds of limitation as also on merits, the complaint does not merit consideration. We, therefore, dismiss the First appeal with no order as to costs.