

(2011) 02 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

MilAan Barot

APPELLANT

Vs

Mukesh Haridat Bhatt

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Citation : 2011 0 NCDRC 100 : 2011 3 CPJ 141

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

Final Decision : Petition is disposed of

Judgement

1. THE present revision petition has been filed by Milan Barot and others (hereinafter referred to as the Petitioners) being aggrieved by the order of the State Consumer Disputes Redressal Commission, Gujarat (hereinafter referred to as the State Commission) in favour of Mukesh Haridat Bhatt and others (hereinafter referred to as the Respondent).

2. THE facts of the case according to the Respondent (original complainants before the District Forum) was that he had decided to purchase Bungalow No.A/8 in the Satyasai Co-operative Housing Society Ltd. From the Petitioners on 21.02.2001. THE Respondent took a loan of Rs.6.50 lakhs and thereafter made an initial payment of Rs.8 lakhs and a cash payment of Rs.45,000/-. THE Petitioners enhanced the price of the bungalow to Rs.9,52,750/- and also asked the Respondent to pay Rs.20,000/- for margin land and Rs.50,000/- for legal charges which the Respondent paid even though the Petitioners were not entitled to demand this amount under the provisions of Gujarat Ownership Flat Act, 1963. THE Respondent further contended that he had spent another Rs.2 lakhs on furniture and fixtures for use in the above bungalow. Despite having made the payments as demanded, Petitioners did not hand over the bungalow to him on the pretext that this would be done after necessary permission is obtained from the Ahmedabad Urban Development Authority(AUDA). In the meantime, Respondent had to pay the bank Rs.7,384/- every month towards installment on the loan that he had taken. Respondent, therefore, issued a legal notice to which the Petitioners did not respond. Aggrieved by this, the Respondent filed a

complaint before the District Forum praying that he be handed over the physical possession of the aforesaid bungalow along with all facilities and also to be paid a monthly amount of Rs.7,384/- from November, 2001 till the realization of possession as well as Rs.2 lakhs for mental agony and Rs.3,000/- as costs.

Petitioners denied the above contentions and stated that they had every intention of handing over the bungalow as soon as the required permission from the municipal authorities was obtained. Further, while admitting that the Respondent had booked the bungalow under the Nirmal Bunglows Scheme from them, they stated that the Respondent had failed to pay the full amount due for the bungalow. According to them, in addition to Rs.9,52,750/- which was the enhanced cost of the bungalow, he was also required to pay Rs.2,69,550/- for the additional work that had been done on the bungalow at the instance of the Respondent. Further, Rs.20,000/- being the maintenance deposit and Rs.43,000/- being the amount to be paid as legal charges are also to be paid by the Respondent. Therefore, Respondent was still required to pay an additional amount of Rs.4,07,300/- over and above the amount that he had already paid (i.e. Rs.8,70,000/-). Under the circumstances, the complaint filed by the Respondent was false and needed to be rejected.

3. THE District Forum after hearing both parties and considering the evidence filed before it allowed the complaint and directed the Petitioners jointly and severally to hand over the peaceful and physical possession of the bungalow within three months from the date of passing of the order after obtaining the required permission from the Ahmedabad Urban Development Authority. In case of failure to do so within three months, then the Respondent are entitled to get from the Petitioners monthly installment of Rs.7,384/- together with increasing interest @ 9%. It further directed Petitioners to pay Rs.10,000/- to the Respondent for mental agony and Rs.2,000/- for costs of the complaint. Aggrieved by this order, Petitioners filed an appeal before the State Commission. The State Commission dismissed the appeal and confirmed the order of the District Forum on the grounds that no agreement was shown by the Petitioners that the price of the bungalow had been enhanced to Rs.9,52,750/-. Further, no evidence including the appointment of any engineer or/and in fact no evidence was produced that Petitioners had done any additional work on the bungalow at the instance of the Respondent. Under the circumstances, the State Commission concluded that the Respondent had already paid the total price for the bungalow and, therefore, he was entitled to immediate physical possession of the bungalow. Hence the present revision petition.

4. LEARNED counsel for both parties were present. Counsel for Petitioner stated at the outset that as per the directives of the learned Fora below and by the National Commission in its order dated 19.11.2008, the bungalow in question had been handed over to the Respondent by Petitioners in the presence of an Architect agreed to by both the parties. He further stated that Petitioners had also removed the defects which had been noted in the said bungalow. Despite

this, Respondent had failed to pay the additional amount which was due from him. Counsel for Petitioner when asked by us to show any written agreement regarding the enhanced price of the bungalow, stated that in fact there was no written agreement between the two parties and there was only an oral agreement. However, he brought to our attention a letter written to them by the Consumer Protection Council on behalf of the Respondent stating that Respondent had paid Rs.8,70,000/- out of the total cost of 10,22,750/- and even as per this document which has been written at the instance of the Respondent an amount of Rs.1,32,750/- is due from him. We have considered the oral submissions made by the learned counsel for the parties as well the evidence on record. It is very clear from the documents before us that there is no evidence of any written agreement stating the actual price of the bungalow. Regrettably, all this appears to have been done informally or through an oral agreement between the two parties. The letter of the Consumer Protection Council on which the Petitioners have relied is not an agreement but a communication which only lists out the grievances of the Respondent against the Petitioners. It is noted that the possession of the bungalow has already been handed over by the Petitioners to the Respondent and the dispute that now remains, pertains to settlement of accounts between the two parties. The consumer fora are courts of limited jurisdiction and are required to conduct their proceedings in a summary manner based on the principles of natural justice. In the sense they are not courts though vested with the powers of the civil courts. The Honble Supreme Court in *Laxmi Engineering Works Vs. P.S.G. Industrial Institute* (1995) 3 SCC 583 had clearly spelt out the status of consumer fora as follows: The quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. These forums/commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. It was intended to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for business-to-consumer disputes and not for business-to-business disputes. Respectfully following the above ruling of the Honble Supreme Court of India, in the instant case the present dispute is a dispute between the two parties pertaining to settlement of account where a counter-claim has been advanced against the Respondent/complainant by the Petitioner herein. This matter is, therefore, to be adjudicated in a civil court and not in a consumer court since it is clearly a business-to-business dispute.

5. KEEPING in view these facts, we do not intend to intervene any further in the matter. The parties are at liberty approach the civil court or any other

appropriate forum in accordance with law for settlement of their dispute, if they so desire. The revision petition is disposed of with the above observations and with no order as to costs.