

(2011) 12 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

M/S. Sri Srinivasa Constructions

APPELLANT

Vs

Dharmapuri Venkateshwar Rao

RESPONDENT

Date of Decision : 17-12-2011

Acts Referred:

Citation : 2011 0 NCDRC 787

Hon'ble Judges : M.SHREESHA , S. Bhujanga Rao J.

Advocate : D.Jawahar Lal

Judgement

1. HAVING heard the learned counsel for the appellant, and having perused the material on record, we are of the opinion that this matter can be disposed of at the stage of admission.

2. APPELLANTS are the opposite parties. The case of the complainant in brief is that the complainant along with others had given their premises on a sharing ratio of 55:45% i.e., for development for construction of residential apartments to the opposite parties and to that effect on 5.11.2005 entered into DGPA and memorandum of understanding. As per MOU, the opposite party has to complete the construction and deliver the possession of the same within 18 months from the date of possession given by the land owners. Though the period of 18 months lapsed, no commencement of work is done. The opposite parties constructed commercial area in time and alienated to third parties without the knowledge and consent of the complainant though it falls to the share of the complainant was sold out to one Dr.AA Suma on 23.8.2007. As agreed originally, a 6 " passage was left for access to upper floors occupant to lead to stair case and lift. After completion of shops another 3 "space was added to the adjacent shop and sold thereby leaving only 3 "wide passage in the common space which may cause inconvenience not only to the complainant but also to all other upper floor occupants. The opposite parties have raised the building upto 4 floors ground floor + 3 upper floors as per the sanction plan and the share of the complainant in the first floor is not completed and the opposite parties have completed the portions which falls to his 55% share and selling the same to third

parties. Therefore the complainant sought direction to the opposite parties to permit the complainant to complete the construction of her share at the cost of the opposite parties or in the alternative to complete the construction and deliver the possession of the share of the complainant in accordance within the specifications annexed to the development agreement and memorandum of understanding by demarcating the 45% share of the complainant and to pay the rent of the share of the complainant as per the market value and pay compensation and costs.

3. THE opposite parties resisted the case contending that the complainant had delivered the vacant possession of the schedule property on 18.7.2007 but not on 5.11.2005 and as such the stipulated period for handing over the possession of complainant 's share expires only on 17.01.2009. The opposite parties have entered into registered joint development agreement with the complainant and other adjacent co-owners on 5.11.2005. As per clause No.1 of the Development Agreement, the complainant along with other adjacent owners have to hand over the vacant possession of their respective properties after obtaining sanction plan by vacating their tenants. The opposite parties obtained municipal sanction plan on 16.7.2007. On 18.7.2007 the complainant along with others handed over the vacant possession and the 18 months period would expire on 17.1.2009. The opposite parties completed the entire construction except few minor works that too because of legal impediment created by one of the adjacent owners before V Junior Civil Judge, CCC, Hyderabad in O.S.No.6393 of 2007 and C.C.NO.34 of 2008 on the file of District Forum-III, Hyderabad which was dismissed on 29.4.2008. The injunction petition in O.s.No.6393 of 2007 was dismissed on 20.10.2008. There is no deficiency in service or unfair trade practice on the part of the opposite parties. There is no consumer relationship between the complainant and the opposite parties. Therefore the opposite parties prayed for dismissal of the complaint.

4. BASED on the evidence adduced i.e., Exs.A1 to A8 by the complainant and Exs.B1 to B12 by the opposite parties the District Forum partly allowed the complaint directing the opposite parties to demarcate the respective shares of the land owners and handover the possession accordingly. Aggrieved by the order of the District Forum, the opposite parties preferred this appeal.

5. THE facts not in dispute are that the complainant along with three other owners of the adjacent lands have entered into development agreement with the opposite parties. It is also not in dispute that the opposite parties have agreed to construct the residential apartments in accordance with the municipal permission and the respective share of the land of the complainant will be delivered within the stipulated period. The complainant contends that the opposite party raised the building upto 4 floors as per the sanction plan and the share of the complainant in the first floor was not completed and they have completed the portions which falls to their 55% share. The opposite parties contended that the complainant has delivered the vacant possession of the schedule property on

18.7.2007 but not on 5.11.2005 and as such the stipulated period for handing over the possession of complainant 's share expires only on 17.1.2009. Even otherwise the opposite parties have completed the entire construction except for few minor works and they are ready to hand over the complainant 's 45% share out of 29 sq.yards within the stipulated period on or before 17.1.2009. The opposite parties in their grounds of appeal contended that the complainant has illegally occupied portion of the building and demanded payment of amount as per the market value for the area which is in excess of what the complainant is actually entitled to. The District Forum has allowed the complaint directing the opposite parties to demarcate the respective shares of the land owners and handover the possession accordingly. The direction given by the District Forum is only to demarcate the respective shares of the land owners and hand over the possession accordingly. There was no direction for any compensation or costs. The development agreement entered into between the land owners and the appellants was also filed and after going through the entire record and the evidence adduced Exs.A1 to A8 and Exs.B1 to B12, the District Forum observed that the opposite parties obtained municipal sanction plan on 16.7.2007, (Ex.B3) and has calculated the time period from that date only. We do not see any infirmity in the order of the District Forum directing the appellants to hand over the share to the land owners and as such the appeal is liable to be dismissed at the stage of admission.

6. IN the result the appeal is dismissed. No costs.