

(2005) 12 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

MUKESH PARIKH

APPELLANT

Vs

KETANKUMAR SIDDHARTHBHAI GAJJAR

RESPONDENT

Date of Decision : 26-12-2005

Acts Referred:

Citation : 2006 1 CPJ 622 : 2006 2 CPR 31

Hon'ble Judges : M.S.Parikh , Jatin P.Vaidya J.

Final Decision : Complaint disposed of

Judgement

1. BY way of this complaint, the complainants have prayed for following reliefs against the opponents. "(a) The opponent should reimburse Rs. 5,70,000 being the cost purchase of flat with interest @ 24% per annum from the date of purchase of flat. (b) Rs. 5,00,000 on account of compensation for great deal of inconvenience, mental agony, suffering of victimization and pain stacking trouble on account of weak construction of flat with defective specifications of flat provided to the complainant, which is deficiency of service, and mental torture till receiving compensation. (c) The opponent should pay Rs. 3,00,000 being difference of price escalation on account of future construction of flats. (d) To pay the interest at the rate of 24% per annum on Rs. 13,85,000 (Rupees thirteen lacs eighty-five thousand only) from the date of purchase of flat of defective specification. (e) The Hon"ble Commission may please be order to pay Rs. 15,000 for the cost of legal expenses and filing this complaint to the complainant Nos. 1 and 2 separately".

2. BRIEF case set up by the complainants in the complaint may be noted: Complainant No. 2 is the consumer represented by complainant No. 1 consumer organisation as per the particulars set out in the complaint. Complainant No. 2 is referred to as the "complainant" hereafter. The complainant purchased Flat No. 101 on the 1st floor of Sharanam Apartment of Upvan (Vasna) Association (NTC). Opponent Nos. 1 and 2 are stated to be the partners of the builder and opponent No. 4 is stated to be builder associates. Opponent No. 3 is the representative of the aforesaid association. It has been asserted that on account of deficiency in

rendition of construction service, the building in which the flat that was allotted to the complainant had collapsed in the devastating earthquake that shook the State of Gujarat on 26.1.2001. The complainants approached the 1st opponent in respect of the loss sustained by the complainant and 1st opponent admitted the liability with regard to weak construction/structure of the building in question. The opponents, however, demanded extra amount of Rs. 1,50,000 for new construction at the same place without giving any guarantee of standard design or structure. Under such circumstances total cost of the flat which was in the sum of Rs. 3,50,000 including land cost invested by the complainant is required to be refunded by the concerned opponent to the complainant. It had also been alleged that the complainant paid Rs. 25,000 towards electricity charges and extra amount of Rs. 2,00,000 on different occasions for flooring tiles, granite platform, wash basin full-fledged tiles on walls for lavatory/bath room, use of kota stones in rooms and other construction. It has also been alleged that complainant had paid in all Rs. 5,70,000 as the cost of the flat in question. The complainant has finally alleged that on account of the weak construction resulting into collapsing of the building the complainant sustained a great deal of pain and hardship and he should be awarded appropriate compensation for which prayer has been made in the complaint. The opponents have been served with the summons and subsequent process as can be seen from the record of the case. Advocate Mr. Nishit P. Mehta appeared for opponent Nos. 1, 2 and 4 as per his Vakalatnama dated 31.5.2001 along with application for adjournment filed on that day. Although the application and the Vakalatnama appear on the record of this file, there is no mention about the same in the Rojnama. However, we take note of appearance in view of the aforesaid papers appearing in the file.

In spite of appearance filed by the concerned opponent Nos. 1, 2 and 4, no affidavit in reply has been filed. The matter was adjourned from time-to-time but none from the side of the opponents remained present. This fact was noted in order dated 28.7.2003 (Exh. 9). As a result of the aforesaid effort for keeping the opponents present, Advocate Mr. N.P. Mehta appeared and gave application Exh. 11 for adjournment. Even that application was granted in spite of objection from the side of the learned representative for the complainant. Thereafter, the parties negotiated for settlement with the result application Exh. 13 was given by the opponent's learned Advocate. That was repeated by application Exh. 14 but of no consequence. The complainant did not have any other option except to produce with list Exh. 18 the affidavit and xerox copies of the papers showing the payments made by him along with the complaint. In all he has paid Rs. 3,55,000 as per the papers produced with the complaint and Rs. 1,75,000 as per the xerox copies of kacha receipts produced with aforesaid list. Thus, the complainant has produced evidence to show payment in the sum of Rs. 5,30,000. The complainant states before us as also in the affidavit of he having made payment in the total sum of Rs. 5,70,000.

3. THE complainant who is present before us fairly submitted that he has received Rs. 1,75,000 by way of assistance from Government. We will take into

consideration this payment received by the complainant for the Government at the time of considering the question of award of compensation on the head of mental agony and hardship. The facts noted hereinabove would clearly indicate that newly constructed flat has collapsed in the earthquake and that would speak volumes with regard to the nature of construction and deficiency in rendition of service of construction of the flat in question. In our considered opinion, the complainant would prima facie be entitled to refund of the amount which he has paid with reasonable interest which would compensate the complainant in the matter of amount spent by him.

4. THE complainant would submit before us that the amount paid by the Government is required to be refunded to the Government as the flat in question has not been reconstructed. Even with regard to reconstruction of the flat, there is no progress as such and there is no scope for any reconstruction in near future. Thus, opponent Nos. 1, 2 and 4 are not likely to re-allot the flat in question after reconstructing the same. We have gone through the communication received by the complainant from the Government from his file and that would also clearly indicate that he would be required to refund Rs. 1,75,000 to the Government if the flat is not reconstructed. That communication is dated 23.7.2004. In that view of the matter, the complainant would be entitled to reasonable compensation for the hardship which he has faced due to deficiency in rendition of construction service. As a matter of fact, when a new flat is totally collapsed on 26.1.2001 the old flats in the surrounding areas were still standing, the act/omission of opponent Nos. 1, 2 and 4 in making weak and defective construction would amount to deficiency in rendition of construction service. In that view of the matter, the complainant would be entitled to reasonable compensation on the head of mental agony the complainant must have faced in the matter of contract between the parties. THE complainants would be entitled to reasonable cost also. Insofar as 3rd opponent is concerned, he would not be liable to answer the claim in any manner as there is no question of rendition of service of construction by him in favour of the complainant. In view of what is stated above and bearing in mind the facts and circumstances of the case, we have no hesitation in accepting the complainant's case with regard to refund of payments made by him with reasonable interest as also compensation which will have to be quantified at Rs. 25,000. We also award cost in the sum of Rs. 15,000 to each of the complainants.

5. WE, therefore, pass following order. ORDER Opponent Nos. 1, 2 and 4 are directed to pay to complainant No. 2 (Dhirenkumar Ambalal Shah) Rs. 5,70,000 with interest @ 10% p.a. from 19.1.2001 till payment, compensation in the sum of Rs. 25,000 and cost in the sum of Rs. 15,000 within 8 weeks from the date on which they receive true copy of this order. Opponent Nos. 1, 2 and 4 will pay cost quantified at Rs. 15,000 to 1st opponent consumer organisation also within the aforesaid period. The complaint insofar as opponent No. 3 Association is concerned, represented by Siddharthbhai A. Gajjar will stand dismissed. This complaint will stand disposed of accordingly in aforesaid terms. Complaint

disposed of.