

(2002) 01 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Prof Lallubhai Parbhubhai Shah

APPELLANT

Vs

Pradeep Lunawat

RESPONDENT

Date of Decision : 29-01-2002

Acts Referred:

Citation : 2002 3 CPJ 17

Hon'ble Judges : D.P.WADHWA , J.K.MEHRA , RAJYALAKSHMI RAO , B.K.TAIMNI J.

Judgement

1. PETITIONER is a retired Government servant. He retired from the post of Assistant Professor, Film Production in Film and TV Institute at Pune. He is now 80 years of age. He is aggrieved by the order of the Maharashtra State Consumer Disputes Redressal Commission dismissing his appeal and affirming the order of the District Forum relegating the dispute of an amount of Rs. 30,000/- between the petitioner and the respondent builder to Civil Court. PETITIONER has lot of grievances against the judicial system. He had filed detailed notes of his written submissions in support of his petition. We are also unable to help him in respect of all his grievances.

2. PETITIONER -complainant entered into an agreement with the respondent - builder for purchase of bungalow in a complex being constructed by the respondent. Under the agreement complainant was to get possession of bungalow on 31.12.1990. This date was then changed to 31.3.1991. Complainant was not given possession. Complainant was informed by the respondent by his letter dated 20.7.1992 that he had obtained completion certificates from the Municipal Corporation and that unit was ready for delivery of possession. Petitioner was informed that a sum of Rs. 30,000/- was due from him under the agreement and Rs. 7,500/- was also due from him towards additional work carried out as per his instructions. Petitioner was asked to pay these amounts before taking possession. He was asked to intimate the date suitable to him for taking the possession. Certain other documents were also sent to the petitioner for his being admitted as member of NCL Cooperative House Building Society Ltd. This society, it would appear, was formed with other,

owners of the bungalows in the complex. By this letter of 20.7.1992 petitioner was also informed that a sum of Rs. 1,251/- was being sent to the Society by the respondent for completion of membership formalities on behalf of the petitioner. Petitioner took possession of the bungalow on 2.10.1992. At that time he gave the possession receipt which we set out in full. "Date : 2nd October, 1992 To SBL, Constructions B -3, Mahalaxmi Abhimanshree Society, Pashan Road, Pune - 411 008. Subject : Taking over Possession. Dear Sir, I hereby confirm having taken possession of my residential unit i.e. Plot No. 34 along with residential bungalow thereon at S. No. 37/3, Pashan, Pune 411 008, constructed by you in terms of our agreement dated 27th May, 1990. I confirm that the said bungalow is constructed according to the agreed specification and also according to agreed additional work, in all respects and I have satisfied myself with the quality of construction work and the material used therein. I am aware of the difficulties caused to you and which were beyond your control in completing the bungalow within stipulated time as stated in Agreement and such I have no claims whatsoever nature including monetary, against you for delayed possession and also no grievance regarding the amount/sums paid as per the Clause Nos. 4 and 5 of Agreement. We shall pay the amount towards Stamp Duty, Sales Tax, if require. Let me assure that I hold own and possess the said unit as member of the NCL Co -operative Housing Society Ltd., I will also execute at my cost Lease Deed with the Society, as and when Society calls upon me. Yours faithfully Sd/ - Rajeev L. Shah 2.10.1992 I hereby acknowledge the followings : 1. P.M.C. Completion Certificate with sanctioned Building Plan. 2. Keys (In triplicate) 3. MSEB Receipt (Security Deposit and Service Connection) 4. Water Receipt (Deposit and Connection) 5. Receipt of Rs. 1,251/- paid on my behalf to NCL Co -operative Housing Society for Entrance Fees, Admission Fees, Value of shares (5). 6. Acknowledgement copy of my application to Ordinary Membership of NCL Co -operative Housing Society Ltd. 7. One Water Pumpset ¼ HP Newmake with connection and Store Shelves in Kitchen provided additionally by Builder. Sd/ - Rajeev L. Shah 2.10.1992."

On 5.11.1994 petitioner wrote to the respondent claiming payment of interest and compensation for late possession and inefficient work and craftsmanship. What he desired in this letter is stated by him in paras 8 and 9 which are as under : "8. Hence by this letter I request you to kindly pay the following by way of our out of pocket expenses, interest and compensation for all of your above defaults : (a) Rs. 6,500/- paid to Society for water arrangements. (b) Rs. 3,500/- for replacing glass in 3 sanitation blocks. (c) Interest as actually worked out at the minimum rate of 18% for late possession from 1.4.1991 to 2.10.1992. (d) Compensation for all above inconveniences caused to us after our occupation and moving into the house. 9. If no reply or payment as above is received within a month from this date, I will have no other alternative left but to go to the Redressal Forum which please note and all the costs and consequences thereof will be borne by you vide their final decision."

3. IT would be seen that there is no mention of about Rs. 30,000/- which so

admittedly was paid by the petitioner to the respondent before taking over the possession of the bungalow. This letter dated 5.11.1994 of the petitioner was replied by the respondent refuting all the allegations. Petitioner filed complaint before the District Forum on 29.12.1994 as he had warned the respondent. He wanted reimbursement of the Rs. 21,896/- with interest from the amount of Rs. 30,000/- charged and not accounted for by the respondent. District Forum found that respondent had cured or repaired whatever deficiencies were found and that respondent also tried to explain how he spent the amount of Rs. 30,000/- taken by him at the time of delivery of possession to the petitioner. District Forum was of the view that this amount of Rs. 30,000/- is required recording of evidence and this could not be a consumer dispute within the meaning of Consumer Protection Act, 1986. Holding that the matter is complicated one requiring evidence, District Forum dismissed the complaint but at the same time observed that petitioner may go to Civil Court if he so desired and advised as per law. No order was made regarding costs.

4. FROM the order of the District Forum petitioner went in appeal before the State Commission. It would appear that another person by the name Brigadier (Retd.) George Mathew had also filed an appeal against the order of the District Forum in a complaint filed by him which also pertained to purchase of a bungalow by him in the complex from the respondent -builder. State Commission by the impugned order dismissed both the appeals. It was observed that there is allegation of fraud and the issue raised was one of mixed question of fact and law and would require elaborate evidence and that could not be decided in the summary jurisdiction. We do not think District Forum or the State Commission should have given much attention to various allegations which may appear rather to be irrelevant. In the exercise of our jurisdiction under Clause (b) of Section 21 we would say the only question which arose for consideration was the amount of Rs. 21,896/- which was not accounted for by the respondent -builder though he had received Rs. 30,000/- at the time of taking over the possession. The demand of Rs. 30,000/- by the respondent at the time of delivery of possession was intricably connected with the agreement of purchase of bungalow to be built by the respondent. It could not be said, therefore, that the accounting of Rs. 30,000/- did not raise a consumer dispute and that it was outside the purview of the Act. It was not necessary for the District Forum to relegate the parties to Civil Court only on the question of balance amount of Rs. 30,000/- which as alleged was not accounted for by the respondent that it was in connection with the agreement of sale and purchase of the bungalow in question. We will not interfere in any other part of the order either of the District Forum or the State Commission as that did not raise any question of law. Accordingly, orders of the State Commission and District Forum are set aside and the matter is remanded to the District Forum for decision on the question of Rs. 21,896/- and claim of interest on that in accordance with law. Revision Petition disposed of.