

(2012) 01 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

R. Rajendra Prasad And Ors.

APPELLANT

Vs

Saritha K. Mehta And Anr.

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Citation : 2012 1 CPJ 457

Hon'ble Judges : ASHOK BHAN J.

Judgement

1. R . Venkata Rama Rao, father of Petitioner Nos. 1 and 2, R. Rajendra Prasad and R. Shyam Prasad who were Opposite Party Nos. 1 and 2 before the District Forum and grand -father of Petitioner Nos. 3 to 5, R. Sanjay Kumar, Dr. R. Ajay Kumar and R. Vijay Kumar, who were Opposite Party Nos. 3 to 5 before the District Forum, obtained a Municipal permission for construction of commercial complex vide file No. 28/32 dated 25.2.2003. Petitioners along with Respondent Nos. 3,4 (Opposite party Nos. 6,7 before the District Forum), M. Jagadeeshwar and Smt. Rajyalakshmi, entered into a development agreement with the Managing Partner of M/s. S.V. Builders, Respondent No. 5 (Opposite Party No. 8 before the District Forum) in respect of premises bearing M.C.H. No. 3 -2 -844 admeasuring 706 square yards and 3 -2 -844/A admeasuring 44.91 square yards situated at Kachiguda, Hyderabad.

2. AS per para 13 of the said agreement, Respondent Nos. 3, 4 were to be given "in all 3900 square feet of constructed area and also 3 car parking available in the cellar." On 2.5.2005, Petitioners and builder, Respondent No. 5 executed and registered Sale Deed dated 2.5.2005(Ex.B -1)bearing document No. 1585/2005 in favour of Respondent No. 4 in respect of Flat No. 403, IV Floor, Rajeshwari Gayatri Sadan Apartment, House No. 3 -2 -884, 3 -2 -844/A, Kachiguda, Hyderabad. Specific area of car park is not mentioned in the registered Sale Deed. However, in para 13 of the Development Agreement dated 18.6.2003, it is stated that the 2nd party, i.e. M.J. Jagadeeshwar ana Smt. M. Rajya Lakshmi, Respondent Nos. 3, 4 will get 3 car parkings available in the Cellar. No specific dimensions of the car parking have been mentioned therein also.

On 21.5.2005, Respondent No. 4 executed and registered Sale Deed (Ex. A -2) in respect of above said flat No. 403 in favour of the original Complainant/ Respondent Nos. 1, 2. Schedule of Property of the said Sale Deed is as under: All that Flat No. 403 on Fourth Floor in the complex known as "Rajeshwari Gayatri Sadan" in premises being Municipal No. 3 -2 -844, admeasuring 1540 sq. ft (including common area) and one car parking earmarked in the Celler, together with undivided share of land 30 sq. yards, situated at Kachiguda, Hyderabad - A.P...."

In the Sale Deed dated 21.5.2005 also there is no mention of the specific area of the car parking.

3. ON 14.10.2005, Complainant/ Respondent Nos. 1,2 got issued a legal notice to the Petitioners, Respondents No. 4 and Builders, Respondent No. 5 complaining about insufficient car parking area. As the grievance of the parking slot was not settled, complainants/Respondent Nos. 1 and 2 filed the complaint No. 1081/05 on the file of the District Forum -III, Hyderabad seeking redressal of their grievance.

4. DISTRICT Forum dismissed the complaint. Complainant/Respondent Nos. 1, 2, being aggrieved, filed the appeal before the State Commission. State Commission allowed the appeal, set aside the order of the District Forum and directed the Petitioners and Respondent Nos. 4, 5 to allot car parking space at Slot No. 301 to the Complainant and Respondent No. 4 (Opposite Party No. 7) was directed to refund Rs. 4,300. Petitioner and Respondent Nos. 4,5 were also held liable to pay costs of Rs. 3,000.

5. LEARNED Counsel appearing for the Petitioners contends that the Petitioners did not have any privity of contract with the Complainants/Respondent Nos. 1, 2 as they have purchased the flat from the Respondent No. 4/O.P. No. 7; that since there was no privity of contract between the Petitioners and the Complainants, the complaint was not maintainable against the Petitioners; that the Petitioners along with Builder had executed and registered Sale Deed on 2.5.2005 in favour of the Respondent Nos. 3, 4 as per their entitlement and handed over the possession of the flat as well as car parking area; that the Complainants purchased the flat in question along with car parking area from Respondent No. 4/O.P. No. 7 and the grievance of the Complainants, if any, is against Respondent No. 4 and not with the Petitioners.

6. AS against this, learned Counsel appearing for the Complainant/Respondent Nos. 1,2 contends that since the Petitioners sold the flat along with car parking area to Respondent No. 4/O.P. No. 7, the complaint filed by them was maintainable against the Petitioners as well. Counsel for the parties have been heard at length. Complainant/Respondent Nos. 1, 2 purchased the premises in dispute along with car parking from Respondent Nos. 3, 4. Complainants filed the complaint with the grievance that the car parking area was smaller to the car parking area of some other flat owners in the complex and prayed for a direction

against the Petitioners, Respondents 3, 4 and Builder, Respondent No. 5 to allot car parking space of 10"x 10".

7. COMPLAINANTS /Respondent Nos. 1, 2 had not availed of any service from the Petitioners or builder. They had purchased the flat and the car parking area from Smt. Rajyalakshmi, Respondent No. 4/O.P. No. 7. Their grievance, if at all, can be against Smt. Rajyalakshmi only. Since the Complainants neither purchased the flat/car parking area nor availed of any service of the Petitioners and the Builder, the complaint filed by them against the Petitioners was not maintainable. Petitioners did not have any role in the conveyance deed executed between Smt. Rajyalakshmi, Respondent No. 4 and the Complainants.

8. WE agree with the submissions made by the learned Counsel for the Petitioners. Complainants/Respondent Nos. 1, 2 did not have any privity of contract with the Petitioners. Complainants had purchased the flat and car parking area from the Respondent No. 4 (O.P. No. 7). Petitioners along with builder sold the flat along with car parking area to the Respondent Nos. 3,4 as per their entitlement, Petitioners had put Respondent Nos. 3, 4 in possession of the property sold to them. Complainants/Respondent Nos. 1, 2 purchased the said flat and the car parking area from Respondent Nos. 3 and 4 with their eyes open. They could not get more than what has been mentioned in the Sale Deed executed between the Complainants and the Respondent No. 4. Petitioners were not the party to the Sale Deed executed by the Respondent No. 4 in favour of the Complainants. The second Sale Deed was between the Complainants and the Respondent No. 4 who was the vendee from the Petitioners. Since, there was no privity of contract between the Petitioners and the Complainant/ Respondent Nos. 1,2, the complaint filed against the Petitioners was not maintainable. Even otherwise, in the Sale Deed executed between the Complainants and the Respondent No. 4, specific area of the car parking is not mentioned. As per Sale Deed dated 21.5.2005, Complainants were entitled to one car parking earmarked in the Celler which must have been handed over to them by the Respondent No. 4. For the reasons stated above, the Revision Petition is accepted and the direction issued by the State Commission to the Petitioners to allot car parking space at Slot No. 301 quo the Petitioners is set aside. The order qua the Opposite Party Nos. 7,8/Respondent Nos. 4,5 shall stand as these Respondents have not challenged the order of the State Commission.