
(2014) 12 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

Rajshree Aggarwal W/O Neeraj Kumar Aggarwal

APPELLANT

Vs

Idyllic Resorts Private Limited

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Citation : 2015 1 CPJ 564

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Advocate : PRAVEEN AGRAWAL

Judgement

1. RAJSHREE Agarwal and Kamal Kishore Garg, the complainants purchased flat measuring 270 sq.yds @ Rs. 23,000/- per sq.yd in Panchkula Extension City, which belongs to Idyllic Resorts Pvt. Ltd., OP. The complainants paid Rs. 6,21,000/- as 10% initial payment on 10.01.2012 and Rs. 3,10,500/- on 09.01.2012, to OP1. The complainants were assured that they would get the flat within two years , i.e. by February, 2014.

2. IN May, 2010, the CEO of OP invited the complainants to choose the flat and assured timely possession of the flat. On 23.06.2012, the complainants selected Flat No.347 measuring 184.74 sq.yds, instead of 270 sq.yds and intimated to OP about this, on 23 -24 June, 2012. A reminder was also sent on 26.07.2012.

3. THE OPs, vide letter dated 03.08.2012, confirmed the reduced size measuring 185 sq.yds and acknowledged the receipt of Rs. 6,21,000/- . They fixed the price of the flat at Rs. 19,000/- per sq.yd + Rs. 3,412/- towards EDC, PLC and IFMS. The OPs made demand of second installment to the extent of 15% and asked the complainants to deposit the balance amount of Rs. 4,15,555/- by considering plot size at 185 sq.yds instead of actual size of 184.74 sq.yds. On 21.08.2012, the complainants, after adjusting the advance payment, sent a total amount of Rs. 4,14,044/- vide three cheques. The OPs sent third demand notice by demanding 15% i.e., Rs. 6,21,059/- on or before 10.12.2012. On 29.11.2012, the complainants sent email to the OPs complaining that they had not received receipt and allotment letter. On 08.03.2013, 3rd and 4th installments were demanded by the OPs vide their letter wherein the amount was

wrongly calculated at Rs. 21,000/ - per sq.yd., amounting to Rs. 13,52,962/ -, whereas, as per the agreed rate, decided vide letter dated 03.08.2012, it should have been Rs. 12,42,118/ -. The complainants received email threatening them to forfeit their amount and as a last reminder for payment of 3rd and 4th installments. Due to threat by OPs, Rs. 5.00 lakhs each, was paid.

4. ON 29.03.2013, reply was sent to Mr. Sandeep Chawla, DGM (Sales) wherein the following request was made : "1. Previous 3 reminders not received.

2. Demand letter contained wrong amount with request to correct the same.

3. Not aware of any demand schedule and no demand schedule provided to the complainant with allotment letter.

4. To send stage wise development schedule clearly linked with demand".

5. ON 02.04.2013, another threatening email of Sandeep Chawla was made to make the payment till 30.04.2013. During the telephonic conversation / discussion with Mayank, they came to know that the email sent by Chawla was neither in their knowledge nor was he authorized to send the same. However, the complainants replied, as under : - "1. Threatening email unwarranted and unacceptable and informed that these emails will be ignored.

2. To provide name, phone numbers and email id of authorized officials on the website of company.

3. To send the information requested for in earlier times".

6. THE complainants were informed on 19.04.2013. The complainants sent email reply requesting on 19.04.2013 : - "1. All documents as mentioned in Clause C and D (SPA, agreements, approvals exemptions) of Draft Buyer's Agreement.

2. Stage wise development schedule linked with demand.

3. Progress of block containing plot No.347 as same not available on website.

4. Price revision as assured".

7. ON 29.05.2013, a reminder was sent to the complainants to send documents as requested by email dated 19.04.2013. The complainants sent the reminder letter on 06.03.2014 at Ahmedabad for payment of Rs. 70,96,323/ - without any supporting document. On 07.06.2013, the OPs again asked for payment. On 24.06.2013, the complainants sent email as reminder to send the pending documents. On 26.11.2013, OPs sent a letter levying an interest in the sum of Rs. 27,07,000/ - on the complainants citing outstanding amount of Rs. 26,98,347/ -. On 02.12.2013, the complainants requested to withdraw the interest charges. On 28.12.2013, notice for refund of the total amount of Rs. 11,35,044/ -, was sent by the complainants. Ultimately, this complaint was filed before this Commission, on 25.08.2014, with the following prayers : - "a) Direct the respondents to refund a sum of Rs. 11,35,044/ - (Rupees Eleven lakhs thirty - five thousand and forty -four only)i.e. the amount paid by the complainant along

with interest @ 24% per annum from the date of payment by the complainant till the date of filing of the present complaint.

b) Award interest @ 24% per annum from the date of filing of the present complaint till the date of its actual payment by the respondents of Rs.6,05,945/- (Rupees six lakhs five thousand nine hundred forty five only).

c) Award compensation of Rs.1,30,00,000/- (Rupees one crore thirty lakhs only) to the complainant and against the respondents for the mental agony suffered by the complainant, loss of time and energy of the complainant, loss of future prospects of the complainant because of wastage of time and energy of the complainant, due to respondent and compensation for breach of promise by the respondent.

e) Pass such other and further orders which this Hon"ble Commission may deem fit and proper in the circumstances of the case and in the interest of justice".

8. WE have heard the counsel for the complainants at the time of admission of this case. We tried our best to make the learned counsel for the complainants to understand that in this case claiming a sum of Rs. 11,35,044/- , he should knock at the proper forum, but he did not agree, though, the case was kept for arguments on two occasions. Consequently, we heard the counsel for the complainants at length, on 28.11.2014. The counsel for the complainants has invited our attention towards Section 21(a) of the CP Act, 1986, which mentions that "the National Commission will entertain the complaint where the value of goods or services and compensation, if any, claim exceeds 1 one crore". He has also referred to the Suit Valuation Act, Court Fees Act, Section 7, where it is mentioned that any suit for money, including for suits for damages or compensation or arrears of maintenance or utilities or other sums payable periodically according to the amount claimed. He has also invited our attention towards Suit Valuation Act, para 8 which has similar effect.

9. NEITHER we are authorised nor pick up a conflict with the legal proposition cited by the counsel for the complainants, but it is the right of the Commission to find out, whether, the claim made by the complainants, is exaggerated or is within the permissible limits. One cannot be allowed to approach the National Commission by demanding a compensation which is never known to the law. The National Commission is armed with the power to consider whether, the claim made by the complainant is, prima facie, payable.

10. KEEPING in view all these facts and circumstances, we asked the counsel for the complainant to explain the basis for the reliefs claimed above. Counsel for the complainants admitted that he has not mentioned any basis for the said amounts. He contended that he will disclose all these facts and circumstances when the evidence would be led.

11. WE are not impressed by his arguments. The complainant must disclose the basis, but the counsel for the complainant arrogantly stated that he cannot

disclose the basis at this stage.

12. THERE lies no rub in demanding as much amount as one considers to be correct, however, there should be some basis for the same. This much huge amount cannot be adjudicated by a consumer court which has to dispose of the case in a summary fashion. This case will require investigation. Such huge amount cannot be awarded unless and until the witnesses are cross -examined. It is too early to give our piece at this stage in absence of solid and unflappable evidence. All these allegations cannot be proved through mere affidavits or interrogatories. It is pertinent to know that cross examination of the witnesses is the life/blood of our legal system. It is the only way, a Judge can decide whom to trust and an answer, during cross -examination, may wreck one's case. It must be borne in mind that interrogatories which may be prepared with consultation of the legal experts cannot be equated with cross -examination. It is painfully apparent that it is impossible to gauge the real issue. This Commission is unable to winnow truth from falsehood. This Commission can go into the subject, only skin deep. It cannot be said at this stage, at which way the wind will blow. IF we allow such a pleading, this Commission will be flooded with such like cases.

13. THIS view finds support from two authorities. In a recent Authority, titled, Pesi Dady Shroff Vs. Boehringer Ingetheim Denmark and Anr., Civil Appeal No.9453 of 2013, filed against this Commission's judgment and order passed in Consumer Complaint No.164, dated 10.07.2013, the Hon"ble Supreme Court was pleased to make the following observations : - "Leaving the question of law open, as to whether in such a fact situation, provisions of Consumer Protection Act, 1986, are applicable, it is open to the appellant to approach the Civil Court for the simple reason that for the purchase price of Rs.4 -5 lakhs in 2003, he has claimed a sum of Rs.73.35 crores. Such a claim can be adjudicated only after the assessment of evidence, etc., before the Civil Court and, therefore, it is a fit case where, even if the Consumer Protection Act, 1986, is applicable, the appellant must approach the Civil Court for appropriate relief. With these observations, the civil appeal is disposed of".

14. IN Synco Industries Vs. State Bank of Bikaner and Jaipur and others, 2002 2 SCC 1, the Hon"ble Apex Court has held as under : - "3. Given the nature of the claim in the complaint and the prayer for damages in the sum of rupees fifteen crores and for an additional sum of rupees sixty lakhs for covering the cost of travelling and other expenses incurred by the appellant, it is obvious that very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and expenses. It is, therefore, in any event, not an appropriate case to be heard and disposed of in a summary fashion. The National Commission was right in giving to the appellant liberty to move the civil court. This is an appropriate claim for a civil court to decide and, obviously, was not filed before a civil court to start with because, before the consumer forum, any figure in damages can be claimed without having to pay the court fees. This, in that sense, is an abuse of the process of the consumer forum".

15. THE complaint is, therefore, dismissed, but liberty is granted to the complainants to approach the appropriate forum, as per law. He can seek help from Laxmi Engineering Works Vs. PSG Industrial Institute, 1995 3 SCC 583, with regard to question of limitation.