
(2000) 08 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

RAKESH KUMAR

APPELLANT

Vs

IMPROVEMENT TRUST

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Citation : 2003 2 CLT 237 : 2003 2 CPJ 578

Hon'ble Judges : H.S.Brar , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Ordered accordingly

Judgement

1. LEARNED Counsels for the parties agree that all these 66 appeals (Nos. 288, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 337, 338, 339, 340, 341, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387 and 388 of 1999) be disposed of by a common judgment as common questions of law and facts are involved in all of them. Facts are being taken from Appeal No. 288 of 1999.

2. THE appellant-complainant (hereinafter called the complainant) was an allottee/purchaser of flat No. 56 (first floor) of the Double Storeyed Duplex Flats in Giani Zail Singh Nagar, Ropar. Housing project in question was completed in the year 1998. THE project in question was in accordance with a Self-financing Scheme as indicated in the letter of allotment issued in the year 1996 before the completion of the construction on the spot in accordance with which 25% of the total sale price was to be paid before hand while the balance amount was recoverable/payable in four equal instalments beginning from the year 1986 as per schedule of instalments attached with the letter of allotment. Admittedly, an agreement of sale was also executed between the parties in the year 1998 along with an indemnity bond before the possession of flat in question was handed over to the complainant after payment of the entire sale price. THE following grievances were made by the complainant before the District Consumer Disputes Redressal Forum, Ropar (hereinafter called the District Forum) : (1) THE flooring

and wall plastering was defective resulting in cracks in walls while electric wiring/fitting and sanitary arrangement was not upto the mark. (2) THERE is an inordinate delay in the execution of the Transfer/Sale Deed of the flat in question in favour of the petitioner. (3) THE pricing pattern of the ground floor and first floor flats is irrational because the price of the upper flats should have been 30% less than the ground floor property. (4) THE housing project being under the Self-Financing Scheme wherein petitioner/purchaser had provided a part of the sale price before hand, no interest should have been recoverable on the total sale price. (5) THERE is lack of proper civic amenities in the colony pertaining to street light, roads and storm-water drainage system. (6) THE defective woodwork and wooden fixtures in the flat had resulted in incurring of substantial expenses by the petitioner which should be got refunded from the O.P.-Trust.

The District Forum vide its order dated 25.2.1999 did not agree with any of the contentions made by the complainant except that O.P. - Trust was found to be deficient in service in not executing Sale-Deed in favour of the complainant within reasonable time after the admitted delivery of possession. Consequently, the District Forum directed the opposite party to execute the required Sale-Deed in favour of the complainant qua the flat in question within 90 days along with payment of Rs. 5,000/- as compensation-cum-costs of the proceedings.

Appeal Nos. 288, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 337, 338, 339, 340 and 341 of 1999 were filed against this judgment by the complainant. Appeal Nos. 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387 and 388 of 1999 were filed by the Improvement Trust-opposite party (hereinafter called the opposite party) against this judgment, vide which the complainants were awarded Rs. 5,000/- as compensation for not executing the sale deed.

3. LEARNED Counsel for the complainant submits that the flooring and wall plastering of the flat was defective, resulting in cracks in walls while electric wiring/fitting and sanitary arrangement was not upto the mark. To prove that fact, reliance has been made by the complainant on the report Ex. A-3 of an Engineer Sharanjit Singh, Retired S.D.O., P.W.D., Ropar. The District Forum has not found the report of the S.D.O. as sufficient to prove the contention of the learned Counsel for the complainant and rightly so. This report Ex. A-3 runs into about seven pages. None of the pages has been signed by the S.D.O. Sharanjit Singh. The S.D.O. has simply signed the forwarding letter attached with the report. This report is thus not proved on the file and the District Forum was right in holding that the details given in the unsigned papers alleged to have been supplied by the S.D.O. cannot be looked into. The District Forum has taken another ground also for not relying upon the report Ex. A-3, Tender Notice Ex. A-15 pertaining to the construction of the flat under discussion, which contained Condition No. 5 referring to the relevant DNIT, designs, drawings etc. available in

the office of the Trust. The said DNIT, or detailed notice inviting tender was relevant yardstick with which relevant quality or defect in construction could be measured. Thus, the report A-3 could not be considered as relevant particularly when the S.D.O. concerned did not make the said DNIT as the basis for preparing his report indicating deficiency, if any, and not PWD specifications. The report Ex. A-3 made by the S.D.O. is neither supported by any affidavit nor the S.D.O., who allegedly made this report, came in the witness box to prove it. Moreover, there is report of the Assistant Forest Engineer, Sh. Manmohan Singh, Ex. R-6 on the file, which is supported by an affidavit of Sh. Manmohan Singh, Trust Engineer, wherein it is stated as under : "That the said duplex flat mentioned above has been rechecked by the then Trust Engineer, Sh. Manmohan Singh and it has been found that there is no deficiency in service rendered by the O.P.-Trust. It has also been found at site that some additions and alterations in the said duplex flat has been made by the allottee in approved structure without the prior approval of the O.P.-Trust. It was also found that proper maintenance has not been made by the allottee. Submitted by Sd/- Executive Officer, Dt. 8.2.1998. Imp. Trust, Ropar"

Moreover, it did not lie in the mouth of the complainant to say about the defective construction of the flat when he had seen and inspected the construction before hand and mentioned in the Indemnity Bond Ex. R-4 executed by him wherein he has mentioned as under in Punjabi script, English translation of which reads as under : "I have seen the construction of the flat on the spot and I have no objection about this construction."

4. IT has also been mentioned in agreement of sale Ex. R-3 entered into by the complainant with the opposite party-Trust authority, in Condition No. 4 that after taking possession the allottee - complainant shall not make any objection about the construction or the price of the flat. IT has been mentioned even in this agreement of sale Ex. R-3 in its Clause 17 that the possession of the flat shall be given on "As is, where is" basis. The first contention of the complainant that the flooring and wall plastering was defective resulting in cracks in walls while electric wiring/fitting and sanitary arrangement was not upto the mark, thus, deserves to be rejected as there is no cogent evidence on the file to prove the same. Second contention of the learned Counsel for the complainant is that there was inordinate delay in execution/transfer of Sale Deed of the flat in question in favour of the complainant. Admittedly, the date of allotment in the case in hand was in the year 1996. After the completion of construction, the possession was taken over by the complainant in June, 1998. It was only after June, 1998 that the sale-deed could be executed in favour of the complainant. Thus, there was no delay in execution of the sale deed etc. particularly when the complaint was filed in November, 1998. It means that there was no delay on the part of the O.Ps. in executing the sale deed in favour of the complainant. District Forum has erred in law and on facts in holding that the allegations of the complainant pertaining to deficiency in service on the part of the O.P. - Trust could be proved with regard to non-execution of transfer/sale-deed in favour of the purchaser

within the reasonable time after the delivery of possession. We, thus, hold that the District Forum was not correct in reaching the above said decision particularly when there was no unreasonable delay on the part of the opposite party with regard to non-execution of transfer/sale-deed. The order of the District Forum to that extent is set-aside and is reversed.

5. THIRD grievance of the complainant about the pricing pattern of the ground floor and first floor flats being irrational has not been pressed by the Counsel for the complainant as it was not pressed before the District Forum also, rightly so because it has been held by a catena of authorities that determination of the pricing pattern is not within the jurisdiction of the various Redressal Agencies under the Consumer Protection Act, 1986.

6. IN Appeal Nos. 302, 304, 308, 309, 310, 320, 321, 325, 331, 338 of 1999 an additional grievance has been made by the complainant that extra amount was illegally charged from the complainant towards the sale price on the ground of its being a corner/preferential flat. As has already been stated above the pricing is not within the jurisdiction of the various Redressal Agencies under the Consumer Protection Act, 1986, this grievance of the complainant is also meaningless and is of no consequence and is, thus, negatived. About the allegation of improper civic amenities, no evidence has been led and proved by the complainant. The District Forum has, thus, rightly rejected this allegation.

Defective wood work and wooden fixture in the flat has not been proved on the file. Moreover, as has been stated above, the complainant has executed the Indemnity Bond Ex. R-4 wherein he has mentioned in Punjabi script, English translation of which reads as under : "I have seen the construction of the flat on the spot and I have no objection about this construction."

It has also been mentioned in agreement of sale Ex. R-3 entered into by the complainant with the opposite party - Trust authority, in Condition No. 4 that after taking the possession the allottee-complainant shall not make any objection about the construction or the price of the flat. It has been mentioned even in this agreement of sale Ex. R-3 in its Clause 17 that the possession of the flat shall be given on "As is, where is" basis. This contention of the Counsel for the complainant is also without any force and is, thus, rejected.

7. ANOTHER grievance of the complainant that housing project being under the Self-Financing Scheme, wherein the complainant had provided part of the sale price before hand, no interest should have been recoverable from the complainant on the sale price is also without any force. About the payment of interest, it has been specifically mentioned in the allotment order issued to the complainant Ex. R-2 as well as agreement of sale entered into between the complainant and the Improvement Trust Ex. R-3 that in the event of payment by the complainant in instalments, he shall have to pay 12% per annum interest. This grievance of the complainant is, thus, also without any foundation and is thus rejected. In view of the discussion made above all the Appeals (Nos. 355,

356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387 and 388 of 1999) filed by the Improvement Trust are hereby allowed. The order of the District Forum to the extent as stated above is set-aside and is reversed. Consequently, all the Appeals (Nos. 288, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 337, 338, 339, 340, 341 of 1999) filed by the complainants are hereby dismissed. Ordered accordingly.