

(1997) 12 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

RITA ROY

APPELLANT

Vs

SHYAMALI CHUG

RESPONDENT

Date of Decision : 10-12-1997

Acts Referred:

Citation : 1998 1 CPJ 438

Hon'ble Judges : A.K.Bhattacharjee , Monoranjan Ghosh , S.Dutta J.

Final Decision : Appeal allowed

Judgement

1. Mr. Justice A.K. Bhattacharjee, President

2. THIS is a petition of complaint filed under Section 17 of the Consumer Protection Act, 1986 alleging deficiency in service in respect of house construction and claiming compensation for the refusal of the opposite parties to register the flat agreed to be sold to the complainant. The complainant's case is that he had entered into a written agreement with opposite party No. 3 Asish Kumar Mukherjee, Promoters, and Constructors and Proprietor of M/s. Shivcon of 54-B, Jadavpur Central Board, Calcutta-32. It has been stated that the plot of land at 90 Lake East, 4th Road, Calcutta-75 belonged to two sisters Shyamali Chug & Dipali Sinha Chowdhury (opposite parties No. 1 & 2). The opposite party No. 2 had executed a general power of attorney in favour of opposite party No. 1 and by virtue of that power of attorney opposite party No. 1 made a deal with the opposite party No. 3, namely, the Proprietor of M/s. Shivcon to construct a four storeyed building at the said paid plot of land. The complainant had agreed to purchase a flat consisting of 625 sq.ft. on the first floor being flat No. 3-B at Shyamali Apartment at 90 Lake East, 4th Road, Calcutta-700 075 at a consideration of Rs. 2,04,375/- with a booking charge of Rs. 30,000/-. According to the complainant she had paid all the aforesaid amounts as also an amount of Rs. 20,000/- as registration fee for registration of the flat. After the completion of the flat the possession of the same was handed over to the complainant but the opposite party No. 3 refused and neglected to register the flat in favour of the complainant although requested for a good number of times for the same.

The complainant alleges that he tried to get the flat registered with the humble request to the opposite party No. 3 and had even prepared a sale deed for registration of the flat by paying Rs. 3,000/- to the recommended Advocate of the opposite party No. 3. For this purpose he also purchased stamp papers costing Rs. 26,260/- on 5.2.1997 and registration deed papers were prepared accordingly. The complainant also states that she paid Rs. 2,500/- as the requisite fees to the Advocate but even then both the opposite parties No. 1 & 3 refused to attend the Registration Office for registration of the deed. In the mean time the complainant's husband who was a retired doctor got an employment at Pithoragar in Uttar Pradesh but he had to come down to Calcutta for making arrangement for the registration of the flat. Due to the delaying tactics of the opposite parties he could not join his service in time and ultimately lost the same. The complainant has accordingly filed this complaint detailing the expenses incurred by her for the flat and claiming damages for financial loss on account of the loss of service of her husband and the amount she was compelled to pay for making a loan of Rs. 45,000/- to meet the registration expenses. On receipt of the complaint, notice was duly served on the opposite parties for giving their version of the case. The opposite party No. 1 appeared but opposite party Nos. 2 & 3 did not appear inspite of the service of notice and warrant of arrest had to be issued for causing the appearance of opposite party No. 3. The opposite party No. 3 ultimately appeared and filed the written objection. The case is contested by the opposite party Nos. 1 & 3. The point for consideration is if there was any deficiency in housing construction as alleged by the complainant and if so what relief, if any, she should be entitled to. Decision

It is admitted by the opposite parties that there was a written agreement between the parties for the sale of the disputed flat at the price agreed to between the parties. It is also agreed that possession of the flat was amicably given to the complainant. The fact, however, remains that the flat was not registered. The complainant's case is that she paid Rs. 20,000/- as Registration Cost by two cheques. The receipt of this amount is admitted by the opposite party No. 3 but his contention is that the aforesaid amount was paid for meeting the cost of extra work which was done at the instance of the complainant. According to the opposite party No. 3 no amount was actually paid for meeting Registration Cost although the complainant promised to do so.

3. AS regards the amount of Rs. 20,000/-, the opposite party No. 3 has produced a letter No. SC/30/93-94 dated 15.9.1993 showing that an amount of Rs. 20,160/- was payable for certain extra work detailed in the letter. This letter although addressed to the complainant was not replied to. Neither there has been any explanation challenging the veracity of this letter. In the circumstances we accept that Rs. 20,000/- paid by the complainant were appropriated towards the extra cost mentioned in the aforesaid letter. But even then we do not find any satisfactory explanation why the opposite parties did not take any step for registration of the deed when the stamp paper was purchased by the complainant and the deed was prepared in consultation with their Advocate. They

have not explained the reason for non-registration of the flat in reply to the letter sent to them by the complainant's Lawyer. At the time of hearing there was heated argument between the parties and show of temper but neither party came with any evidence to meet with the others' allegations.

4. REGISTRATION of a flat which is constructed on the basis of an agreement for the construction and sale of the same is an essential part of the agreement for sale. An immovable property which is compulsorily registrable under the REGISTRATION Act cannot be conveyed without registration. We are satisfied from the documents produced by the complainant that she had procured the amount for registration of the deed by taking loan and agreed to defray the expenses herself. The opposite parties did not make any specific reply as to why registration was not possible. They were reluctant to be present before the Commission also and was compelled to appear only after the issue of warrant of arrest. So we accept the plea of the complainant that registration was not done for the laches of the opposite parties. It is argued on behalf of the opposite parties that in view of the provision for arbitration in the agreement the complaint case filed before this Commission is not maintainable. It is true that there was an arbitration clause in the agreement but Section 3 of the Consumer Protection Act, 1986 provides that the provisions of the Act shall be in addition to and not in derogation of provisions of any other law for the time being in force. The result is that inspite of the existence of an arbitration clause in such cases the same is not binding if a Consumer Disputes Redressal Agency decides to provide cheap remedy under the provisions of Section 3 of the Act. In the result, we hold that by not agreeing to register the disputed flat the opposite parties are guilty of deficiency in construction service which is a potential service coming under the purview of the Consumer Protection Act. This case therefore, succeeds. The opposite parties are directed to complete the registration of the relevant deed with due formalities at the cost of the complainant within one month from the date of receipt of this order. The opposite parties are also directed to pay a total compensation of Rs. 50,000/- (fifty thousand only) to the complainant for the harassment, mental agony and other expenses which she had to incur on account of the non-registration of the flat. The aforesaid amount should also be paid within one month from the date of communication of this order. There will be no separate order for costs. Appeal allowed.