

(2007) 07 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

R.S. RAMA CHANDRA MURTY

APPELLANT

Vs

K. VIRENDRA REDDY

RESPONDENT

Date of Decision : 19-07-2007

Acts Referred:

Citation : 2007 3 CPJ 467

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Appeal disposed of

Judgement

1. THIS is complainant's appeal against the order passed by the Andhra Pradesh Consumer Disputes Redressal Commission directing the opposite party/respondent to allot Flat No. C-206 in favour of the complainant by collecting registration charges from the complainant/appellant by taking the price @ Rs. 675 per sq. ft. and adjust the amount of Rs. 9,70,000 towards the cost of the said plot and refund the balance amount within a period of six weeks from the date of order i.e., 31st March, 2007 @ 9% p.a. from the date of last payment made by the complainant till the date of payment. The opposite party was also directed to pay Rs. 50,000 towards compensation for delay in possession to the complainant together with a sum of Rs. 5,000 towards costs.

2. THE grievance of the appellant is that he had paid in all Rs. 16,32,150. The appellant has sought the following reliefs : 1. confirming my total payment to be Rs. 16,32,150 as on 25.1.2003 towards the booking of two flats, flat price at Rs. 675 sq. ft. for the specifications stated in all my correspondence and in the C.D. 2. directing the respondent/opposite parties to furnish the available list with chargeable areas of flats for the selection of my second flat. 3. directing the respondent/opposite parties to pay rental loss of Rs. 10,000 p.m. (as he has been earning on the unsold flats through rents) for every month of delay in handing over two flats beyond the agreed period of construction i.e., 30 months from 7.7.2000 (including grace period). 4. to impose heavy penalty for disobeying the orders of A.P. State Commission to deliver the flats at different times thereby restricting my choice selection. 5. to pay compensation towards

my mental agony and cost of this petition to serve as a deterrent for their callous and arrogant attitude.

The State Commission has taken the view that there was dispute about payment of Rs. 1.00 lakh which was allegedly paid through late Mr. Sidhanti and over and above Rs. 9,70,000, had not been proved. No receipt or document about this payment had been produced by the complainant/appellant. Accordingly, the State Commission has rightly taken the view that the payment of Rs. 1.00 lakh could not be accepted without proof. Similarly, in regard to further payment of Rs. 2,17,150 towards advance and parking area for two flats by the complainant to Mr. Sidhanti prior to the taking over of Kura Homes cannot be accepted since the complainant did not file any documentary proof or credible evidence in that regard.

3. IN addition to the above alleged payments that further payment was also made. Two cheques and bank statement filed by the complainant showed that the complainant had paid Rs. 3,45,000 to M/s. Labham Estates vide cheque Nos. 597761 dated 30.10.2001 and 822282 dated 30.10.2001 drawn on Andhra Bank. If the amount had been paid to Labham Estates and the complainant/appellant was unable to establish anything to show that Labham Estate had received the amount on behalf of the respondent it could not be claimed to have been paid to the opposite party. If any amount was paid to a third party independently of the contract in issue, the matter would be totally outside the jurisdiction of the Consumer Fora. For want of appropriate evidence, the claim of aforesaid payments made by the complainant need not be considered. In such circumstances since it appears that the payment has been made to Labham Estates through cheques, the appellant might have suffered the loss of the said amount. In order to do substantial justice, the complainant is to be given liberty to file a civil suit. If any payment has been made to late Sidhanti, which has not been proved to have been received by the respondent in absence of any receipt, etc. the appellant should claim the amount from the legal heirs of the late Mr. Sidhanti in accordance with law. But, in absence of proof, the aforesaid payment could not be deemed to have been made to the respondent. There does not appear any possibility to accept that the payments have been proved to have been made to the respondent. Consequently, on the basis of these payments, the State Commission could not direct the opposite party to refund or register any other plot.

4. WE might have thought to award some compensation in case the payment of either disputed amount had been proved to have been made to the respondent. But, in absence of any such proof, we feel that there is no scope for awarding any compensation for mental agony and costs, etc. for probably the third parties were responsible for creating more problem for the complainant than the respondent. For the aforesaid reasons, while dismissing the appeal. We grant liberty to the complainant to approach Civil Court or any other Forum where he could seek appropriate relief against the legal heirs of late Sh. Sidhanti as well as

Labham Estate and in view of the observations the judgment of the Hon''ble Supreme Court in the case of Laxmi Engineering Works v. P.S.G. Industrial Institute, II (1995) CPJ 1 (SC)=(1995) 3 SCC 583, the complainant should be entitled to exclude the period spent before Consumer Fora in respect of claims of refund of payment made to late Mr. Sidhanti and Labham Estates. The first appeal is disposed of accordingly. Appeal disposed of.