
(2016) 10 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

Case No : 399 of 2016

RUPJI CONSTRUCTIONS & ANR.

APPELLANT

Vs

SANTOSH S. MAYEKAR

RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:

Citation : 2016 4 CPR 505

Hon'ble Judges : D.K.Jain, M.Shreesha

Advocate : Dilip Annasaheb Taur, S.B. Prabhavalkar, Nilesh Porte

Final Decision : Appeal Dismissed

Judgement

1. Delay condoned.

2. This group of 19 First Appeals, by a real estate developer, namely M/s Rupji Constructions, a partnership firm, is directed against a common order dated 10.03.2016, passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (for short "the State Commission") in Consumer Complaints No. CC/13/333, CC/13/334, CC/13/336, CC/13/337, CC/13/338, CC/13/339, CC/14/151, CC/14/152, CC/14/153, CC/13/422, CC/13/424, CC/13/427, CC/13/428, CC/13/430, CC/13/429, CC/13/489, CC/13/490, CC/13/493 and CC/13/423. By the impugned order, while accepting the Complaints filed by the Respondents/Complainants, alleging deficiency in service on the part of the Appellants in not delivering the possession of the flats, booked by them, by the stipulated time, the State Commission has directed the Appellants to jointly and severally handover to the Complainants, in each of the Complaints, vacant and peaceful possession of the flats, specifically described in the agreements for sale executed in their favour, upon accepting the balance consideration from each of the Complainants, as noted in the Schedule appended to the order. The State Commission has also clarified that the Complainants shall not be liable to pay any extra amount to the Appellants, except the balance amount of consideration, as noted in the said Schedule, with a further stipulation that in case the Appellants refuse to accept the said amount, the Complainants

would be at liberty to deposit the same with the State Commission within a period of 15 days from the date of such refusal, if any. In addition, the State Commission has also directed the Appellants to pay to each of the Complainants an amount of 1,00,000/- by way of compensation towards mental agony and harassment, besides costs of litigation, quantified at 15,000/- in each of the Complaints.

3. It would be relevant to note at this juncture itself that the Complainants have also preferred Appeals against the order impugned in these Appeals on the ground that the State Commission has not awarded any interest and has failed to examine the prayer in the Complaints for allotment of a parking space by the Appellants. The said Appeals have since been admitted, by a separate order in those Appeals. However, since the main grievance of the Appellants in these Appeals is that the State Commission has erred on facts in not accepting the stand of the Appellants that the Complainants were liable to pay the premium charged by the Brihanmumbai Municipal Corporation (for short "the BMC"), we deem it unnecessary to tag these Appeals with the said Appeals preferred by the Complainants.

4. In short, the grievance of the Complainants, in the Complaints, was that despite their having paid almost 98% of the agreed sale consideration, vacant and peaceful possession of the flats was not delivered to them by the stipulated time, i.e. May, 2010. Their further grievance was that having themselves failed to deliver the possession of the flats within the stipulated time, the Appellants were illegally demanding extra amount from them over and above the agreed consideration, in the garb of escalation cost.

5. On the other hand, the stand of the Appellants, in their Written Version filed in opposition to the Complaints, was that the delay in completion of the project occasioned because of their inability to pay the amount demanded by the BMC towards the Capitalized Value, as per the letter of intent issued by it to the Appellants, on account of refusal by the Complainants to pay the said amount.

6. Having heard learned Counsel for the parties and perused the pleadings, the core issue for consideration in these Appeals is whether the Complainants were liable to pay to the Appellants the aforesaid Capitalized Value, as demanded by the BMC.

7. Insofar as this Commission is concerned, the issue is no longer res integra. The same issue came up for consideration of this Commission in the case of the Appellants itself in Consumer Case No. 207 of 2014 (Vijay Sakharam Pawar v. M/s Rupji Constructions). Vide order dated 20.01.2016, this Commission, upon consideration of Clause 20 of the Sale Agreement, pressed into service by the developer, came to the conclusion that the aforesaid Clause relates to "future demands", if any, by the Municipal Corporation of Greater Mumbai and/or BEST/ State Government and not to any past demands irrespective of whether paid or not paid by the builder. In our view, the said decision is on all fours to the facts

of the present Appeals. Following the said order, we reject the stand of the Appellants.

8. At this juncture, it is submitted by learned Counsel appearing for the Appellants that the State Commission has also failed to consider that since there was default in payment of certain instalments by the Complainants and being the defaulters themselves, they were not entitled to the compensation of 1,00,000/-, as awarded by the State Commission to each of the Complainants.

9. Having carefully perused the Written Version filed on behalf of the Appellants before the State Commission, we find that no such plea was raised by the Appellants therein. That being so, the Appellants are estopped from raking up the said issue at this stage.

10. Resultantly, all the Appeals fail and are dismissed accordingly, with no order as to costs.