
(2016) 04 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

Case No : 170 of 2008

SOCIETY OF CATALYSTS

APPELLANT

Vs

RAJ TRUST, R & M TRUST & ORS.

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Citation : 2016 2 CPR 492

Hon'ble Judges : V.K. Jain, B.C. Gupta

Advocate : Omesh Saigal, Yatindra N. Vidyarthi, Kunal Vajani, Pranaya Goyal, Shubham Kulshreshtha, Farrukh Rasheed, R. David, Febin M. Varghese

Judgement

1. The complainant claims to be a Voluntary Consumer Association and is registered under the Societies Registration Act and taking up the cases of consumers in various Forums, including Consumer Courts. One Mrs. Janaki, owner of the certain land in village Sadahalli, Taluk Devnanhalli, District Bangalore North, obtained sanction for converting the said land from the agricultural to non-agricultural / residential purposes and then entered into an agreement dated 20.08.1990, followed by supplementary agreement dated 05.11.1990 and subsequent agreements dated 17.11.1990 and 13.07.1992 with opposite party No.1 Raj Trust. Opposite Party No.1 prepared a scheme to develop the aforesaid land into a residential colony, and entered into a development agreement dated 23.09.1991 followed by supplementary agreement dated 01.09.1992 with opposite party No. 2 R & M Trust. Residential sites in the aforesaid project were then sold by opposite party No. 1 Raj Trust to several buyers, for consideration and individual sale deeds in their favour were executed jointly by opposite party No.1 and Mrs. Janki. Separate agreements were executed between plot buyers and opposite party No.2 R&M Trust for development of the plots sold to them by opposite party No.1, on payment of the agreed development charges. It is alleged in the complaint that opposite party No.2 completed the development work in phase-I of the aforesaid project namely Jade Garden including construction of club house for recreation facilities, constructing roads etc. and generally carried out its obligation in respect of the

said phase-I. It is further alleged that after regular maintenance of phase-I, including its upkeep, security and management of the club house, Phase-I was handed over to the association of plot buyers. It is further alleged that after completing or during the completion of phase I, opposite party took up the work of phase II and III of the said project and entrusted the development work for the said phases also to opposite party No.2. According to the complainant, since phase-II to IV were not complete in all respects, opposite party No.1 was maintaining them, though after completing the development, the same also were to be handed over to the association. It is further alleged that the opposite party No.2 abruptly stopped the development work in phase II to IV, without street lights, water supply, security arrangements etc. and also failed to hand over those phases to the association. It is also alleged that opposite party No.1 & 2 collected Rs.10,000/- each from the plot owners towards contingency funds which they were required to pay to the association to enable it to manage the layout, but neither the common areas and facilities including club house were handed over to the association nor was the amount collected towards contingency, paid to the said association. The cost of completing the remaining development work of phase II to IV has been estimated by the complainant at Rs.5,56,62,562/-. Being aggrieved the complainant is before this Commission, seeking the following reliefs:

- a. Direct the opposite parties to pay the Association a sum of over Rs.75,00,000/- towards reimbursement of the Contingency Fund collected by the opposite parties together with interest accrued cumulatively since its collection from plot owners;
- b. Direct the opposite parties to pay a sum of Rs.5,56,62,562/- (Rupees Five Crores Fifty Six Lakhs Sixty two thousand five sixty only) for restoring and making up the developmental deficiencies;
- c. Direct the opposite party to pay compensation of Rs.48,000/- per annum to each of the 50 odd members who have built houses in the layout in phases 2-4 as compensation for the extra cost incurred due to the deficiency in service. Till the concerned persons are located the amount be got deposited in the Consumer Welfare Fund.
- d. Direct the opposite parties to pay Rs.10,000/- each to all the 750 members who have purchased land in the layout for the mental harassment and agony suffered by them. This amount of Rs. 75 lacs may be ordered to be deposited in the Consumer Welfare Fund till it can be disbursed.
- e. Direct the opposite parties to hand over to the complainant all the documents, sanctions, accounts, audited statements, etc. pertaining to the layout for records and management of the layout.
- f. Direct the opposite parties to hand over to the complainant the Jade Club, its extension and all recreation facilities to restore and manage the services, for making up the deficiency

g. Award costs of the proceedings to the complainants.

2. In its reply filed through its Administrator Justice R.G. Vaidyanatha, appointed by Bombay High Court, opposite party No.1 has stated that opposite party No.1 & 2 had completed

infrastructure facility in the first phase of Jade Garden and transferred possession of the entire first phase, with all the infrastructure, to the association besides transferring the contingency amount collected from the plot owners of the first phase and there is no claim or dispute in respect of phase I. He further stated that pursuant to the directions given by the Hon'ble High Court, he called the General Body Meeting of the plot owners of Phase II, III and IV on 08.4.2007 and the said plot owners resolved to join the existing association instead of having a rival association. He further stated that Raj Trust will have to transfer the contingency funds collected from the plot owners of Phase II to IV to the said association but being short of funds, the Trust had moved Bombay High Court for permission to sell four plots to meet urgent commitments, including transfer of contingency funds to the association. The Administrator however, could not sell the said plots and the Trust is liable to transfer contingency funds amounting to 51,40,000/-. It is further stated in the said reply that it is R&M Trust which has to provide infrastructure facilities to the plot owners and the Hon'ble High Court has held that opposite party No.1 Raj Trust cannot be made to incur expenditure towards development or to provide infrastructure. Opposite party No.1, represented by the Administrator, denied the allegation that there is no development work and stated that electricity and water facility have been provided to Phase II to IV. He also stated that opposite party No.1 has provided security to Phase II to IV of Jade Garden. He further stated that as far as the club house is concerned, the Trustees have taken the stand that the same should be with opposite party No.1 though the plot owners can make use of its facilities.

The Administrator of opposite party No.1 has maintained that there is no necessity of removing the existing compound wall and constructing a new one. He has further stated that items B,C & D of the estimate submitted by the complainant do not find mention in the agreement between plot owners and opposite party No.1. As regards item No. E, i.e. repair of roads, it is stated that the Trust has already provided roads which are in good condition and if some of them have worn out due to passage of time they can be repaired. He has also denied the claim of the complainant for plumbing work as well as bore well, electric work etc.

3. In their reply / written version to the complaint, opposite party No. 4, 7 and 8 have taken a preliminary objection that the complaint is barred by limitation since the cause of action to file the complaint arose on 07.4.2006 when opposite party No.4, by way of a letter notified his inability to continue the management of Jade Garden and requested alternative arrangement. Another preliminary objection taken by them is that the sale to hundreds of plot owners being under separate individual sale deeds, the complaint in the present form is not

maintainable. On merits, the agreements between the parties are not disputed but it is alleged that after development of plots in Phase-I, the management of the maintenance of phase-I was taken over by the association of plot owners. It is further alleged that after completion of development work in phase-II, III and IV, sale deeds were executed in favour of the purchasers, who acknowledged the completion of the development work in the said sale deeds. It is claimed that the completion of the development work in phase-II, III and IV having been acknowledged in the sale deeds, the plot owners are estopped from contending that the said work was not complete. It is pointed out that the said sale deeds have been withheld by the complainant, while filing this complaint. It is further stated in their reply that in the sale deed, it was clearly stated that opposite party No.1 had reserved to itself a portion of the land to provide recreational facilities for the common enjoyment of the plot owners in the project Jade Garden and to such other owners as might be decided by opposite party No.1 from time to time. It is claimed that the opposite party No.1 is not liable to transfer such reserved land to the association of the plot owners. It is also alleged that the maintenance was being carried out by opposite party No.1 till April, 2006 and thereafter it was for the plot owners of Phase-II, III and IV to form their own association and take over the maintenance of the common areas. It is pointed out that the plot owners of phase-I have already formed their own association to maintain the common area. It is also alleged in the reply filed by the aforesaid opposite parties that Jade club is not a common area to be handed over to the association of the plot owners, who are entitled to only use the recreational facilities available in the said club which can also be used by those who are not plot holders in the project. Similar stand has been taken in the written version filed by the opposite parties No. 3 and 9, 5 and 6.

4. It is an admitted position that the development work in phase-I of Jade Garden was duly completed and thereafter the said phase was handed over to the association of plot owners in order to enable it to maintain the common areas in phase-I. The complainant itself has acknowledged the said completion of the development work of phase-I and delivery of the said phase to the association of plot owners in para-10 of the complaint.

5. As regards development work in phase II, III and IV of Jade Garden, the case of the complainant is that the said development work is incomplete whereas the case of the contesting respondents is that the said development work had been completed before execution of the sale deeds in favour of the plot owners. A perusal of the sale deed executed in favour of one Mr. Shree G. Bhaskaran, one of the plot owners, would show that in para-G of the preamble to the said sale deed, it was specifically recorded that the confirming party / the developer had completed development work in the project Jade Garden Annexe and Vendor No.2 Raj Trust had paid the proportionate development charges to the developer R&M Trust in respect of various sites so developed by the said R&M Trust, which was shown as the confirming party or developer in the sale deed. The complainant has not filed sale deed of any plot developed in phase II, III and IV

of the project. Vide order dated 07.3.2016, this Commission, while reserving the order, directed as under:

"If the sale deed executed in favour of some of the allottees of phase-II to IV of Jade Garden, which is also termed as Jade Garden Annexe, is different from the sale deed available on page No.93 onwards of our paper book, the complainant shall file affidavits of all such plot holders along with copies of the sale deeds in their favour, within two weeks from today, failing which it will be presumed that the sale deeds in favour of all the plot holders in phase II to IV of Jade Garden / Jade Garden Annexe were in the same format in which the sale deed on page No.93 onwards of our paper book is".

No sale deed has been filed by the complainant despite the aforesaid liberty granted to it. Therefore, it must necessarily be presumed that the sale deeds in favour of all the plot holders in phase II to IV of Jade Garden / Jade Garden Annexe were in the same format in which the sale deed available on our paper book is. We therefore, conclude that in all the sale deeds, it was expressly acknowledged that the development work had been completed by the developer R&M Trust and therefore proportionate development charges had been paid to it by Raj Trust. Having acknowledged the completion of the development work, the plot owners are estopped from claiming, at a later date, that the said development was incomplete in any respect. We therefore, hold that the development work in all the phases of Jade Garden/Jade Garden Annexe had been completed by the developer and therefore, no direction in this regard is called for.

6. As far as handing over of Jade Club to the association of the plot owners is concerned, Clause j and k of the sale deeds executed by Smt. Janaki Gangaram and Raj Trust in favour of the plot buyers are relevant and the said paragraphs read as under:-

"j) That he /she / it is aware of the fact that the Vendor No.2 has retained a portion of the Schedule A Property (fully described in Schedule B) for providing recreational facilities to the site owners of Jade Garden and others who may or may not own sites in Jade Garden project.

k) That he / she / it is fully aware of the fact that the above mentioned reserved area which is retained by the Vendor No.2 shall form a separate entity distinct from the area where the Jade Garden is formed and the purchasers of sites in Jade Garden and other persons as decided by the Vendor No.2 shall have right of use of facilities provided on such reserved area and such use of facilities as prescribed by the Vendor No.2 by framing its independent rules and regulations".

It is evident from the bare perusal of the above referred clauses in the sale deed executed by Smt. Janaki Gangaram and Raj Trust that the site of Jade Garden Club was not to be transferred to the association of the plot owners and besides the plot owners, other persons also could be allowed to use the recreational facilities provided in the said club. The aforesaid reserved land, on which the club

has been constructed, forms a separate entity distinct from the area where the project Jade Garden was to come up though the purchasers of the plot in Jade Garden / Jade Garden Annexe had right to use the facilities provided on the said reserved area. Raj Trust is entitled to frame rules and regulations, governing the use of the recreational facilities provided on the said reserved area. Therefore, no direction for transfer of the Jade club area to the association of plot owners can be given by this Commission.

7. As far as the maintenance fund is concerned, the reply filed by the opposite party No.1, Administrator of Raj Trust, clearly shows that a sum of 51,40,000/- collected as contingency charges, from the plot owners is yet to be transferred to the association of plot owners. The Administrator has clearly stated in the reply filed by him that being short of funds, the Trust could not transfer the aforesaid amount to the association of plot owners. Therefore, Raj Trust must necessarily transfer the aforesaid amount of 51,40,000/-, which it had collected from the plot owners to the association of the plot owners, along with appropriate interest on the amount collected by it.

8. For the reasons stated hereinabove, the complaint is disposed of with a direction to opposite party No.1 Raj Trust to transfer the contingency funds, amounting to 51,40,000/- to the association of plot owners within six months from today, along with simple interest @ 9% per annum on the aforesaid amount, from the date of filing of this complaint. If so required, the Administrator of the opposite party No.1 shall obtain permission from the Bombay High Court for making payment in terms of this order. If any property of the Trust is required to be sold by the Administrator, in order to comply with this direction, he shall be at liberty to do so after obtaining the requisite permission, including the permission from Bombay High Court. Opposite Party No.1 Raj Trust is also directed to pay a sum of 25,000/- to the complainant towards the cost of litigation.