

(2010) 09 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Suvidha Realtors and Constructions Pvt. Ltd

APPELLANT

Vs

Suvidha Annex Apartment Owners Association

RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Citation : 2010 0 NCDRC 155 : 2010 4 CPJ 131

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision Petition dismiss

Judgement

1. M/s Suvidha Realtors and Constructions Pvt. Ltd. (hereinafter referred to as Petitioner) have filed this present revision petition, being aggrieved by the order of the Karnataka State Consumer Disputes Redressal Commission, Bangalore, which had dismissed their appeal against M/s Suvidha Annexe Apartment Owners Association (hereinafter referred to as Respondent).

2. BRIEFLY, the facts of the case according to the Respondent (original complainant before the District Forum) who are an association of apartment owners of the Suvidha Annexe is that they had entered into an agreement in 1992 with the Petitioner, a company of builders for construction of Suvidha Annexe multi-storied buildings in four blocks on 25.06.1992. The Agreement comprehensively covered various aspects pertaining to the construction, schedule of payments as well as common facilities and areas that would be provided by the Petitioner to the Respondent. The Agreement also provided for electrification, light fittings, lifts and a standby Generator for meeting the essential lighting requirements of the Suvidha Annexe. Soon after taking possession of their apartments in the year 1995 Respondent formed an Association, and on 27.01.1996 they wrote a letter to the Petitioner to inter alia make arrangements for installation of a standby Generator of suitable capacity for meeting the essential lighting requirements as stipulated in the Agreement. In response to this letter, Petitioner vide a letter dated 10.02.1996 stated that they are already taking necessary steps to install the standby generator and this would be done as early as possible. On 04.03.1996, the Petitioner wrote to the

Respondent stating that though they were ready to install a 20 KVA Generator, but some of the members of the Respondent association were insisting on a 75 KVA Generator, for which the Respondent would have to contribute Rs.3000/- each. In response, Respondent wrote back that the Owners Association had voted and agreed for a 25 KVA Generator, and therefore this may be installed. This was followed by several reminders, requesting the Petitioner to immediately install the generator as promised in the agreement, but there was no positive response. Respondent, therefore, issued a legal notice to the Petitioner in response to which the Petitioner replied that they are prepared to install a 10 KVA Generator but this had got delayed because of inter-se differences between the flat owners. Respondent denied this and again urged the Petitioner to fulfill their obligation to install a 25 KVA Generator. In view of the dilly-dallying attitude of the Petitioner, Respondent finally filed a complaint before the District Forum on the grounds of deficiency of service with a prayer to direct the Petitioner to install a 25 KVA Generator for their use and benefit or in the alternative direct the Petitioner to pay an amount of Rs.2,50,331/- towards the cost of 25 KVA Generator and its installation charges, and to pay compensation of Rs.50,000/- for mental agony alongwith cost of litigation. Petitioner on the other hand, agreed that as per Clause 18 of the Agreement, essential lighting was to be provided to the Respondent for common areas and for this purpose a 1 to 2 KVA Generator would be adequate. The Petitioner stated that at no point of time, had they agreed to provide a standby 25 KVA Generator. Apart from this, Petitioner have also stated that this case is barred by limitation because Members of the Respondent association took possession of their flats in the year 1995 and had expressed their total satisfaction with all arrangement made. Therefore, the allegations of deficiency of service after nearly a decade is not tenable and should be dismissed.

The District Forum after hearing the contention and evidence filed by both the parties dismissed the complaint both on merits and also held that it was not barred by limitation, because, this issue had been taken up with the Petitioner immediately after the Respondent took possession of their premises. Petitioner had also admitted their liability for installing a Generator. The District Forum therefore ordered as follows: The Respondent is directed to install 25 KVA Generator for essential lighting for owners of association of complainant within 4 weeks from today, and also to pay Rs.100/- of the cost of the proceedings.

3. AGGRIEVED by the order of the District Forum, the Petitioner filed an appeal before the State Commission. The State Commission dismissed the appeal as reproduced below: The complaint was filed by the Association of Flat owners who purchased flats from the OP. One of the terms of the contract between the parties is that the OP shall install a Generator for essential lighting for owners of flats. Admittedly, there are about 74 flats in three blocks. If that were to be taken into account, in our view, 25 KVA Generator itself may not be sufficient for the purpose of lighting. In the instant case, the District Forum taking all these facts into consideration has directed the OP to install 25 KVA Generator for

lighting. This direction issued by the District Forum, in our view, is just and reasonable. The State Commission also agreed with the reasoning and findings of the District Forum that the case was not barred by limitation. It further ruled that the Association was within its right to make a complaint under the provisions of the Consumer Protection Act.

4. AGGRIEVED by this order, the Petitioner - Suvidha Realtors and Constructions have filed this present revision petition before us. "Learned Counsels for both the parties made their oral submissions. Learned Counsel for the Petitioner while admitting that the agreement does indeed have a clause pertaining to supply of a Generator, stated it was unreasonable for the Respondent to expect installation of a 25 KVA standby Generator for the limited areas required for essential lighting and that a 1 to 2 KVA Generator would adequately serve the purpose. He further stated that at no point of time was a commitment made by the Petitioner to supply a 25 KVA Generator. He also raised the issue of limitations on the grounds that the cause of the complaint rose in 1994-95 and the Respondent only took legal note in 2001."

Learned Counsel for the Respondent stated that it was on record that the Petitioner in a meeting held with the Respondent on 20.10.1995 agreed to install a 25 KVA Generator. Thereafter they kept on changing their stand by offering to install a 20 KVA Generator, then a 10 KVA Generator and finally a 1 - 2 KVA Generator. It is obvious that a 1 KVA Generator would be totally inadequate for providing electricity to the vast common areas of 74 Apartments in four separate blocks. This shifting stand and the delaying tactics on the part of the Petitioner, right from the start proves that they had no intention of adhering to their written agreement. Thus, there was a gross deficiency in service on their part. This was correctly appreciated by both the District Forum and the State Commission. We have heard the Counsel for both the parties and have gone through the evidence on record. It is a fact that as per the written agreement entered between the parties it was clearly stated that a standby Generator for meeting the essential lighting requirements would be provided by the Petitioner. Further, it is also on record that 74 flats housed in four blocks would be covered by this arrangement we therefore, agree with the Respondent that it would be unrealistic to expect that a Generator of less than 25 KVA would be able to provide lighting to the large number of common areas in the premises. It is also on record that the Petitioner had agreed in writing to install the Generator on several occasions, and there are also letters to show that Petitioner had first agreed to provide a 25 KVA Generator, and later through a letter a 20 KVA Generator. In response to a legal notice, Petitioner replied that they wanted to install a 10 KVA Generator, but could not do so, because of the inter-se differences on the capacity of the Generator among the owners of the flats/ apartments. Their latest submission to provide a 1 KVA Generator puts a serious doubt on both their credibility and bona-fides to honour the Agreement. On the other hand, there is adequate evidence on record that the Respondent soon after taking possession of their premises and forming an Association had relentlessly pursued their case with the

Petitioner for providing a Generator for the common areas as per the agreement entered into by both the parties. It is only after all their efforts failed, that they had to take recourse to issuing a legal notice and thereafter filing a complaint before the District Forum. Keeping in view the above facts, we agree with learned State Commission and the District Forum that there was indeed a serious deficiency of service on the part of the Respondent. We also agree with the reasoning of the District Forum and the State Commission that the Respondent was within its rights to file a complaint under the Consumer Protection Act, and that this case is not barred by limitation.

5. WE thus uphold the order of the State Commission as well as the District Forum in toto, and dismiss the Revision Petition. Petitioner is directed to install a 25 KVA Generator within a period of four weeks from the date of pronouncement of this order and pay the Respondent Rs.5000/- as cost. Ordered accordingly.