

(2002) 04 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

SYNDICATE BANK

APPELLANT

Vs

BANGALORE DEVELOPMENT AUTHORITY

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Citation : 2002 0 NCDRC 44 : 2002 2 CPC 426 : 2002 2 CPR 92 : 2002 3 CLT 291 : 2002 3 CPJ 36

Hon'ble Judges : D.P.WADHWA , B.K.TAIMNI , J.K.MEHRA J.

Advocate : AJANT KUMAR , S.K.KULKARNI

Judgement

1. THIS complaint has been filed by the complainant M/s. Syndicate Bank against the opposite party, Bangalore Development Authority alleging deficiency on the part of latter by way of delayed delivery of flats.

2. BRIEFLY , the facts of the case are that the respondent floated a "Self Financing Housing Scheme" presumably in 1982 and the complainant booked 250 flats in all. The original plan was modified and in terms of the new scheme, the complainant applied for fifteen houses under Raj Mahal Vilas IInd Stage, Bangalore under H.I.G. Group. L.I.G. Flats booked earlier were surrendered. As per letter dated 22nd August, 1985, the opposite party promised to deliver the houses by December, 1986. All the payments as per demand letters of the opposite party as per scheme, were made in time. Yet, in spite of assurance from time to time, the respondent could deliver possession of only four plots, 3 in December, 1989 and one in May, 1990. It is in respect of balance 11 houses that the complaint was filed in February, 1995. It is the case of the complainant that in spite of promise to deliver the houses in December, 1986 and in spite of having made full payment, the possession of 11 houses has not yet been given indicative of deficiency in service on the part of the opposite party and praying for following reliefs : (a) that this Hon"ble Commission may be pleased to direct the respondent to complete 11 HIG houses as mentioned in the complaint; and after due completion of the construction hand-over the possession of the same to the complainant immediately; (b) direct the respondent to pay a sum of Rs.

1,98,40,930.73 paise on account of loss of interest suffered by the complainant as stated in the complaint and also direct to pay to the complainant a sum of Rs. 16.5 lacs on account of rent paid by the complainant for accommodating its officers as stated in the complaint and also direct to pay a sum of Rs. 25 lacs on account of mental agony and harassment caused to the officials of the complainant on account of deficiency in service on the part of the respondent; (c) direct the respondent to pay to the complainant interest at the rate of 19.5% per annum on the amount of Rs. 53 lakhs from 1.1.1995 till handing over of the possession of the said houses and also direct to pay Rs. 33,000/- per month on account of rent being paid by the complainant for accommodating its 11 officials in leasehold accommodation from 1.1.1995 till the possession of the houses are delivered to the complainant by the respondent; (d) in case the respondent fails to deliver the possession of the said houses to the complainant duly completed within the time fixed by this Hon'ble Commission, direct the respondent to hand over the possession of the incomplete houses to the complainant with directions to complete the construction of the same by the complainant at the cost of the respondent; and (e) to pass such other and further directions as this Hon'ble Commission may deem fit and proper under the circumstances of the case.

On notice being issued a statement of objections were filed by the respondent in August, 1995, that delay in delivery of possession has been caused by reasons beyond their control. The land in which these houses were to come up, first got caught in litigation with the landlords whose lands were acquired with. This got settled only in December, 1985, and subsequently the issue got involved in dispute with the contractor. Both these were beyond the control of the respondent. There has been no loss to the respondent as the property value has increased considerably in this area. Claim in respect of interest is high and arbitrary and claim in respect of rent being paid by the complainant to accommodate to its officer is also not sustainable. In such a big project involving construction of over 500 houses, there is bound to be some delay and on these grounds praying for rejection of the complaint. Further preliminary objections regarding maintainability were filed in January, 2001. Main objections as per this application are that the filing of complaint is time-barred as the cause of action arose by 28.2.1985 or by December, 1986 when the houses were proposed to be allotted. Complainant is not a person within the meaning of Section 2(1)(m) of the C.P.A., 1986. Complainant is not a consumer within the meaning of Section 2(1)(a)(I). There has been no hiring of service. Since the complainant is a nationalised Bank, and thus, being a statutory body cannot ventilate its grievance against the opposite party under the provisions of the C.P.A., 1986. On merits the reply of the opposite party is that they function on "no profit no loss basis", delay was for reasons beyond their control for reasons already mentioned above.

3. ONE affidavit each by way of evidence was filed by both the parties. An additional affidavit by way of evidence was also filed by the respondent.

4. IT was argued by the learned Counsel for the petitioner that admitted position is that houses were to be completed by December, 1986, yet possession in respect of 11 houses was delivered only on 12.3.1997 after a delay of over 10 years. All demands made by the respondent were met within time, yet possession was not delivered till the filing of the complaint, which is a deficiency in service and the respondent need to compensate the complainant by way of interest for the period, the amount of Rs. 53 lakhs was lying with the respondent as well as other reliefs sought in the complaint. Had the complainant kept the money in the Bank, he would have earned interest on this amount which is a loss to the complainant. The complaint needs to be allowed with costs. On the other hand, it was argued by the learned Counsel for the respondent that there has been no deficiency on their part. They were always earnest in their efforts - but these efforts were first thwarted by litigation, involving the land on which houses were to be built, followed by dispute with the contractor. Hence delay was caused by powers beyond their control for which they cannot be held liable. No interest need to be paid as the appreciation in the property (Houses) itself would compensate against any earning of interest on the deposited amount. Main ground taken by the respondent is that on account of dispute with the contractor this part of the project could not be completed which was beyond their control, hence no deficiency in service can be fastened on them. Basic facts are undisputed that the complainant had booked flats/houses with the respondent of which possession in respect of 11 houses was given in March, 1997 in spite of booking them sometime in 1982 and an assurance was there from the respondent that these houses would be delivered by December, 1986. It is also not in dispute that possession of these houses were given after almost two years of filing the complaint. The first defence on merits pressed by the respondent relates to time taken by litigation by the owners of the land acquired. Presumption is that the land must have been acquired before the launch of the scheme in 1982. Even if litigation was started by the land owners - we see nothing on record to show that any stay existed during this period of litigation, the respondent having taken action in pursuance of Section 4 and Section 6 of the Land Acquisition Act. In the absence of any "stay" granted by any competent Court, we are unable to appreciate as to how the progress of the work on site could be affected and how did it affect the completion of the houses in time. Be that as it may as per record - this problem was solved by 1985 than why delay in delivery in possession till 1997. We are unable to appreciate the attributed delay on this account. Respondent seems to be covering up its own inactivity. Second point is its defence raised by the learned Counsel for the respondent related to the time taken in dispute with the contractor and repeatedly drew our attention to the Agenda Note No. 45/1995 of respondent, BDA on the subject. Rescinding of contract of construction of HIG houses under the Self - Financing Scheme in R.M.V. II Stage. We have gone through this document carefully and find ourselves unable to accept this as a reason delay vis-a-vis the complainant for two reasons. Firstly, no dates are available except the year 1984 (19.9.1994) and 1985 (19.4.1985) and then 1991 and then to 1995. At all times issue relates

to settlement of claims/payments demanded by the contractor. In its meeting, BDA on 15.2.1995 decided to rescind the contract and give work to someone else. Nothing is on record to show as to why work could not be completed during 1985-1991. Secondly how is this of concern to the complainant ? His contract is with the respondent, BDA and written assured period for delivery of the house as 31.12.1986. He is not concerned about the internal functioning of BDA as he cannot influence its functioning one way or the other. We see no merit in this argument of the respondent.

5. THE respondent in order to cover up its faults has also advanced the objections of the complainant not being a consumer, complainant being a statutory body cannot file a complaint. Consumer has been defined to mean "any person who "Person has been defined in Section 2(1)(m) to include. .." It has been severally held that this is an inclusive definition. There is no doubt in our mind that respondent, BDA was rendering "services" as defined in Section 2(1)(o) and the complainant is very much a consumer within the meaning of Section 2(1)(d)(11) as the complainant had availed of the services of the respondent-BDA for a consideration. Regarding bar of limitation it is not disputed that there was no communication from the respondent to the complainant about any possible delay. Complainant was writing to the respondent. He wrote to the respondent on 9.7.1993, 11.1.1994, 12.3.1994. It is pertinent to note that correspondence was going on till 1989 and four houses were also handed over in December, 1989 and May, 1990. It is only in July, 1994 that a legal notice is issued and no reply is recovered. As could be seen from the above events that complainant was continuously in touch with the respondent though one-sided. We see this to be case of continued cause of action. In any case it has been held severally that the public bodies like the respondent-BDA should not really raise this sort of technical pleas in order to cover their mistakes.

6. THERE is no dispute that money for 15 houses were paid in time and were to be delivered by December, 1986, four of which were delivered in December, 1989 and May, 1990. Dispute relates to 11 houses only possession of which was given only on 12.3.1997 which we hold a clear case of deficiency in rendering services on the part of the respondent. Following our own orders in HUDA v. Darsh Kumar and Ors., the respondent-BDA is directed to pay interest @ 18% from two years after the deposit of last instalment of Rs. 53 lakhs upto the date of handing over the possession. The complaint is allowed with cost which we fix at Rs. 2,500/- to be payable to the complainant by the respondent.