

(2012) 09 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

Tamil Nadu State Consumer Disputes Redressal Commission

APPELLANT

Vs

G Keshav Raj

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 518

Hon'ble Judges : J.M.Malik , Vinay Kumar J.

Advocate : A.Prasanna Venkat

Judgement

1. THIS revision petition has been filed by the builder-opposite party after contesting and losing the case before the District Forum and State Commission.

2. THE facts of this case are these. The complainant, G. Keshav Raj and the opposite party/petitioner, M/s Sterling Estates and Properties Limited entered into an agreement wherein it was agreed that the complainant would purchase one flat having a plinth area not exceeding 393 sq. feet in the apartment promoted by the petitioner in the name of "Sterling Shambu" situated at 5 to 20 Rajalakshmi Avenue, Arcot Road, T.S. No. 269/2, Old Survey No. 87/A/1 Virugambakkam Village, Mambalam Guindy Taluk, Chennai district for a sale consideration of Rs.3,93,054 for the undivided 327 sq. ft. share of land and Rs.2,28,546/- towards cost of construction of the flat on 13.5.2004. Sale deed was also executed in favour of the complainant for the sale of land. As per the agreement, the petitioner-opposite party was to hand over possession on or before 31.5.2005. It was also stipulated in the agreement that for the delay caused, Rs.2/- per sq. ft. as rental loss would be paid by the opposite party and thereby the possession was given on 29.9.2006 with the delay of 16 months.

3. THE grievance of the complainant is that he had to pay unnecessary interest to the housing loan obtained and the opposite party had not constructed the building up to the mark. The opposite party had left various defects and thereby complainant claimed rental loss of Rs.12,576/- and excess amount in the sum of Rs.2,09,805/- with interest at the rate of 12% p.a., Rs.50,000/- as compensation for mental agony, hardship suffered by the complainant due to deficiency in

service of opposite party, and for rectification of defects. Accordingly, the consumer complaint was filed. The District Forum allowed the complaint and directed the opposite party to pay Rs.10,464/- towards rental compensation, Rs. 1 lakh toward rectification of defects and Rs.50,000/- towards compensation for mental agony and Rs.5,000/- towards costs.

4. THE petitioner-opposite party preferred an appeal before the State Commission. The State Commission partly allowed the appeal and set aside the order delivered by the District Forum directing the opposite party to pay Rs.1,55,464/- to the complainant. It directed the opposite party to pay Rs.10,464/- towards rental compensation, Rs.40,000/- towards rectification of defects and Rs.10,000/- towards compensation for mental agony and Rs.2500/- towards costs. Aggrieved by that order, the present revision petition has been filed.

5. WE have heard the learned counsel for the petitioner. Learned counsel for the petitioner vehemently argued that due to unavoidable circumstances, the delay of 16 months was caused. Secondly, it was argued that the complaint filed by the complainant was barred by time. The complainant took possession of the premises in dispute on 29.8.2006 without demur. The complainant had pointed out certain minor defects in his flat, which were immediately removed. On 17.7.2008, the opposite party received a legal notice from the respondent claiming a sum of Rs.1 lakh with interest wherein the complainant listed a number of defects in the said house. Thereafter, the consumer complaint was filed on 18.11.2008. Learned counsel for the complainant stated that it is barred by time.

6. ALL these arguments carry no conviction. The complainant took possession on 29.9.2006. Immediately after receiving the possession, he lodged a complaint, which was replied by the petitioner itself on 29.9.2006. The complainant complained about minor defects in his flat, which were immediately attended to and were repaired to the satisfaction of the complainant. The record reveal that those defects were not rectified and continued till the legal notice was given and the complaint was filed. This is a continuous cause and by no stretch of imagination, it can be said that those defects have been ever rectified. See the authority of B. Venu Madhav v. National Consumer Disputes Redressal Commission, represented by its Registrar, New Delhi and others in writ petition No. 30394 of 2011 decided on 18.1.2012 by Andhra Pradesh High Court.

7. ANOTHER letter dated 23.12.2006 goes to show that the opposite party had demanded some money and asked the complainant to collect his electricity cord which was in their office. There is report of the advocate who visited the premises as per the order of the District Forum. He inspected the premises in dispute on 9.12.2009 at 4.00 p.m. His report reads:- "f) On inspection it was evident that there were numerous cracks on the walls of the house. Cracks were found in many places in the hall and the kitchen. The Engineer inspected the flat and also the terrace. On inspection, the Engineer noted that the quality of the

cement mortar used in the construction on the inner and the outer walls were not of the best quality. Such use of the inferior quality of the mortar has led to the peeling of the plastering on many parts of the building. Further the cracks in the building are also because of the inferior quality of the mortar used in the construction. g) Traces of water seepage were present in the hall and the kitchen. The corners in the roof of the hall and the kitchen had seepage traces. The engineer also felt the wetness of the walls and confirmed seepage from the terrace. h) The weather roofing tiles in the terrace were not in place, the tiles were peeled off because of poor plastering. The water from the over head tank overflows as it is not properly covered and the water also seep through such pores which is evident from the photographs. i) The engineer also noted that the plumbing and sanitary fittings were not of the standard quality and the same were not in working condition. j) There was no bedroom partition in the flat and there were unfinished electrical circuits in the flat which the engineer felt as unsafe during rainy seasons. k) The engineer also noted that the door frames were not affixed properly. The plastering near the door in the terrace and peeled off due to poor plastering which the engineer felt it as unsafe. The main door also had a cut in the lower region as said in the complaint. l) Besides this the engineer also found that Sump provided is getting filled with external water due to the seepage in the sump walls."

It, therefore, clearly goes to show that there were certain defects in the construction.

8. IN view of the above, the order passed by the State Commission cannot be faulted. The State Commission has thoroughly gone through the evidence and given the correct verdict. In view of this, the revision petition is dismissed.