
(2016) 12 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Case No : 1388 of 2016

VASANT PRABHAKAR DAREKAR, & ANR.

APPELLANT

Vs

ANAND VYANKATESH HORADDI & ANR.

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 19](#)
[Section 2\(1\)\(d\)](#) - Appeals - Definitions

Citation : (2016) 12 NCDRC CK 0026

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

Advocate : Sumati Anand

Judgement

1. Delay condoned.

2. These two First Appeals, under Section 19 of the Consumer Protection Act, 1986 (for short "the Act"), by the Proprietor of a Real Estate Developer, namely, Darekar Developers, Opposite Party No.1 in the Complaint, are directed against a common order dated 30.08.2016, passed by the Maharashtra State Consumer Disputes Redressal Commission at Mumbai (for short "the State Commission") in Consumer Complaints No. CC/12/113 and CC/12/114. By the impugned order, while accepting the Complaints filed by the Complainant, Respondent No.1 herein, in respect of two flats, bearing no. 102 and 201, purchased by him from the Appellant in the multi storey building, named and styled as Chandan Bungalows, the State Commission has directed the Appellant to hand over to the Complainant possession of the afore-noted two flats within one month from the date of the order, after accepting the balance amount of 84,000/- and 1,54,000/- in respect of flat no. 102 and 201 respectively and also pay a compensation of 50,000/- in respect of each of the flats to the Complainant towards mental agony and harassment caused to him on account of non-delivery of the possession of said flats, besides litigation costs, quantified at 20,000/- in each of the Complaints.

3. Since the Complaints have been decided by the State Commission by a

common order, these Appeals are also being disposed of by this order.

4. Learned Counsel appearing for the Appellant strenuously urged that while issuing the afore-noted directions, the State Commission has failed to take into consideration the fact that a sum of 13,53,000/- was still due from the Complainant towards the cost of extra construction and amenities. Thus, according to the learned Counsel, the direction by the State Commission to the Complainant to pay only a total sum of 2,38,000/- is obviously detrimental to the interest of the Appellant, because it will not be possible to recover the balance amount from the Complainant once the possession of the flats is delivered to him. It is also pleaded that the Complainant having booked more than one flat with the Appellant, it was a commercial transaction and, therefore, the Complainant not being a "consumer" within the meaning of Section 2(1)(d) of the Act, the Complaints under the Act were not maintainable. Lastly, it is urged that since the evidence filed on behalf of the Complainant was by his General Power of Attorney Holder, in the absence of any Attorney on record, executed by the Complainant, her evidence should not have been taken into consideration.

5. Having heard the learned Counsel at length and perused the documents on record, we are of the view that there is no substance in both the Appeals.

6. As regards the contention that an amount of 10,00,000/- is still due from the Complainant to the Appellant, except for relying on the legal notice dated 07.12.2011, despite our repeated queries, learned Counsel has not been able to pin point from any document or statement of Complainant's account that said amount was payable by the Complainant to the Appellant. At this juncture, it is pertinent to note that in the impugned order, the State Commission has returned a clear finding that the Complainant had paid the entire consideration to the Appellant in respect of both the flats by sending two cheques in the sums of 84,000/- and 1,54,000/- at the time of handing over possession of the flats by the Appellant to the Complainant but for the reasons best known to the Appellant, he did not have the said cheques encashed. Therefore, in the absence of any material on record, showing that a further sum of 10,00,000/- was still due from the Complainant to the Appellant, no fault can be found with the afore-noted finding recorded by the State Commission.

7. As regards the question as to whether or not the Complainant is a "consumer" because of his having booked two flats with the Appellant, in our view, the argument is stated to be rejected for the simple reason that the Appellant has not adduced any evidence to show that the Complainant was engaged in a real estate business.

8. Insofar as the question of filing of evidence by the power of attorney holder of the Complainant, who happens to be her sister, is concerned, suffice it to say that no such objection was raised by the Appellant either in its affidavit filed by way of evidence or during the course of arguments before the State Commission.

9. For the aforesaid reasons, both the Appeals fail and are dismissed accordingly,

with no order as to costs.