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(1997) 02 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

V.BALASUBRAMANIAN — APPELLANT

Vs

R.SATHYAMURTHY — RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Citation : 1997 0 NCDRC 50 : 1997 2 CPJ 44

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : S.MURLIDHAR , NEERU VAID

Judgement

1. FIRST Appeal No. 196/95 is directed against the order dated 2.12.94 of the Tamil Nadu State Consumer Disputes Redressal Commission in O.P. No. 166/ 94. The complainant is the appellant before us.

2. FACTS of the case as per available records are as follows. The complainant owned the land and house at the bungalow in Plot No. 80/A at Door No. 1, 4th Cross Street, Raja Annamalaipuram, Madras. The opposite party is a builder. They entered into an agreement dated 7.6.91 according to which the plot is divided into two parts A and B, ''A, measuring 5673 sq. ft. and ''B'' measuring 4000 sq. ft. The opposite party was to give Rs. 16 lakhs to the complainant and put up a building free of cost in portion ''B'' which will consist of ground and three upper floors with one flat on each floor having a built-up area of 1300 sq. ft. or thereabout as per plan. The above costs are to be met by the opposite party from the sale proceeds of 8 flats to be put up by him in portion ''A''. In the performance of the said agreement, the complainant alleged before the State Commission as many as 11 items of deficiencies and claimed a total sum of Rs. 14,09,100/- as compensation and other reliefs. The State Commission confined itself to deficiencies in regard to the building constructed by the opposite party in the ''B'' portion of the land as being covered under the Consumer Protection Act. There alleged deficiencies pertained to (i) shortage in the area constructed (i.e. that the built-up area of the ''B'' Block building does not include common or other areas in the building or the compound and is less by 700 sq. ft.); (ii) non-

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provision of alternate accommodation since according to the complainant, the ''B'' Block new building was available for occupation only in August ''93 whereas he had vacated the old bungalow on 7.5.92; (iii) delay in construction of ''B'' Block building, non-completion of ground floor works, incomplete compound wall construction and certain deficiencies in flooring work and electric supply connections. The State Commission considered the matter in detail and directed the opposite party to (i) put up partition walls in the ground floor of the ''B, Block as requested by the complainant and pay to the complainant (a) Rs. 20,000/- for deficiency in the flooring in the ground floor and in the entrance area; and (b) Rs. 20,000/- for deficiency in giving electric connections. The State Commission observed that the entire ''B'' Block belongs to the complainant and that there is, therefore, no question of any portion of the built-up area common between him and others. On the question of shortage of area alleged by the complainant, the Commission noted that except for the affidavit of the complainant and the counter-affidavit of the opposite party, there was no other evidence and that the complainant had not chosen to take out a Commission for taking measurements of the plinth area of each of the flats in ''B, block belonging to him to establish his case that there is deficiency of 700 sq. ft.

3. AGGRIEVED by this order of the State Commission, the complainant has preferred this appeal. We have heard the appellant in person and the Counsel for the opposite party. The appellant was permitted to file his written submission also. The appellant has reiterated that the agreed area to be constructed was 1300 sq. ft. The relevant agreement dated 7.6.91 in this regard reads inter alia that "the building B'' will consist of ground and three upper floors with one flat on each floor, each having a built up area of 1300 sq. ft. or thereabouts as per the plans and specifications thereto annexed.,'' The agreement is thus not specific about the builtup area. We are of the view that the State Commission has carefully gone into the allegations in the complaint in so far as they come under the purview of Consumer Protection Act and awarded appropriate reliefs to the appellant. We confirm the order of the State Commission. In the result, the Appeal fails. Parties will bear their respective costs.

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