

(1993) 04 NCDRC CK 0120

In the National Consumer Disputes Redressal Commission

VICE-CHAIRMAN And HOUSING COMMISSIONER, A.P.
HOUSING BOARD

APPELLANT

Vs

T. SATYANARAYANA MURTHY

RESPONDENT

Date of Decision : 06-04-1993

Acts Referred:

Citation : 1993 2 CPJ 1187

Hon'ble Judges : A.Venkatarami Reddy , Pothuri Venkateswara Rao , J.Ananda Lakshmi J.

Final Decision : Appeal partly allowed

Judgement

1. THE opposite parties Nos. 1 to 3 in C.D. No. 384 of 1991 are the appellants. THE respondent, who is the complainant was allotted an L.I.G. House at Proddutur, on payment of installments, amounting to Rs. 8,740-00. He paid the installments and also the escalation cost being 1/8th of the installment, that is, Rs. 362-00. After completion of the building, an agreement was entered into on 31-3-1989 between the complainant and the opposite parties. It is relevant to note that even before entering into the agreement, the complainant gave a notice on 17-1-1989 complaining that there is leakage and cracks in the building. As, according to the Complainant, it is not possible to live in the building, as there are so many cracks and leakage, he, requested the opposite party to refund the amount paid by him. As the opposite parties did not refund the amount, he filed this complaint claiming a sum of Rs. 17,645-62, including interest at 18% and the cost of application and the escalated cost of Rs. 362-00.

2. IN the counter-filed, the opposite parties admitted the payment of the installments and also the additional amount of Rs. 362-00 towards escalation cost by the complainant. But it was stated that the complainant is being made after a lapse of two years and if there are defects in construction, due to which, some cracks developed, the opposite parties would attend to all the defects and make it suitable for living, if the allottee is prepared to take possession immediately and that, therefore, they are not liable for refund of the amount.

Before the District Forum, the District Housing Engineer was present and he admitted that the building developed cracks. But his plea was that those cracks can be rectified and the building can be put to use. But he is not agreeable for the reconstruction of the building in a proper and habitable manner. The complainant is not willing to take possession of the building unless the flat is reconstructed. The District Forum was satisfied having regard to the statements made by the Engineer and also the complainant before it, that since there is deficiency in the service accepted by the opposite parties in-as-much as they have not constructed the building properly, it directed the refund of the amount of Rs. 8,740-00, that is, installments paid, with 15% interest from 29-11-1988.

In this appeal, Mr. T. Ramulu, the Counsel for the appellant submitted that according to Regulation 22-A(i) of the A.P. Housing Board (Allotment, Management and Sale of Low Income Group Houses) Regulations, 1975, any claim for refund the earnest money deposit, advance payment, in full without any deduction to the applicants (i) who are in waiting list; (ii) refund in full the earnest money deposit (Advance payment) deposited by the allottees in respect of applications, who have refused the allotment within the time prescribed in allotment letters, deduct in the case of L.I.G., a sum of Rs. 200-00 or 2% of the amounts paid whichever is more in case the allottee either fails to pay in installment or installments in time or requests for the refund of the amounts paid by him. But this plea was not taken in the counter filed by the opposite parties and that, therefore, the District Forum has rightly did not consider this aspect and we are not inclined to permit the appellant to take this plea for the first time in the appeal.

3. IT is nextly submitted that since the opposite party, that is, the Housing Board has completed the house and delivered possession of the same to the complainant and also an agreement was completed, it is not liable to pay interest on the deposited amount, as it is willing to give delivery of possession of the house and also undertakes the repairs. We see sufficient force in the aforesaid contention. IT is the complainant that does not want to occupy the house, even when the Housing Board under-takes to effect the repairs and deliver possession of the same. IT cannot, therefore, be said that the Housing Board used the money of the complainant without completing the house and agreeing to deliver the same. In these circumstances, we are of the view that no interest is payable by the Housing Board to the complainant on the amount deposited by him. It is to be further noticed that the complainant has paid a sum of Rs. 362-00 to the Housing Board by way of additional cost. In fact, he claimed this amount also in the complaint. But obviously, due to over-sight, the District Forum did not direct the refund of this amount to the complainant, although it was part of the amount collected from the complainant. We, therefore, direct the Housing Board to refund this amount of Rs. 362-00 to the complainant within a period of two months from today.

4. IN the result, the appeal is partly allowed to the extent mentioned above.

There shall be no order as to costs. Appeal partly allowed.