

(2014) 05 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Vyas Enterprises

APPELLANT

Vs

Das Darshan Co -operative Housing Society Ltd.

RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Citation : 2014 0 NCDRC 489 : 2014 2 CPJ 741 : 2014 3 CPR 169

Hon'ble Judges : J.

Judgement

1. ON 5.5.1982, a partnership firm in the name and style of "Vyas Enterprises" purchased the plot in dispute from Sh. Sadashiv Musle and others. The said partnership firm was dissolved on 1.4.1996. Sh. Mahendra Vyas, one of the partners of the said partnership firm became the sole owner of this plot, who retained the same name. M/s. Vyas Enterprises constructed six -storey building which was sold to different intending buyers through various agreements. Those buyers formed a Co -operative Housing Society, by the name of M/s. Das Darshan Co -operative Housing Society, the complainant, in this case, on 6.1.2003.

2. THE grouse of the Society is that opponent has not conveyed the property under MOFA Act, in favour of the Society for which the Society, from time -to -time, requested the opponent to do the needful. However, the opponent did not care a fig. A legal notice was sent to the opposite party on 1.12.2007. Ultimately, this complaint was filed before the District Forum, on 21.6.2008. The District Forum partly allowed the complaint. It directed the opposite party to execute the conveyance deed within three months, otherwise the opposite party shall pay for the delay period, a compensation of Rs. 1,000 per week, to the complainant. The District Forum also imposed costs of Rs. 10,000 upon the opposite party. The District Forum, however, did not accept the other prayer wherein it was prayed that debris and waste materials lying in stilt parking Nos. 1 and 2 of the building be removed by OP and restore the premises to original plan. Aggrieved by that judgment, the OP preferred First Appeal before the State Commission. The State Commission dismissed the appeal on 20.8.2013.

3. WE have heard the Counsel for the petitioner/OP. Learned Counsel for the petitioner pointed out that the original owner of the land, Sh. Sadashiv Musle is a necessary party. He has invited our attention towards the affidavit filed by Sh. Mahendra J. Vyas, which runs as follows: I state that the complainant had filed the above complaint against this OP for conveyance. The OP is ready and willing to give conveyance, however the land owners are not the party to the said complaint and the OP is having non -registered power of attorney. The complainant is opposing the same saying that the OP should have registered power of attorney. Therefore, OP had also requested the complainant that they should make landowners as party to the complaint.

4. IT was argued that the petitioner is not the owner of the property. He was the Power of Attorney Simpliter. He has also filed on record, irrevocable Power of Attorney, which mentions that it will continue for ten years. Now, we turn to the agreement entered into between the complainant and the O.P. Paras. (iii), (iv), (v), (vi), (vii) and 2 of the said agreement, read as under: (iii) By an agreement dated 5th May, 1982, the said owners agreed to sell the said property to the sellers herein at the price and on the terms and conditions set out therein.

(iv) Pursuant to the said agreement between the owners and the sellers herein, the sellers have entered into possession of the said property for construction of building/bungalows and to sell the flats/garages/bungalows therein on ownership basis to the prospective buyers.

(v) The sellers have decided to commence the construction of the building on the said property described in the first schedule hereunder written, consisting of flats, garages (the garage shall mean and include covered as well as uncovered and/or open car parking spaces) bungalows, etc., with a view to sell the same on ownership basis.

(vi) In pursuance of the said agreement, the owners have also executed in favour of the sellers, a power of attorney conferring upon the sell, transfer, alienates, dispose of flats, garages, bungalows, units, constructed on the said property.

(vii) By virtue of the said agreement and the power of attorney, the sellers sold and exclusive right to sell the flats, garages, units, bungalows, open/closed car parking spaces, in the said building to be constructed by the sellers on the land and to enter into agreement with the purchasers of the said flats, garages, bungalow and unit, open/closed car parking spaces and to receive sale price in respect thereof;

2. The Buyer hereby declares that before execution of this Agreement, the Sellers have made full and complete disclosure and the buyer has taken full and free inspection of particulars and disclosure of inter alia, the following.

5. THERE is not even an iota of evidence to show that the complainants knew about irrevocable Power of Attorney. The OP has made misrepresentation before

the complainants/consumers. He is estopped from taking another plea.

6. IT appears that the original owners and builder have got a dispute inter se. The consumers/complainants have to do nothing with it. There is no privity of contract between the owners and the complainants. The builder/promoter/person holding the Power of Attorney has to solve his/her problem with the owners only. The OP alone is answerable to the complainant. The action of the OP is below the belt. His motive is to feather his own nest, i.e., to make the profits at the instance of others. He is trying to adopt a Fabian policy. Will this policy come to his rescue?. He has not even a scintilla of remorse after putting the lives of so many people at stake. This is a lamentable position. The second submission made by the petitioner was that the Society has no locus standi to file this case. There is no privity of contract between the Society and the OP. The case was not filed in accordance with Section 2(1)(m) of the C.P. Act, 1986.

7. WE see no merit in this argument. The buyers can subsequently form a Society, as well. We find no force in this argument.

8. THE last argument urged by the Counsel for the petitioner was that it is a time barred case. The complaint should have been filed within two years" from the date of the agreement. This issue is also bereft of merit. This is a continuous cause of action, as was held by this Commission, in RP 3097 of 2012, decided on 4.9.2012, as under: 9. The learned State Commission brushed aside the argument regarding delay in filing the complaint by placing reliance on the judgment in B. Venu Madhav v. National Consumer Disputes Redressal Commission, Represented by its Registrar, New Delhi & Ors., in W.P. No. 30394 of 2011, dated 18.1.2012 reported in CDJ 2012 APHC 421, wherein it was held that "when there is immovable property and the amenities promised by the opposite party were not provided, the National Commission held that it can be construed as continuing cause of action and it cannot be said to be barred by time.

10. This discussion tips the scale in favour of the complainant and, as such, the revision petition filed by the OP, is dismissed.

9. AGAINST the above said order dated 4.9.2012, a Special Leave to Appeal (Civil) No. 35805 of 2012, was filed before the Hon"ble Apex Court, titled Raghava Estates Ltd. v. Vishnupuram Colony Welfare Association, wherein the Hon"ble Apex Court, vide order dated 7.12.2012, was pleased to dismiss the same.

10. SIMILAR view was taken in another judgment of this Commission, in RP 668 of 2013, titled as Bhagyalaxmi Construction v. Monoranjana Basak, : III (2013) CPJ 75 (NC) : decided on 31.5.2013, wherein in para No. 5, it was held as under: Coming to the issue of limitation, raised before the Fora below on behalf of RP/ OP. The State Commission has agreed with the finding of the District Forum that it was a case of continuing cause of action. The question of the complaint being barred by limitation did not arise. From a perusal of the records and from the arguments of the Counsel for the revision petitioner, I find that it is a case where

existence of an agreement between the parties for purchase of a flat is not denied. Receipt of consideration for the same is also not denied. I, therefore, find myself in agreement with the Forum below that the cause of action had continued to exist because neither the possession was delivered nor the conveyance was executed in favour of the complainant.

Aggrieved against the above said order dated 31.5.2013, a Special Leave to Appeal (Civil) No. 28910 of 2013, was filed before the Hon'ble Apex Court, titled Bhagyalaxmi Construction v. Monoranjan Basak & Ors., wherein the Hon'ble Apex Court, vide order dated 11.11.2013, dismissed the same.

11. It is thus clear that if one has the blue sky ideas, he/she has it, at his/her own peril. The OP has committed an egregious mistake by making a wrong representation that he was the owner of the said property. He should not have led the complainant, up the garden path, unless and until, he had full authority. On one hand, he says that he is the owner, vide agreement, and on the other hand, the Counsel for the OP admitted that he did not file any suit for specific performance, as per his own stand taken in the agreement with the complainant. The Counsel for the petitioner argued that the order passed by the District Forum is very harsh. We see no merit in this argument. It is only the "wearer of the shoe, who knows, where the shoe pinches". Without Conveyance Deed, the position of the consumer is like that of a ship, without a radar. The revision petition is dismissed. However, we refrain from imposing any other costs upon the petitioner. The order of the District Forum be complied with, strictly. Consumer Forum cannot make it a case of title between the petitioner and the owner.