

2023 LiveLaw (SC) 92

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
S. RAVINDRA BHAT; J., DIPANKAR DATTA; J.
Civil Appeal No. 3343 of 2020; February 9, 2023

DEBASHIS SINHA & ORS.

versus

M/S R.N.R. ENTERPRISE REP. BY ITS PROPRIETOR/CHAIRMAN, KOLKATA & ORS.

Summary: - Flat owners do not forfeit the right to claim amenities promised by the developer by taking possession of the apartments- Supreme Court disapproves of NCDRC order dismissing homebuyers' claim on the ground that knowingly purchased the apartments.

Consumer Protection Act 1986 - Flat-owners' rights-If complaints were to be spurned on the specious ground that the consumers knew what they were purchasing, the object and purpose of the enactment would be defeated-in most cases, the jurisdiction of NCDRC is invoked post-purchase-Any deficiency detected post-purchase opens up an avenue for the aggrieved consumer to seek relief before the consumer for a. (Para 11)

Supreme Court's comments on flat-owners' plight - Now-a-days, flat owners seldom purchase flats with liquid cash. Flats are purchased on the basis of finances being advanced by banks and other financial institutions. Once a flat is booked and the prospective flat owner enters into an agreement for loan, instalments fall due to be paid to clear the debt irrespective of whether the flat is ready for being delivered possession. The usual delays that are associated with construction activities result in undue anxiety, stress, and harassment for which many a prospective flat owner, it is common knowledge, even without the project/flat being wholly complete is left with no other option but to take possession.

Consumer Protection Act, 1986 - Kolkata Municipal Corporation Act - Builder has obligation to seek completion certificate-It is no part of the flat owner's duty to apply for a completion certificate. (Para 18, 19)

For Appellant(s) Mr. Arvind Kr. Sharma, Adv. Mr. Aniteja Sharma, Adv. Mr. Avijit Singh, Adv. Mr. Raj Kishor Choudhary, AOR

For Respondent(s) Mr. Vipin Kumar Jai, AOR

ORDER

1. This appeal under section 23 of the Consumer Protection Act, 1986 (hereafter 'the C.P. Act', for short) calls in question the order dated 21st August, 2020 passed by the National Consumer Disputes Redressal Commission, New Delhi, (hereafter 'NCDRC', for short). By the impugned order, the NCDRC has dismissed the consumer complaint lodged by the appellants.

2. The multiple appellants are owners of flats in different blocks of a housing complex at 1, Kailash Ghosh Road, Kolkata – 700008 (hereafter 'housing complex', for short).

3. Aggrieved by the failure of the respondents - the developers of the housing complex - to provide services as promised, the jurisdiction of the NCRDC was invoked by the appellants in 2008. They alleged that despite paying full consideration amount as per

market rate and despite execution and registration of deeds of conveyance in their favour, the respondents had failed, inter alia, to provide the 'Completion Certificate', which is their statutory obligation as per the rules of the Kolkata Municipal Corporation (hereafter 'KMC', for short); and, in the absence of such a certificate, their occupation of the respective flats has been rendered precarious. According to the appellants, the respondents also failed to provide them common amenities and facilities viz., playground, community hall-cum-office room, 33-feet wide concrete road, and supply of water from the KMC. It was their further complaint that the respondents had adopted unfair trade practices by promising a playground on a land which actually belonged to a local club as well as attracted buyers by showing in the brochure/ advertisement a 'beautified lake', which never came into existence. Also, finding that there were constructional defects, a valuer from the list of approved valuers maintained by the Calcutta High Court had been engaged by the appellants. The report of such valuer revealed constructional defects of the nature delineated therein. Based on the complaint that was lodged before the NCDRC, the appellants sought direction to the respondents to provide the completion certificate of the project and to set right the constructional defects as pointed out by the valuer. Further, they claimed that direction be issued for providing other facilities such as community hall, landscape gardening, generator, multi-gymnasium, water filtration plant, and gas pipeline. Additionally, compensation of Rs.1,80,00,000/- (Rupees one crore eighty lakh only) together with litigation cost of Rs.50,000/- (Rupees fifty thousand only) was claimed.

4. The complaint lodged by the appellants was contested by the respondents by filing a written statement. Apart from objecting to the maintainability of the complaint on the grounds that the same was time barred and that a joint complaint could not have been lodged by 36 (thirty-six) flat owners, it was contended that the appellants have not paid the full consideration amounts, that certain common facilities/amenities could be provided only if all the members of the housing complex contribute for the same and that the compensation claimed was vague and imaginary. It was also contended in the written statement that most of the appellants had taken possession of the flats in 2006 without raising any objection at the material time; hence, lodging of a complaint after 2 (two) years of possession being delivered is motivated. Insofar as the issue of obtaining the completion certificate is concerned, it was contended that the flats having already stood transferred to the appellants by way of conveyance/sale deed(s), it was for the appellants to apply before the KMC for obtaining such certificate. The respondents also contended that since KMC had completed assessment of the flats of the appellants, it was not possible for the respondents to now apply and obtain completion certificate for the flats.

5. Considering the pleadings before it as well as upon hearing the parties, the NCDRC returned findings that the respondents had shown a very casual approach and were guilty of unfair trade practice as well; yet, it was observed that the appellants had not been able to establish their claim. It also appears from the impugned order that the NCDRC suspected that the purpose of the complaint was to pressurize the respondents into paying some compensation and/or not insisting upon extra payment for the extra facilities and amenities. Also, it was held that the respondents had been able to successfully urge that the fault for not obtaining the completion certificate of the project could not be attributed to them. In this regard, the NCDRC returned a finding that reading of section 403 of the Kolkata Municipal Corporation Act, 1980 (hereafter 'KMC Act', for short) makes it clear that it was incumbent on both the respondents as well as the appellants to not occupy the premises in the absence of the completion certificate. As a result thereof, a finding was further returned that both the parties had violated the law; as such, no deficiency could be attributed to the respondents on this account. Based on broadly these findings, the complaint of the appellants failed before the NCDRC.

6. We have heard Mr. Sharma, learned counsel for the appellants. None appeared before us on behalf of the respondents on the previous 2 (two) occasions the appeal was heard and even today.

7. We have also perused the impugned order of the NCDRC and considered the materials on record.

8. What has struck us first is the time taken by the NCDRC to decide the complaint after it reserved the same for passing orders. It took the NCDRC in excess of 10 (ten) months to dismiss the complaint. As our discussion hereafter would unfold, we are of the clear view that the long delay in passing the order on the complaint did have its own effect on the ultimate decision of the NCDRC.

9. The complaint of the appellants was that the respondents have not provided playground, community hall, beautified lake, landscape gardening, generator backup, multi-gymnasium, etc. as mentioned in the brochure/advertisement pursuant to which they expressed interest to purchase flats in the project and, thus, defaulted in providing services in relation to housing construction.

10. One entire paragraph in the order has been devoted by the NCDRC to highlight that the project was not that huge and talk of common areas and facilities on a grand scale was quite misplaced. An admission made by the appellants themselves in the complaint has been referred to but we have not been able to trace any admission of the complainants that the respondents promised not to deliver substantial common areas and common facilities. Be that as it may, what the NCDRC omitted to bear in mind was that the appellants were allured to purchase flats of the nature and kind together with facilities and amenities as attractively published in the brochure/advertisement; hence, whether the project was huge or otherwise was absolutely beside the point. It was the duty of the NCDRC to ascertain, based on the materials on record, whether if at all and to what extent facilities and amenities as promised were offered and/or whether there was any deficiency of service. We have not found any categorical findings in this regard, although there are unambiguous findings that the NCDRC disapproved the conduct of the respondents.

11. The conduct of the respondents, the NCDRC recorded in the impugned order, was far too casual and on the face of it, the respondents are guilty of “unfair trade practice” within the meaning of section 2(1)(r) of the C.P. Act. After so recording, the NCDRC held that this does little to rescue the complainants. The reason assigned therefor defies logic. We have failed to comprehend as to what the NCDRC meant when it observed that the appellants “ought to have known what they were purchasing”. More often than not, the jurisdiction of the consumer fora under the C.P. Act is invoked postpurchase. If complaints were to be spurned on the specious ground that the consumers knew what they were purchasing, the object and purpose of the enactment would be defeated. Any deficiency detected post-purchase opens up an avenue for the aggrieved consumer to seek relief before the consumer fora. The reasoning of the NCDRC is, thus, indefensible. Indeed, the appellants had purchased their respective flats on payment of consideration amounts as per market rate and there was due execution and registration of the deeds of conveyance preceded by agreements for sale and these instruments did indicate, inter alia, what formed part of the common facilities/amenities; however, the matter obviously could not have ended there. Whether the appellants had been provided what the respondents had promised did survive for consideration, which does not get reflected in the impugned order.

12. NCDRC, in our opinion, might have missed to appreciate the present day realities of life. Now-a-days, flat owners seldom purchase flats with liquid cash. Flats are

purchased on the basis of finances being advanced by banks and other financial institutions. Once a flat is booked and the prospective flat owner enters into an agreement for loan, instalments fall due to be paid to clear the debt irrespective of whether the flat is ready for being delivered possession. The usual delays that are associated with construction activities result in undue anxiety, stress, and harassment for which many a prospective flat owner, it is common knowledge, even without the project/flat being wholly complete is left with no other option but to take possession. Whether, upon taking possession, a flat owner forfeits his/her right to claim such services which had been promised but are not provided resulting in deficiency in services is a question that the NCDRC ought to have adverted to. Once the NCDRC arrived at a finding that the respondents were casual in their approach and had even resorted to unfair trade practice, it was its obligation to consider the appellants' grievance objectively and upon application of mind and thereafter give its reasoned decision. If at all, the appellants had not forfeited any right by registration of the sale deeds and if indeed the respondents were remiss in providing any of the facilities/amenities as promised in the brochure/advertisement, it was the duty of the NCDRC to set things right.

13. That the appellants had genuine reasons to feel aggrieved was clearly documented in the report of the valuer dated 11th July, 2008 which was even acknowledged by the NCDRC, yet, a peculiar approach was adopted and the respondents absolved of their obligations by an order which appears to us to be unjustified on facts and in the circumstances.

14. We have found from the impugned order that it speaks of certain facilities to be made available by the respondents on payment of extra money. However, there is no such clear-cut description of facilities/amenities which the respondents asserted would be provided on payment of extra money by the appellants. NCDRC would have done well to indicate the same with clarity.

15. Finally, we cannot resist but comment on the perfunctory approach of the NCDRC while dealing with the appellants' contention that it was the duty of the respondents to apply for and obtain the completion certificate from the KMC and that the respondents ought to have been directed to act in accordance with law. The observation made by the NCDRC of the respondents having successfully argued that it was not their fault, that no completion certificate of the project could be obtained, is clearly contrary to the statutory provisions.

16. Sub-section (2) of section 403 of the KMC Act was referred to by the NCDRC in the impugned order. Sub-section (1) thereof, which finds no reference therein, requires every person giving notice under section 393 or section 394 or every owner of a building or a work to which the notice relates to send or cause to be delivered or sent to the Municipal Commissioner a notice in writing of completion of erection of building or execution of work within one month of such completion/erection, accompanied by a certificate in the form specified in the rules made in this behalf as well as to give to the Municipal Commissioner all necessary facilities for inspection of such building or work.

17. Section 393 mandates every person, who intends to erect a building, to apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form and containing such information as may be prescribed together with such documents and plans. Similarly, section 394 also mandates every person who intends to execute any of the works specified in clause (b) to clause (m) of sub-section (1) of section 390 to apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form and containing such information as may be prescribed.

18. It is, therefore, evident on a conjoint reading of sections 403, 390, and 394 of the KMC Act that it is the obligation of the person intending to erect a building or to execute works to apply for completion certificate in terms of the rules framed thereunder. It is no part of the flat owner's duty to apply for a completion certificate. When the respondents had applied for permission/sanction to erect, the Calcutta Municipal Corporation Buildings Rules, 1990 (hereafter '1990 Rules', for short) were in force. Rule 26 of the 1990 Rules happens to be the relevant rule. In terms of sub-rules (1) to (3) of rule 26 thereof, the obligation as cast was required to be discharged by the respondents. Evidently, the respondents observed the statutory provisions in the breach.

19. Curiously enough, the NCDRC referred to sub-section (2) of section 403 of the KMC Act only to permit the respondents to wriggle out of such obligation and arrived at a completely erroneous finding that no deficiency in service could be attributed to the respondents since both the respondents and the appellants had acted in violation of law. True it is, the appellants ought not to have taken possession without the completion certificate; however, that was not a valid ground not to direct the respondents to apply for and obtain the completion certificate as required by law. The mere fact that the flat owners were being assessed by the KMC affords no reason to the respondents for breaching section 403(1) read with rule 26 of the 1990 Rules. Of course, once a completion certificate is issued by the KMC upon conducting appropriate inspection and tests of the building that has since been erected, it would stand to reason that the same amounts to a certification that the building does not suffer from any violation of the building plan sanctioned for the purpose under section 390 of the KMC Act or that its constructional quality is not of the desired level for which it is unsafe for human habitation. We are constrained to observe that the respondents have been let off by the NCDRC in a manner contrary to law.

20. For such infirmities, as noticed above, this is an appropriate case where the complaint of the appellants ought to be remitted to the NCDRC for taking a relook into the complaint in accordance with law. It is ordered accordingly.

21. Since it is found that the appellants while praying for monetary compensation of Rs.1,80,00,000.00 have failed to give detailed particulars and/or provide the basis therefor, and undoubtedly, they have also been on the wrong side of law by taking possession of their respective flats without the completion certificate, whatever might be the compulsion, we are not inclined to direct the NCDRC to decide on the compensation component. That chapter stands closed. The remand is directed only with a view to secure adherence to the promises that the respondents had made in the brochure and/or advertisement, as the case may be, and thereby cover up deficiency in service, if any, as well as the mandatory statutory provisions.

22. The appeal stands disposed of on terms as aforesaid, with no orders as to costs.

23. Since the complaint is more than 15 (fifteen) years old, it would be desirable if the NCDRC decides the same as early as possible and preferably within a year of service of an authenticated copy of this order.