

**Date of Filing : 07.06.2023**  
**Date of Disposal : 18.04.2024**

**BEFORE THE KARNATAKA STATE CONSUMER DISPUTES  
REDRESSAL COMMISSION, BENGALURU (PRINCIPAL BENCH)**

**DATED THIS THE 18<sup>th</sup> DAY OF APRIL 2024**

**PRESENT**

**HON'BLE Mr.JUSTICE HULUVADI G RAMESH : PRESIDENT**

**Mr. K.B.SANGANNAVAR : JUDICIAL MEMBER**

**Mrs M.DIVYASHREE : LADY MEMBER**

**Appeal No.1059/2023**

1. Chandrakumar  
S/o Hanumaiah  
Aged about 59 years
2. C.Kumar  
S/o Chandrakumar  
Aged about 31 years

Both are R/at  
No.5, 'A' Layout,  
Saint Joseph Convent Road,  
Bannimantap, Mysuru-570015. **..Appellant/s**

**(By Adv.Sri.K.S.Mallikarjunaiah)**

**VS**

Chandrakanth Kembhavi  
S/o Late Chandramappa,  
Aged about 62 years,  
R/at No.588, 'B' Layout,  
Bannimantap,  
S.S.Nagara, Mysuru-570015. **...Respondent/s**

**(By Adv.Sri.T.A.Karumbhaiah)**

**ORDER****BY HON'BLE Mr.JUSTICE HULUVADI G RAMESH : PRESIDENT**

1. This is an appeal filed U/s.41 of CPA 2019 by OP.1 & 2/Appellants aggrieved by the order dtd.31.10.2022 passed in CC/182/2022 on the file of Mysuru District Commission. (Parties to the appeal henceforth are referred to their rank assigned to them by the District Commission).
2. The Commission examined grounds of appeal, impugned order, appeal papers, LCR and heard the learned counsels.
3. Complaint came to be filed by the Complainant when OPs despite receipt of the amount failed to complete the construction work as agreed under construction agreement. Despite service of the complaint notice, OPs failed contest the matter, thereby they were placed exparte. The District Commission enquired into the matter and held OPs are deficient in their service, thereby proceeded to allow the complaint directing OPs to complete the remaining construction work of the 2<sup>nd</sup> floor within 2 months from the date of this order by receiving balance amount from Complainant OR in the alternative, if Ops failed to complete the construction work they shall pay damages of Rs.1,50,000/- to the Complainant; to pay Rs.50,000/- towards deficiency in service and Rs.5,000/- towards cost of litigation within two months, failing which, entire amount shall carry

interest at 10% p.a. It is this order, being assailed in this appeal, on the ground that, they were not served with complaint notice, thereby did not get an opportunity to contest the matter, thus have sought for setting aside the exparte order.

4. On looking into the construction agreement dtd.03.03.2021, it is seen that, Complainant/Chandrakanath Kembhavi and OP.1 & 2/Civil Engineer i.e. Chandrakumar and Kumar.C who are none other father and son, have entered into construction agreement dtd.03.03.2021, wherein OPs agreed to construct the 2<sup>nd</sup> floor on the existing building of the Complainant measuring 5.5 square for a sum of Rs.1,80,000/- per square. Further agreed to complete the works in all respects and handover the house made fit for habitation and use within five months from the date of this agreement subject to unforeseeable circumstances and payment of entire amount by the Complainant as agreed.
5. It is the case of the Complainant that, the OP despite receipt of Rs.9,60,000/- failed to perform their part of obligations in terms of the construction agreement. In respect of receipt of such amount by OPs.1 & 2, it seen that, they endorsed their signature against each payment in the construction agreement itself. Such signatures getting tallied with the signatures they endorsed on the construction agreement. From this it is evident

that, OPs had received Rs.9,60,000/-, whereas, the District Commission has wrongly examined that OP has received Rs.8,10,000/-. As on 05.07.2011 they have received Rs.6,90,000/-; Rs.1,50,000/- on 31.07.2021; Rs.20,000/- on 19.08.2021; Rs.1 lakh on 01.09.2021; thus in total Rs.9,60,000/- received by OPs. Despite receipt of such amount, when OPs have left out from the construction work, even negotiation was also held between the parties before the jurisdictional police, but later OPs remained silent. Thus, Complainant caused legal notice dtd.02.12.2021, to which OPs on 23.12.2021 replied that “while the construction was going on smoothly, they noticed that 2<sup>nd</sup> floor measures more than 7 squares but not 5.5 square. Hence they are ready to complete the construction of 2<sup>nd</sup> floor as per the agreement, if owner pays extra amount as per the agreement per square Rs.1,80,000/- on extra measurement.” Thus, Complainant has approached one Sri.Madhukara.K, Civil Engineer who along with his staff conducted spot inspection and measured the construction area of 2<sup>nd</sup> floor and submitted his report on 24.01.2022. We perused the said report, wherein they endorsed that total plinth area is 5.5 squares and also given the cost of construction of pending works left out by OPs at Rs.3,06,200/-.

6. It is found from the enquiry that, the District Commission on 11.08.2022 recorded that *“notice issued to OP.1 & 2 returned with shara as refused - it is held as sufficient service on OPs. OPs.1 & 2 called out absent, they are placed exparte.”* Thereafter received affidavit evidence of the Complainant along with documents, and also examined the witness Sri.Madhukar, Civil Engineer who has given the inspection report, thereby held OP.1 & 2 committed deficiency in service on their part and proceeded to allow the complaint. It is right OPs placed exparte as they refused to receive complaint notice. But it is not right in accepting the report of the Civil Engineer solely as the OPs in their reply to the legal notice have stated that there is difference in measurement of the area i.e. 7 square but not 5.5square as per the agreement. Further, it is noticed that, Complainant in his complaint himself stated that, when OPs informed that the 2<sup>nd</sup> floor measures 6 square, they agreed to pay Rs.50,000/- in relation to construction of additional ½ square. But the report of civil engineer says 2<sup>nd</sup> floor measures 5.5 square. In this regard, Commission could have appointed its own Commissioner on cost to be payable by the Complainant to inspect the spot, so also, to examine the genuineness of the report of the civil engineer, before proceeding to pass the impugned order. As such, we feel matter requires for reconsideration. Further, as

the Appellants/OPs also seeking an opportunity to contest the case, they would be allowed on cost of Rs.10,000/- to be payable to Complainant. In such view, we proceeded to allow the appeal, consequently, set aside the impugned order. In the result, matter is remanded back to the District Commission with a direction to reconsider the case afresh affording opportunity to both parties and decide the case in accordance with law as early as possible not later than three months from the date of receipt of this order.

7. The Appellants/OPs are directed to pay Rs.10,000/- as cost to the Complainant before proceed to contest their case before the District Commission.
8. The amount in deposit is directed to be transferred to the District Commission for needful.
9. Return the LCR to the District Commission.
10. Notify copy of this Order to the District Commission and parties.

**Lady Member**

**Judicial Member**

**President**

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