

**BEFORE THE TELANGANA STATE CONSUMER DISPUTES
REDRESSAL COMMISSION : HYDERABAD.**

**F.A.No. 210F2019
AGAINST ORDERS IN C.C.No.142/2017,
DISTRICT CONSUMER COMMISSION-I, HYDERABAD.**

Between:

Janaharsha Estates "N" Constructions Pvt., Ltd.,
A Registered Company,
Having its office at #5-9-233 & 234, III Floor,
Somali Mall, Opp.: Grammar School Bus Stop,
Abids, Hyderabad – 500 001,
Rep. by its Chief Manager Sri J.Ashok.

.....Appellant/Opposite Party

And:

B.Ramchander Reddy,
S/o Vittal Reddy,
Aged about 44 years,
Occ.: Agriculture,
R/o H.No.4-1-312/6, AfsaraGunjBagh,
Candel Market Road, Chandra Bagh Colony,
Vikarabad District.

.....Respondent/Complainant

Counsel for the Appellant/Opposite Party :

Sri N.S.V.NageswaraRao.

Counsel for the Respondent/Complainant : M/s. K.Mallesh.

QUORUM :

**HON'BLE SMT. MEENA RAMANATHAN, I/c PRESIDENT
&
HON'BLE SRI. K. RANGA RAO, MEMBER -(JUDICIAL)**

**TUESDAY, THE 20th DAY OF JUNE
TWO THOUSAND TWENTY THREE**

Order : (PER HON'BLE SMT. MEENA RAMANATHAN, I/c PRESIDENT)

1.This appeal is filed by the Appellant/Opposite Party U/s. 15 of
the Consumer Protection Act, 1986, praying this State Commission

to allow the appeal by setting aside the orders dated 13.11.2018 in C.C.No.142/2017 passed by the District Consumer Commission-I, Hyderabad and pass such other and further order or orders as are deemed fit and proper in the circumstances of the case and in the interest of justice.

2. For the sake of convenience, the parties are referred to as arrayed in the complaint. The Appellant was the Opposite Party and Respondent was the complainant in the C.C.

3. Briefly stated, the facts of the complaint are that the complainant is an Agriculturist and the Opposite Party is in the Real Estate Business. The complainant was induced by the Marketing Executive of the opposite party in the month of February 2008 and having lured by the presentation made by the personnel of the opposite party, the complainant joined in the scheme launched by them and had allotted with two ticket, bearing No.'s 12627-FS & 12628-FS.

4. At the time of joining as a member, the opposite party has obtained his signatures on some printed text papers as it is required for the official purpose only. The opposite party has not provided any documents relating to the scheme to the complainant and after paying the first installment, he was furnished with Passbooks to record the payments whenever are made and informed him that not to visit their office, as their employees would come to his place to receive the installments.

5. The Complainant paid the installments whenever the personnel of the opposite party visited to him and also on some occasions he visited the opposite party office and paid the installments. From 31.03.2008 to 14.08.2010, he regularly paid the installments of both tickets each amounting to Rs.1,52,000/- thus in total he paid Rs.3,04,000/- (Rupees three lakh four thousand only). Thereafter, he informed to the opposite party about his inability to continue as a member in the said scheme and made a request to return the amount paid by him, but they postponed in returning the amount paid by him. When the opposite party deliberately neglected to refund the amount, he got issued a legal notice, dated 01.12.2016 demanding for refund of Rs.3,04,000/- with interest @ 18% per annum from 14.08.2011.

6. The opposite party gave a reply stating that he has agreed to the terms and conditions of the scheme by signing the membership form. The opposite party has not explained the terms and conditions printed on the membership application form. The only information in respect of the scheme given to him was that residential plots will be registered in his favour, if he paid the cost of the plot in installments and in the event of withdrawal the amount would be returned. There was no scope for him to either to go through the terms and conditions printed on the membership application form or were they read over to him before obtaining his signatures.

7. He signed the membership application form under the impression that, it is only membership application and not an

agreement. The opposite party ought to have given a separate sheet of terms and conditions of the scheme to the complainant before signing on the Membership Application Form. All these facts, clearly establish that there is a deficiency of service on the part of the opposite party. Hence, the complaint.

8. The Opposite Party filed counter denying all the averments of the complainant and submitted that that the complainant himself got enrolled as a member in the scheme and there was no inducement by the Marketing Personnel of the opposite party. The complainant has opted to pay installments as per Clause 7(a) of terms and condition so the membership application.

9. As per the payment option, the cost of 120 sq. yards unit in 50 months installment agreement is of Rs.2,76,000/- this includes the monthly installments of Rs.3,000/- along with special installments of Rs.12,000/- in first month, Rs.10,000/- each in 6th, 12th, 18th 24th and 30th months respectively, Rs.22,000/- in 36th month and Rs.21,000/- each in 42nd and 46th months respectively, Those who pay 42nd month special installment (Rs.21,000/-) and 48th month special installment (Rs.21,000/-) in advance will become eligible to get unit reservation.

10. In case of installments are not paid for 3 months in succession or in case if a member fails to clear his dues and to regularize his account ever in 3rd month in succession management reserves its right to cancel such membership(s) without any prior notice as per the ClauseNo.s.9, 11 and 14 of the

agreement. And development charges of Rs.30,000/- for each membership totaling Rs.60,000/- to be paid along with basicplot/unit cost and road cost if any applies as Clause No.8 of the membership application/passbook. Therefore, the total plot costs for Rs.240/- sq. yards is of Rs.6,12,000/- (Rs.3,06,000/- x 2 plots/units). It is admitted that the complainant totally paid an amount of Rs.1,52,000/- in each membership totaling Rs.3,04,000/- to the opposite party towards the above cited memberships on different dates starting from 31.03.2008 to 14.08.2010 by way of installments but, irregular in pattern, which is not in consistence with the agreed terms and conditions of the agreement signed by the complainant at the time of entering into it. The complainant has to pay total basic plot costs of Rs.3,06,000/- including Rs.30,000/- towards developmental charges in each membership in installments mode of payment as per the given schedule, but the complainant has not adhered to the terms and conditions and the complainant has paid his last installment on 14.08.2010 itself, after that he had never paid any installments to the opposite party.

11. The agreed period has completed in the month of April 2012. The opposite party has already made it clear many times that the complainant is not paying regularly and not updating his accounts by paying requisite due amount. As per the terms and conditions of the application is not eligible to any of the agreement benefits, as the complainant was supposed to pay an amount of

Rs.6,12,000/- for 240 sq. yards, whereas, the complainant has paid only an amount of Rs.3,04,000/- till 14.08.2010 and the balance was Rs.3,08,000/-. It is humbly submitted that the complainant's demand is hopelessly time barred one as per Clause No.9 and 11 of the terms and conditions vide agreement/passbooks.

12. The deficiency of service would arise only if the opposite party fails to register the plots even after completion of payments payable in the scheme or any defect in title of the property or reported that there is willful default or intentional act on the part of the opposite party. The complainant cannot seek refund of the amount. Hence, prayed the District Commission to dismiss the complaint.

13. During the course of trial, the complainant filed his evidence affidavit and got marked Ex.A1 to A4. The opposite party filed their evidence affidavit and got marked Ex.B1 to B7.

14. The District Commission after considering the material available on record, allowed the complaint in part, directing the Opposite Party to refund the entire amount collected from the complainant with interest @ 18% per annum on the amounts collected from the complainant from time to time, from the date of respective payments to the date of payment. The opposite party is shall also pay a sum of Rs.25,000/- as compensation to the complainant. The opposite party further liable to pay Rs.10,000/- as costs of this complaint. Time for compliance was one month from the date of service of this order as otherwise, the opposite party is liable to pay interest @ 12% p.a. on the amount of

compensation of Rs.25,000/- from the date of the complaint to the date of payment.

15. Aggrieved by the said order, the Appellant/Opposite Party preferred the present appeal with the following grounds:-

- The order of the District Commission is arbitrary against to facts, law, without jurisdiction and without applying judicial discretion.
- The District Commission ought to have rejected the complaint as it is barred by limitation.
- The District Commission ought to have considered that as per section 24-A of the Consumer Protection act, 1986 “No complaint shall be admitted by the District Commission, the State Commission or the National Commission, unless it is filed within 2 years from the date on which the cause of action has arisen.
- The District Commission ought to have considered that as per Section 3(1) of Limitation Act, every suit instituted appeal preferred and application made after prescribed period shall be dismissed, although limitation had not been set up as defense.
- The District Commission failed to consider as the complainant had given coloring as the dispute is consumer dispute being aware that his claim is barred by limitation to file a civil suit and filed the present complaint.

- The District Commission failed to consider the aspect of limitation while passing the impugned order, more particularly when the appellant had taken a clear defense with regard to bar of limitation.
- The District Commission completely ignored the fact that the complainant has expressed his inability to continue payment of monthly installments.
- The District Commission made imaginary observations in respect of Ex.B2 and awarded exorbitant rate of interest along with compensation.
- The District Commission ought to have appreciated that the complaint was frivolous and vexations.

With the above grounds, the Appellant prayed this Commission to allow the appeal and to set aside the impugned order dated 13.11.2018 in C.C.No.142/2017of the District Consumer Commission-I, Hyderabad.

16. Heard the Arguments of the Appellant. Written arguments are filed by the Respondent.

17. The points that arise for consideration are whether the impugned order passed by the District Commission suffers from any error or irregularity or whether it is liable to be set aside, modified or interfered with in any manner- to what relief?

18. As per the records, the Appellant/Opposite Party is in a construction Company and launched a scheme of developing

housing plots for sale to the persons who enrolled as members and agreeing to pay the sale consideration by way of installments.

19. Ex.B2 is the application for membership and the terms and conditions are recorded in the said form and the complainant has read and agreed to the terms and conditions by enclosing an admission fee of Rs.100/- along with the first installment. This application is for Plot size of 240 sq. yards i.e. 2 plots of 120 sq. yards. Membership number allotted is 12627-FS & 12628-FS. The Respondent/complainant entered this Scheme on 31.03.2008 as evidenced vide Ex.A1 & A2 and he paid a cumulative total of Rs.3,04,000/- only. The last date of payment entered in this exhibit is recorded as 14.08.2010. Thereafter, he has failed to pay any further installments.

20. The terms and conditions of this Scheme are also clearly recorded in the exhibit A1 and A2. We reproduce clause 14 – which emphasis the following conditions if a member fails to pay further installments:-

“If the members is not able to pay further installments and could not continue in the scheme, can pull himself out of the scheme by receiving back certain portion of the total amount paid, accepting it as a full and final settlement of these entire transactions, which will be arrived by deducting certain percentage specified in this clause, from the total amount paid in order to compensate the expenditure incurred by the Company.

After pulling himself out of the scheme, any person will totally becomes ineligible for any sort of rights, claims, benefits and facilities under this scheme.

In this way, while voluntarily nullifying his membership, the amount which a member can receive will be finalized depending on the amount paid by him till then i.e. a person who paid unit reservation can receive 20% of the total amount paid by him, a person who paid $\leq 50\%$ of the total unit cost can receive 30% of the total amount paid by him, a person who paid $> 50\%$ and $< 75\%$ of the total unit cost can receive 40% of the total amount paid by him, a person who paid $\geq 75\%$ of the total unit cost can receive 60% of the total amount paid by him as a full and final settlement of these entire transactions.

However, the members who paid reservation amount and also regular in paying installments will only become eligible to receive back certain portion of the amount paid while nullifying their membership as specified in this clause.

The member can transfer his membership as per Clause (12) or can cancel his membership while receiving certain amount as full and final settlement of these entire transactions as specified in the clause but, under any circumstances, the amount paid by him will be refundable neither in total nor with interest”.

21. The complainant has paid a sum of Rs.1,52,000/- vide Membership No.12627-FS and another sum of Rs.1,52,000/- vide Membership No.12628-FS. So together he has paid a total sum of Rs.3,04,000/- towards the housing plots and the last date of payment is 14.08.2010. Thereafter, he expressed his inability to continue the scheme and claims he requested the Appellant/Opposite Party to refund the amount paid by him but there is no evidence filed by him to support this claim. A keen

perusal of Ex.A1 & A2 reveals that the complainant has paid the installments in a haphazard and irregular manner which was never alluded to by the Commission below.

22. The present status is the outcome of the Respondent/Complainant's inability to continue and sustain the scheme and the Respondent/Complainant failed to approach the Appellant/Opposite Party after 14.08.2010 for refund of the amounts paid.

23. The Commission below failed to discuss the fact that the complainant slept over his rights for many years before filing the present complaint. The Consumer Protection Act, clearly lays down that there is a period of limitation to file a Consumer Complaint and if the delay is abnormal, then, it should properly be substantiated for the Commission to condone the delay. In the present case the complainant has merely stated that he continuously approached the Appellant/Opposite Party for refund and when they did not respond, issued a legal notice dated 01.12.2016. This explanation is not satisfactory and the Commission below gravely erred in not discussing this very crucial aspect and merely concluded that the Appellant/Opposite Party printed the terms and conditions to induce innocent persons to become members.

24. Keeping all these factual aspects, the complaint is highly time barred and in the absence of any formal condonation of delay, the delay of 2381 days cannot be condoned. It is also stressed as per Section 9 of the Limitation Act, that once the period of limitation begins-no event, inability or disability can stop it. This .

view is further forfeited by referring to the judgment of the Hon'ble National Consumer Disputes Redressal Commission, in FA 265/2020.M/s Manya Infra-Build Well Pvt., Ltd., vs Muzammil Lahmad decided on 20.02.2020. In this case, there was a delay of 355 days in filing the appeal and it was decided as under:-

“ From the above facts, it is clear that the appellant had not acted with reasonable diligence. They had a nap of about 11 months after handing over the file to Advocate.They have failed to show the reasonable ground which prevented them from coming to the court for filing the present appeal with in the period of limitation.

25. Once we have come to this conclusion, that, the complaint is barred by limitation, we find valid grounds in the appeal. It is the primary duty of the Commission below to consider this point.

26. For the reasons recorded above, we hold the complaint is time barred, hence the same is dismissed and the orders of the District Commission is dismissed as devoid of merits.

27. In the result, the appeal is allowed, by setting aside the order of the District Consumer Commission-I, Hyderabad passed in C.C.No.142 of 2017, dated 13.11.2018 and the complaint stands dismissed.

SD/-

SD/-

I/c PRESIDENT

MEMBER-JUDICIAL

Dated:20.06.2023

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