

Date of Filing: 19.10.2022
Date of Order: 25.10.2023

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION – I,
HYDERABAD

PRESENT

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT
HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER
HON'BLE MR.B.RAJA REDDY, MEMBER

Wednesday, the 25th day of October, 2023

Consumer Case No.666 OF 2022

Between:-

Sri Joseph Fernandez S/o.Late Capt. AG Fernandez
Aged about: 67 Years, Occ: Retired,
R/o. Flat No.17, Avidhoot Apartments,
Rukmini Devi Colony, West Marredpaly,
Secunderabad.

....Complainant

AND

1. Fortune 99 Homes

Regd. Office at Cyber Heights 1st & 2nd Floors,
Road No.2, Banjara Hills,
Beside NTR Trust Lane, Hyderabad – 500 034,
Rep. by its Partner Sri Madhirala Rosi Reddy S/o. M.Poli Reddy.

2. Sri Madhirala Rosi Reddy S/o. M.Poli Reddy

C/o. Fortune 99 Homes,
Regd. Office at Cyber Heights, 1st and 2nd Floors,
Road No.2, Banjara Hills,
Beside NTR Trust Lane,
Hyderabad – 500 034.

3. Sri Kota Vijaya Babu S/o. Alfred

C/o. Fortune 99 Homes,
Regd. Office at Cyber Heights, 1st and 2nd Floors,
Road No.2, Banjara Hills,
Beside NTR Trust Lane,
Hyderabad – 500 034.

....Opposite Parties

Counsel for the Complainant :
Counsel for the Opposite Party No.1 to 3 :

Vijaya Sagi
Habeeb Sultan Ali

ORDER

(By Hon'ble Mr.B.Raja Reddy, Member
on Behalf of the Bench)

1. The present complaint is filed under Section 35 of the Consumer Protection Act, 2019, alleging deficiency of service and unfair trade practice on the part of opposite parties, with a prayer which reads as under:

- (i) To refund the total amount of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) paid to the opposite party with 18% penal interest as agreed by the opposite party from the date of the payment i.e. 08.03.2021;
- (ii) To pay compensation of Rs. 2,00,000/- (Rupees Two Lakhs Only) towards mental agony and physical stress;
- (iii) To pay Rs. 50,000/- (Rupees Fifty Thousand Only) towards costs of this complaint;
- (iv) To pass any such order / orders as this Hon'ble Commission may deem fit and proper in the above circumstances.

2. Brief facts as averred in the complaint and necessary for adjudication are that the complainant, impressed with the advertisement given by the opposite parties, approached them for enquiring about the open plots. The complainant, after going through the brochure of the opposite parties about their venture "NCS Fortune Medi City" at Mucherla Village, Ranga Reddy District, agreed to purchase 2 plots admeasuring 200 sq. yds each @ Rs. 8,750/- (Rupees Eight Thousand Seven Hundred and Fifty Only) per sq. yard. The total cost of the two plots was fixed at Rs. 35,00,000/- (Rupees Thirty Five Lakhs Only) and the complainant made part payment of Rs. 25,00,000/- (Rupees Thirty Five Lakhs Only) for 400 sq. yards i.e. two plots. Thereafter, the opposite parties executed agreement of sale dated 15.03.2021 and allotted plots bearing plot No. B102& B103 in favour of the complainant. It was agreed by and between the parties that the remaining balance of Rs. 10,00,000/- (Rupees Ten Lakhs Only) would be paid within 15 days from the date of getting HMDA approvals. The opposite parties No.2 and 3 assured the complainant that they would soon obtain HMDA approvals. On enquiry, the complainant came to know that the opposite parties were not the absolute owners of the subject plots in the venture and the opposite parties did not follow the procedure. When the complainant approached the opposite parties, they offered alternate plots in another venture called Indraprastha Developers, Kandukur project. After the site visit, the complainant asked for copies of relevant documents for legal verification but the same were not provided by the opposite parties. It is further averred that the opposite parties had failed to discharge their part of duty to get necessary approvals for registering the plots in the name of the complainant. It is stated that, as per clause (5) of the agreement of sale, the opposite parties had failed to register the property in favour of the complainant, therefore the opposite party was required to

refund the amounts with penal interest within a period of 180 days. When the opposite parties did not keep their promise, the complainant sent several e-mails requesting them to refund the amounts. As there was no response from the opposite parties, the complainant got issued legal notice dated 07.09.2022. The legal notice was returned with endorsement 'unclaimed'. It is submitted that, although the opposite parties received Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) towards sale consideration of the subject plots, they failed to register the property in favour of the complainant. It is further submitted that the act of opposite parties had pushed the complainant to fear and threat of losing the money that was paid from the amounts sent by his children. Hence, alleging deficiency of service and unfair trade practice on the part of opposite parties, the complainant filed the present complaint with a prayer to grant the reliefs as stated supra.

3. Although notice sent to opposite party No. 3 was returned with endorsement "left", Vakalat was filed by the counsel for opposite parties No. 1, 2 & 3.
4. While denying the allegations and averments made in the complaint unless specifically admitted in the written version, it is contended by the opposite party No. 2 that the complaint is not sustainable either on facts or on law and the same is liable to be dismissed. It is further contended that the complaint is nothing but gross abuse of process of law, therefore, the complainant is not entitled for any of the reliefs prayed by him. It is averred that the opposite party No. 1 is a company registered in the name of "Fortune 99 Homes" and the role of the company is to undertake marketing / selling of the plots in the approved layout. It is further averred that the opposite party No. 1 represented by opposite parties No. 2 & 3 (managing directors / partners) entered into an agreement with Mr. Nookala Chandra Shekhar, who claimed to be the representative of the owner, Mr. C. Suresh Kumar Agarwal who owned lands pertaining to survey no. 50 / 97, 50 / 98, 50 / 99, 50 / 100, 50 / 101, 50 / 102 & 477 admeasuring Ac 85-28 guntas of Mucherla village Kandukur Mandal. The opposite parties paid token amount as advance for developing, marketing and selling the subject land. When the opposite party No. 2 came to know that the agreement holder who claimed to be the representative of the owner did not complete the agreed formalities, the opposite parties cancelled the old agreement executed with the

representative and approached the original owner. Thereafter, the opposite parties entered into an agreement with the original owner and applied for approval of L.P. by submitting application on 04.02.2023. It is stated that the opposite parties expressed their inconvenience for the delay in getting L.P. and requested the purchasers for time for registering the plots in the Medi City Layout. It is further stated that the complainant neither approached the opposite parties nor expressed his readiness or willingness to pay the balance sale consideration to get the allotted plots registered in his name. Hence, denying the allegations of deficiency of service and unfair trade practice on their part, the opposite parties prayed the Commission to dismiss the complaint with cost.

5. The opposite parties 1 & 3 filed adoption memo and adopted the written version filed by the opposite party No. 2.
6. During the course of enquiry, the complainant (PW1) filed evidence affidavit and got marked the documents at Ex.A1 to Ex.A8. Mr. M. Rosi Reddy, signing authority (RW-1), filed evidence affidavit on behalf of opposite parties No. 1, 2 & 3 and got marked their documents at Ex.B1 to EX.B3. Thereafter, written arguments were filed by both parties. After hearing the learned counsel of the complainant and opposite parties, the matter was reserved for orders.
7. Based on the facts and material available on the record, the following points have emerged for consideration:
 - a. Whether the complainant could establish deficiency of service and unfair trade practice on the part of opposite parties No.1, 2 & 3?
 - b. Whether the complainant is entitled for the reliefs prayed in the complaint? If so, to what extent?

8. Point 'a':

- 8.1. It is evident from the agreement of sale dated 15.03.2021 (Ex.A2) that the complainant paid an amount of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) towards part sale consideration for purchase of plots bearing Nos. B102& B103 admeasuring 200 sq. yards each in "NCS Fortune Medi City". It is further evident from Ex.B1 that the opposite parties acknowledged the receipt of payments to the tune of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only). Despite receiving about 75% of the sale consideration, the opposite parties failed to get HMDA approvals and register the plots, therefore, the complainant

issued legal notice dated 11.12.2022 (Ex.A7) through his counsel and the same was returned.

- 8.2. It is the case of the complainant that, although the complainant paid about 75% of the total sale consideration towards the purchase of the subject plots, the opposite parties failed to register the plots in favour of the complainant. It is also the case of the complainant that, as per the brochure, the opposite parties applied for permissions from HMDA but the permissions were not obtained by them and it was a fake promise. Further, though the opposite parties agreed to allot some other plots in the venture called Indraprastha Developers, they failed to provide relevant documents for legal verification.
- 8.3. It is the version of the opposite parties that the agreement holder (who claimed to be the representative of the owner of the land) failed to complete the formalities, therefore, the agreement was cancelled and another agreement was executed with the original owner of the land. Hence, there was delay for making an application for approval of the L.P. and approval application was made on 04.02.2023. It is also the version of the opposite parties that they requested the customers in the Medi City Layout for time to register the land.
- 8.4. In the case at hand, the complainant proved that 75% of the total sale consideration was paid towards the purchase of the subject plot. The complainant submitted documentary evidence in support of his averments and pleadings. Although, the opposite parties raised objections for exhibiting the documents at Ex.A4 to Ex.A7 (e-mail reminders and legal notice), the payment of amounts to the tune of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) was not disputed.
- 8.5. Before advertng on the merits of the case, it is pertinent to mention relevant provisions of Consumer Protection Act, 2019.

As per Section 2(11) of the Consumer Protection Act, 2019, "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes-

- (i) Any act of negligence or omission or commission by such person which causes loss or injury to the consumer and*
- (ii) Deliberate withholding of relevant information by such person to the consumer.*

As per Section 2(42) of the Consumer Protection Act, 2019, “service” means service of any description which is made available to potential users and includes but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of new or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

8.6. In the case at hand, as per clause 5 of agreement of sale (Ex.A2), it is clear that the opposite parties have undertaken to reimburse the payment along with penal interest, if any defect is found or discovered in the title of the vendor regarding scheduled property or due to such defect in the title or for any reason, if the vendee is deprived of the whole or part of the property. Further, there is no iota of evidence to establish that the opposite parties, after knowing that the agreement holder has failed to complete the formalities, have requested for time for registering the plots in favour of the complainant. Also, there is no cogent documentary evidence to substantiate the statements made in para 5, 6 & 7 (under sub-heading ‘brief facts of the case’) of written version and evidence affidavit of opposite parties. Thus, per se deficiency in service is evident. Hence, point ‘a’ is answered in favour of the complainant.

9. Point ‘b’:

9.1. It is settled law that the complainant cannot be expected to wait for an indefinite time period to get the benefits of the hard-earned money which he / she has spent in order to purchase the property.

9.2. In the present case, as per their own admission, the opposite parties received the amounts towards advance payment for the purchase of the subject plots before getting HMDA approvals. It is also established that the registration of the plots could not be executed. Thus, collecting amounts before obtaining necessary permissions and final approvals of the project is nothing but unfair trade practice on the part of opposite parties. The conduct of the opposite parties also amounts to deficiency in service.

9.3. Consequently, we are of the considered opinion that the opposite parties are deficient in providing services to the complainant since they have failed to execute registered sale deed upon receiving the balance sale consideration within a reasonable time period, hence, the complainant is entitled for the refund of the amount along with

reasonable compensation for the inconvenience and mental agony caused to the complainant.

9.4. Though, it is the prayer of the complainant that the opposite party be directed to refund the amount paid with interest @18% p.a., we are of the considered opinion that awarding interest @18% p.a. as prayed for by the complainant will lead to injustice. Hence, in the interest of justice, we direct the opposite party to refund the amounts paid by the complainant along with interest @9% p.a.

9.5. In the result, the complaint is allowed in part and the opposite parties No. 1, 2 & 3 are directed jointly and severally to

- (i) refund the amount of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) along with interest @9% p.a. from the date of respective payments made by the complainant to till actual payment;
- (ii) pay an amount of Rs. 50,000/- (Rupees Fifty Thousand Only) towards compensation for the inconvenience and mental agony caused to the complainant for non-delivery of subject flat;
- (iii) pay an amount of Rs. 25,000/- (Rupees Twenty Five Thousand Only) towards costs.

Time for compliance: 45 days from the date of receipt of the order. In case of non-compliance, the amount mentioned in Sr. No. (i) & (ii) shall attract an interest @ 3% p.a. from the date of the order till its actual payment.

Dictated to stenographer, transcribed and typed by him, pronounced by us on this the 25th day of October, 2023.

MEMBER

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

Joseph Fernandez S/o. Late Capt. A.G.Fernandez Complainant (PW1).

WITNESS EXAMINED FOR THE OPPOSITE PARTY No.1 to 3:

Madhirala Rosi Reddy S/o. Late Sri M.Poli Reddy C/o. Fortune 99 Homes (DW1).

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- Ex.A1 Brochure of the Opposite Party.
- Ex.A2 Copy of agreement of sale dated: 15.03.2021.
- Ex.A3 Sanction Plan.
- Ex.A4 Copy of the email dated: 08.06.2022.
- Ex.A5 Copy of the email dated: 29.06.2022.
- Ex.A6 Copy of the email dated: 03.08.2022.
- Ex.A7 Legal notice with postal receipts dated: 07.09.2022.
- Ex.A8 Returned Covers dated: 17.09.2022.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY No.1 to 3:

- Ex.B1 Statement of the payments dated: 11.02.2023.
- Ex.B2 Firm Registration Certificate dated: 01.11.2019.
- Ex.B3 Partnership Deed dated: 23.10.2019.

MEMBER

MEMBER

PRESIDENT

Read by:
Compared by:
DSK