

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM
Dated this the 30th day of October 2023.

PRESENT

Shri.D.B.Binu
Shri.V.Ramachandran
Smt.Sreevidhia.T.N

Filed on: 17/12/2020

President
Member
Member

C.C. No. 421/2020

COMPLAINANTS

1. Captain [Indian Navy] K.K Nair, S/o Late .K.Govindan kutty Nair, A3, Brighton Court, Near Ulsoor Lake , Pin-560042
2. Mrs. Geetha Nair, W/o K.K Nair, A3, Brighton Court, Near Ulsoor Lake, Bangalore, Pin-60042.
(By Adv.T.J.Lakshmanan, 2nd Floor, Megha Arcade, Power House Road, Kochi-18)

Vs.

OPPOSITE PARTY

1. M/s Holy faith builders & Developers Pvt Ltd. Rep by its Managing Director Mr. Sany Francis House No. 48/2005C, Kattarukudiyil House, RMV Road, Elamakkara, Cochin-682026.
2. State Bank of India, Vankarath Towers, 1st floor, Palarivattom Bypass RACPC branch, Palarivattom, Kochi-682025. Rep. by its Manager.

(Op2 rep. by Adv.P.Gopalakrishnan Menon, M.Jithesh Menon, Indu K., Mahesh Kumar P.G., Brijesh R., No.79, DD Oceano Mall, Marine Drive, Ernakulam, Kochi-682 011)

(As per I.A.637/2022 the 2nd opposite party is deleted from the opposite party array)

FINAL ORDER

D.B. Binu, President

1. A brief statement of facts of this complaint is as stated below:

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The brief facts, as stated in the complaint, are that the first complainant served in the defence and retired as a captain from the Indian Navy after rendering relentless service to the country for more than 25 years.

The second complainant is the wife of the first complainant. The Complainants purchased an apartment in the Holy Faith H2O apartment complex in Kochi, India, constructed by the first opposite party. They availed a housing loan from the second opposite party to purchase the apartment. The first and second opposite parties provided false assurances regarding the legality and approvals for the construction of the apartment complex.

However, it was later revealed through Hon'ble Supreme judgment that the construction of the apartment complex was in violation of the law, and the complex was demolished as per the court's direction. This resulted in the complainants losing their shelter and the money they had invested in the apartment. The first and second opposite parties engaged in unfair trade practices and deficiency in service by misleading the complainants and failing to properly scrutinize the project's legal status before providing the loan. The complaint details various actions taken by the second opposite party to recover the loan amount, even after the demolition of the apartment complex, which is unfair. The complainants demand several actions, including halting the recovery of the housing loan by the second opposite party, refunding all amounts taken post-apartment demolition, compensation totalling Rs. 25,00,000/- for service deficiencies and mental distress, Rs. 2,00,000/- for legal costs, and a refund of Rs.17,87,437 from the first opposite party for the apartment's balance.

2) **Notice**

The commission sent notices to both the opposite parties. The second opposite party responded by filing their version. However, the first opposite party, despite receiving the notice, did not file their version. As a consequence, the first opposite party is set ex-parte in the proceedings.

3) **The Version Of The Second Opposite Party**

The complainants are obligated to repay the housing loan as per their agreement and that non-payment would be a violation of the loan agreement. They argue that the demolition of the building was not due to any action on

their part but rather the fault of the local authority. Therefore, the compensation, if any, should be sought against the local authority and not against them. The second opposite party maintains that the loan was sanctioned when there was an approved plan by the local authority, which made the construction legal. They assert that they cannot be held responsible for events that led to the demolition, as this was caused by the actions of the local authority.

Furthermore, they argue that the complainants did not raise any grievances regarding deficiency of service until after the Supreme Court's order to demolish the building. They believe that the real issue is the demolition itself, and the blame should be directed at the Maradu Municipality and the State Government. The second opposite party states that they had conducted a title investigation before sanctioning the loan and had ascertained the authenticity and marketability of the property's title. They maintain that they cannot be faulted for approving the loan based on the documents available to them at the time.

Regarding the debits made in September and October 2020, they assert that these debits were in accordance with the Standing Instruction provided by the complainants and that the complainants had deactivated the Standing Instruction themselves. The second opposite party denies that they attached a sum from the pension account of the first complainant without consent and argues that the complainants are bound by the Standing Instruction they provided.

They clarify that they issued a lawyer notice but did not initiate recovery proceedings during the COVID period.

Regarding the complainants' claims of mental agony and hardship due to the loss of shelter, the second opposite party contends that the complainants are not residents of the demolished apartment and that their claims are misleading.

They acknowledge that the complainants have repaid a portion of the loan but state that an amount of Rs. 6,20,189/-remains due as of February 16, 2021.

The second opposite party argues that the complainants are still liable to repay the balance loan amount as per their agreement, even though the subject matter of the contract (the apartment) no longer exists.

They assert that the security for the loan (the mortgage of the demolished apartment) is now non-existent, which has compelled them to recall the loan and seek payment of the outstanding amount.

In conclusion, the second opposite party contends that the complaint lacks merit, and they have not committed any deficiency of service. They request the complaint to be dismissed with costs.

4) . **Evidence**

The complainant had filed a proof affidavit and 5document that was marked as Exhibits A1 to A5.

EXHIBIT A1: Copy of Tripartite Agreement.

EXHIBIT A2: Copy of Home Loan accounts statement of the complainants.

EXHIBIT A3: Copy of E-mail dated 2-11-2020, 29-10-2020, 26-10-2020.

EXHIBIT A4: Copy of lawyer notice dated 4-05-2020 issued by the 2nd opposite party

EXHIBIT A5: Copy of Email dated 10/5/2020 addressed to Adv.Jithesh Menon.

5) **The main points to be analysed in this case are as follows:**

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

6) **The issues mentioned above are considered together and are answered as follows:**

In the present case in hand, as per Section 35 of the Consumer Protection Act, 2019, a consumer is a 'person' who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. A copy of Tripartite Agreement. (Exhibits A-1). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019.

The complainant initiated the aforementioned case to claim compensation due to the deficiency in service resulting from the opposite party's failure. The complaint revolves around allegations of negligence and misrepresentation by the opposite parties, which resulted in substantial financial losses and hardships for the complainant, ultimately leading to a shortfall in the service received by the complainant. We have considered the submissions made by Sri. T.J. Lakshmanan, the learned counsel appearing for the complainants. It has been brought to our attention that during the course of this case, the dispute between the complainants and the 2nd opposite party bank has been resolved, resulting in the exoneration of the 2nd opposite party bank from liability. Furthermore, it has been noted that the 1st opposite party builder received and acknowledged the notice issued by this Commission pertaining to the case. Despite this acknowledgment, the 1st opposite party builder did not appear before this Commission and failed to present any opposing arguments. The non-appearance of the 1st opposite party, coupled with their failure to contest the complainants' claims, suggests that the 1st opposite party acknowledges the deficiency in service and unfair trade practices alleged against them.

It is crucial to highlight that the Ext. A1 tripartite agreement explicitly states that the 1st opposite party builder shall indemnify the purchaser (complainants) in the event of any wrongdoing associated with the construction of the apartment. In this case, the order issued by the Hon'ble Supreme Court unequivocally establishes that the 1st opposite party builder

constructed the apartment complex in violation of the law. Consequently, the actions of the 1st opposite party builder undeniably amount to deficiency in service and unfair trade practices on their part.

The counsel for the complainant urges actions against the 1st opposite party to provide compensation for the deficiency in service and unfair trade practices, grant compensation for mental agony and hardships, bear the cost of proceedings, and refund the amount paid for their apartment, as the complainants lost their dwelling due to the party's malpractices.

The evidence presented included a proof affidavit filed by the complainant, and it was unchallenged by the first opposite party. Therefore, the complainants' claims were the party's malpractices. The evidence presented included a proof affidavit filed by the complainant, and it was unchallenged by the first opposite party. Therefore, the complainants' claim were considered credible and supported by the evidence. Therefore, the complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the first opposite party. We have no reason to disbelieve the words of the complainants as against the first opposite party. The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).

In light of the amicable settlement reached between the 2nd opposite party bank and the complainants during the pendency of the case where no further relief is sought against the 2nd opposite party the Commission duly acknowledges this settlement

As such, the case against the 2nd opposite party bank is considered resolved, and no further orders or reliefs are necessary in connection with the

2nd opposite party. The case shall proceed solely against the 1st opposite party (the builder).

The complainants bought an apartment(No.14A1, 14th floor) in the Holy Faith H2O complex in Maradu, Kochi, built by the 1st opposite party (builder), for a sum of Rs. 61,87,47/-. They availed a loan of Rs.20,00,000/- from the 2nd opposite party (bank). The builder had claimed that the apartment complex had all the necessary approvals and clearances, and the bank, having the project in its approved list, sanctioned the loan after allegedly verifying the documents.

However, the Supreme Court later ruled that the apartment complex violated legal norms and directed its demolition. The complainants lost their apartment due to this judgment. They allege that the builder misled them about the project's legal status, constituting unfair trade practices. They also claim the bank did not adequately verify the documents and misled them into believing the construction was lawful.

The complainants had to vacate in August 2019 and by the time they vacated, they repaid Rs. 24,89,396/- of their loan. Despite their situation, the bank debited amounts from the first complainant's pension account, further aggravating their plight.

During the case's proceedings, the complainants and the bank resolved their issues amicably. The focus then shifted solely to the builder, who failed to appear before the Commission. The Justice Balakrishnan committee, appointed by the Supreme Court, awarded the complainants Rs. 44 lakhs as compensation, but the builder has not complied with this order.

The complainants' current claim against the builder includes compensation of Rs. 15,00,000/- for deficiency in service and unfair practices, Rs.10,00,000/- for mental distress, Rs. 2,00,000/- for the cost of the

proceedings, and a refund of Rs. 17,87,47/- which represents the balance they paid for the apartment they paid for the apartment.

In **Lucknow Development Authority v. M.K. Gupta** Lucknow Development Authority Vs M.K. Gupta Air 1994 Sc787 (AIR 1994 SC 787), the Honourable Supreme Court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a 'service' as defined by Section 2 (0) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.

A. Deficiency in Service and Unfair Trade Practices: The complainants have alleged that the first opposite party engaged in unfair trade practices and deficiency in service. The first opposite party, the builder, was found to have constructed the apartment complex in violation of the law, as per the Hon'ble Supreme Court's judgment. This unequivocally establishes that the first opposite party's actions amount to a deficiency in service and unfair trade practices.

B. Failure of the First Opposite Party to Contest: The first opposite party, the builder, received notice but did not file a response or contest the complainants' claims. Their non-appearance in these proceedings, despite acknowledging the Commission's notice, implies their acknowledgment of the allegations against them.

In the contemporary context, the concerns of home buyers have intensified due to the growing instances of deceitful practices by builders. This unfortunate trend has resulted in an uptick in cases involving cheating and fraud. Home buyers often grapple with uncertainty, not only concerning the timely allocation of their properties but also the quality of construction. The builder misrepresented the home buyer as an approved project. It is imperative for savvy buyers to acquaint themselves with available avenues of redressal to navigate such challenging situations.

Recognizing the predicaments faced by home buyers, especially those with limited means, the government has proactively implemented measures aimed at safe guarding their interests. However, it is essential to acknowledge that not all buyers may be fully informed about their legal rights. For many, the dream of owning a beautiful home is a cherished aspiration, but this dream can be shattered by unscrupulous builders.

In this context, it is incumbent upon the commission to assume an active role rather than being passive spectators when confronted with builders who undermine the trust and dreams of innocent home buyers.

In conclusion, the complainants have successfully established that they are consumers as defined under the Consumer Protection Act, 2019, and that they have suffered from a deficiency in service and unfair trade practices on the part of the first opposite party. The Commission awards the above-mentioned reliefs in favour of the complainants and directs the first opposite party to comply with these orders promptly. The first opposite party had inadequately performed the service as contracted with the complainant and hence there is a deficiency in service, negligence, and failure on the part of the first opposite party in failing to provide the Complainants desired service which in turn has caused mental agony and hardship, and financial loss, to the Complainants.

We find the issues Nos. (II) to (IV) are in favour of the complainants for the serious deficiency in service that happened on the side of the first opposite party. Naturally, the complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss, etc. due to the negligence on the part of the first opposite party. In view of the above facts and circumstances of the case, we are of the opinion that the first opposite party is liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- 1) The first opposite party shall refund Rs. 17,87,437/- as the balance consideration for the apartment to the complainants

- II) The first opposite party shall pay the complainants Rs 5,00,000/- as compensation for service deficiency, unfair trade practices and failing to deliver services after receiving an advance, resulting in mental distress, agony, and hardship.
- III. The first opposite Party shall also pay the complainant Rs 25,000/- towards the cost of the proceedings.

The first opposite party is liable for the aforementioned directives and must comply within 30 days of receiving a copy of this order. If they fail to do so, the amounts specified in (i) and (ii) will accrue interest at 9% from the date the complaint was filed until realization.

Pronounced in the Open Commission on this 31st day of October 2023.



D.B.Binu, President

V.Ramachandran, Member



Sreevidhia T.N, Member