

Tulip Park Cooperative Housing Society Ltd.

Vs

Sai Overseas Import & Export

Civil Appeal No. 13417 of 1996

(S. Saghir Ahmad, D. P. Wadhwa JJ)

14.09.1999

JUDGMENT

D. P. WADHWA, J.: -

1. The appellant was a complainant before the National Consumer Disputes Redressal Commission (for short the National Commission). Proceedings were initiated under the Consumer Protection Act, 1986, under which the National Commission has been constituted to entertain complainants where value of the goods or services and compensation, if any, claimed exceeds Rs. 20 lakhs. The National Commission is also an appellate authority. It heads the appeals from orders of the State Commission.
2. The complainant, a cooperative housing society, had complained of shortfall in services rendered by the respondent, a builder and developer, which had agreed to construct and sell 64 flats to the complainant in a building called Tulip Park. The complainant is not happy with the order dated 21-6-1996 of the National Commission in one aspect and it is that while under the agreement dated 10-5-19990 the respondent had agreed to construct the flats having total saleable area measuring 34,361 sq. ft. at the rate of Rs. 630 per sq. ft, but the saleable area actually measured comes to 29,788.34 sq. ft, there being thus shortfall of 4572.66 sq. ft., in the constructed area. Since the complainant has paid the price for the area of 34,361 sq. ft., and it got only 29,788.34 sq. ft. it claimed refund from the respondent of an amount of Rs. 28,80,776 (4572.66 sq. ft. X Rs. 630 per sq.ft.). The National Commission did not agree with the complainant. In this appeal by the complainant we are called upon to decide on what the appellant says, if there is any deficiency in services provided by the respondent, the builder.
3. Under clause (g) of section 2 of the act, 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 of 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"

A complainant lies if there is deficiency in service of housing construction. "service" under clause (0) of section 2 means service of housing construction as well. The grievance of the complainant is that the respondent failed to give 34,361 sq. ft. of area in the building Tulip Park in accordance with the terms of the contract and that less area was given. When this fact was brought to the notice of the respondent it took the stand for the first time that there was a mistake and it had forgotten to include the stilt area in the agreement and claimed that the complainant had to pay for the stilt area. There is no ground floor as the building is

constructed of stilts. The price of land is included in the cost of construction calculated at the rate of Rs. 630 per sq. ft.. The actual total saleable area given was 29,788.34 sq. ft and thus there was the (sic no) shortfall of the actual area. The respondent was (sic not) liable to return the amount for the shortfall of this area aggregating to Rs. 28,80,776.

4. We may at this stage refer to the some of the terms of the agreement, the alleged breach of which led the complainant to approach the National Commission. The agreement recites as to how the respondent, as developer, became entitled to sell the land and the building constructed thereon. The respondent was to construct the building constructed thereon. The respondent was to construct the building as per the sanctioned plan granted by the Bombay Municipal Commission, as per the sanctioned plan the respondent was required to construct 64 flats in two wings 'A' and 'B'. Wing 'A' has seven floors with four flats on each floor totaling 28 flats. Wing 'B' has six floors with six flats of each floor totaling 36 flats. With the agreement a plan was annexed showing the flats on each floor of both the wings giving sq. ft. area of the flat. The plan, however, does not show the area of the common places. The agreement specifically records the declaration the builder that the building is sanctioned for development and constructions as per the sanctioned plan granted by the Bombay Municipal Corporation and the sanctioned plan were part of the agreement. The members of the complainant are the employees of Air India and they formed themselves into a cooperative society called "Tulip Park Cooperative Society Ltd.," They entered into an agreement with the builder on "Package deal" basis to purchase the proposed building under construction and the land described thereunder at the rate of Rs. 630 per sq. ft. saleable area. Two clauses of the agreement which are relevant for or purpose are as under:

"1. THE DEVELOPER shall sell and the purchaser herein as chief promoter representing himself, and the enrolled members of the proposed Cooperative housing society to be formed and registered under the Maharashtra Cooperative Societies Act, has agreed to purchase on what is commonly termed "package deal" basis, the said proposed building to be constructed and comprising of 64 residential flats, totally permitted for construction to the extent of 34, 361 sq. ft of the saleable area inclusive of the balcony, lift, landings, lobby and staircase area on the portion of LAND admeasuring 1820 sq. m, bearing CTS No. 263, SL. No. 7-A, Hissa 13, lying and situated at Village Marol, within the registration district of Bombay suburbs of Greater Bombay, more particularly described hereunder in the Second Schedule and prominently indicated on the plan annexed hereto as Annexure I-A together with the amenities and specifications as more particularly set out in the list of amenities annexed hereto as Annexure II, at the consideration (which includes the value of the LAND) that is Rs. 630 per sq. ft saleable area of the building and on the terms and conditions as hereafter set out. It is agreed that there will be no dispute on the salable area by the purchasers on any grounds and on any reasons.

2. That the total consideration (including the value of the LAND and amenities to be provided by the DEVELOPER) at the agreed deal rate of Rs. 630 per sq. ft. of the proposed building being constructed and consisting of the 64 residential flats and to the extent of 34, 361 sq. ft. saleable area (inclusive of the balcony, lifts, landing, lobby and the staircase areas) is agreed to be a sum of Rs. 2,16,47,430 (Rupees two crores sixteen lakhs forty-seven thousand four hundred and thirty only.)"

5. It is not disputed that the building was constructed, as per the sanctioned plan and each flat has the area as given in the plan annexed to the agreement. It is the manner of calculation of

the saleable area. The complainant was put to notice of the area to be constructed in the building from the plan annexed with the agreement as well as with the sanctioned plan. Two things are apparent from the terms of the agreement.

(1) proposed building was to have 64 residential flats totally permitted for construction to be extent of 34,361 sq. ft. of the saleable area (emphasis supplied), and

(2) there will be no dispute on the saleable area by the purchaser on any ground and on any reason.

We are not going into the question if there under the stilts was to be paid separately as claimed by the respondent or not as that has been negatived by the National Commission. We separately put it to the learned counsel for the complainant as to how and where the area of 4572.66 sq. ft. could have been built in the building, which is the alleged shortfall. There was no answer to that and there could not be any as the building was constructed as per the sanctioned plan. The complainant has brought on record a certificate by its architect is bereft of particulars. The report did not find favour with the National Commission and we think rightly.

6. Considering the fact that the building was constructed as per the sanctioned plan and each flat has the area as given in the agreement and the complainant had agreed not to raise any dispute regarding the saleable area, particularly when the permitted area of construction was to the extent of 34,361 sq. ft., we do not think there is any deficiency in service in "housing construction" provided by the respondent. We uphold the order of the National Commission in rejecting that prayer of the complainant wherein it has claimed that the respondent be directed to refund Rs. 28,80,776 towards the shortfall of the saleable area.
7. The appeal is dismissed. We, however, leave the parties to bear their own costs.