

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 163 OF 2022**

(Against the Order dated 22/12/2020 in Complaint No. 315/2016 of the State Commission  
Karnataka)

1. M/S. SABARI CONSTRUCTION

REPRESENTED BY ITS PROPRIETOR, C.S. KODANDA  
RAMA RAJU S/O C.SHESMA RAJU, BUILDERS AND  
DEVELOPERS SABARI NIVAS SABARI, CONSTRUCTION  
NO. 20, 1st MAIN, 1st CROSS GURU RAGHAVENDRA  
NAGAR J.P. 7th PHASE,  
BENGALURU-560078

.....Appellant(s)

Versus

1. R. LAKSHMINARASIMHA & ANR.

NO. 136, SHRI BHOVARAHA NILAYA CELEBRITY  
PRIME ECOFRONT LAYOUT KUMBARAHALLI VILLAGE  
JIGANI POST OFFICE  
BENGALURU URBAN - 560101

2. SMT.VARALAKSHMI NARASIMHA

W/O LAKSHMINARASIMHA R, NO.136, SHRI  
BHOVARAHA NILAYA, CELEBRITY PRIME EXOFRONT  
LAYOUT, KUMBARAHALLI VILLAGE,JIGANI POST  
OFFICE, BENGALURU URBAN-560101 KARNATAKA

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER  
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT :

**Dated : 19 August 2024**

**ORDER**

**For the Appellant  
Sujeet Kumar**

**Mr Ashok Bannidinni, Mr**

Mr Baalag G Naidu, Advocates

For the Respondents            IN PERSON (Through V C)

**ORDER**

**PER SUBHASH CHANDRA**

1. This appeal challenges the order of the Karnataka State Consumer Disputes Redressal Commission, Bengaluru (in short, 'the State Commission') in complaint no. 315 of 2016 dated 22.12.2020. The State Commission vide impugned order has upheld the complaint praying for:

- a. Direct the opposite party to pay a sum of Rs.50,00,000/- along with interest 18% per annum from the date of this complaint until realisation with costs of this proceedings to complainants towards deficiency of service and unfair trade practice;
- b. Grant any other relief/s as this Hon'ble Commission deem fit to grant under the facts and circumstances of this complaint.

Appellant/ opposite party has been directed to refund Rs.25,50,000/- with interest @ 12% per annum from 23.12.2015 till realisation subject to surrender of schedule property along with Rs.2.00 lakh towards compensation for mental agony and Rs.50,000/- as litigation charges.

2. The facts, in brief, are that the respondent had booked a residential flat with the appellants at SF 3B, 2<sup>nd</sup> Floor of 'Sabari Nest'. An Agreement to Sale dated 19.05.2014 was executed between the parties for a sale consideration of Rs.35,50,000/- and the sale transaction was to be completed within three months. There is no dispute as per this Agreement, the sale payment was made amounting to Rs.35,50,000/- to the appellant by the respondents and thereafter on 23.02.2015 an absolute Sale Deed was registered between the parties. Possession was taken by the respondent thereafter. On 29.12.2016, Complaint No.315 of 2016 was filed by the respondents before the State Commission alleging various short comings in the flat in question and alleging various deficiencies relating to quality and other specifications with regard to the construction. The State Commission disposed of the complaint on contest and held that the respondents were entitled to refund along with interest and other compensations in view of the deficiencies on the part of the respondent. This order is impugned before us praying to:

- i. Set aside the impugned judgment and order dated 22.12.2020 passed by the State Commission in Complaint no. 315 of 2016;
- ii. Pass an order imposing heavy cost on the respondent for concealment of true facts, producing concocted documents and for filing a frivolous claim; and
- iii. Pass any such order/ orders as this Commission deems fit to grant in the circumstances of the case in the ends of justice and equity.

3. We have heard the learned counsel for the parties and have given our thoughtful consideration to the material on record. Both the parties have filed their written submissions of argument which have been carefully considered.

4. According to the appellant the respondent had taken possession of the flat booked by them even before the project had been completed in view of personal circumstances and have now made allegations stating that the project was incomplete and suffer from various deficiencies and also made allegations regarding issues relating to the building plan sanctions and completion certificate. It is contended that the absolute Sale Deed was executed by Shri Y K Bhaskar and Sabari Constructions in favour of the respondents clearly mentions that the Building Plan was sanctioned by the Bangalore Mahanagar Palika in the scheduled property vide LP No.125 2012-2013 dated 18.04.2012. There was also a General Power of Attorney

executed by the vendor in favour of the developer and therefore the issues being raised now were not material. It was also contended that the nature of issues raised by the respondents in their complaint before the State Commission and which were sought to be attributed as deficiencies of the appellant were actually maintenance issues which, as per the Sale Deed, had been agreed by the purchaser (respondents) to be the property of the Association of Appellant Owners who would have common rights over such common areas and facilities and would be maintained by the Association of Owners subject to the Bye laws and Memorandum of Articles for such an Association. It is therefore, contended that the State Commission had erred in upholding the complainant of the respondent and directing refund of the flat in question of which the possession had been obtained and in which the respondent had resided for nearly two years and were now seeking to profit by making allegations of deficiency in service by the appellant.

5. *Per contra*, the respondents contended that while the State Commission had rightly upheld their contention in the Complaint No.315 of 2016 it had failed to appreciate the issues in its entirety and had awarded only Rs.35,50,000/- as against the claim amount of Rs.50 lakh with interest. It was argued that the appellant had failed to complete the building as per the specifications in the Agreement to Sale and various common amenities including the lift were not operational. It was also contended that various statutory clearances for the building had not been obtained by the appellant from various authorities and therefore, they were entitled to relief claimed by amending the order of the State Commission appropriately.

6. From the records it is seen that the State Commission has held that for a few months the complainants occupied the scheduled flat and thereafter relocated to another address on the ground that their daughter was suffering due to dust. It is also held that the complainants had produced photographs to show that the opposite party had failed to provide basic amenities such as lift, apart from the various unfinished works, poor quality/ faulty construction and fixtures and fittings which the complainants claim to be deficiency in service. The State Commission came to the finding that the property as per the certificate of BBMP stands in the name of Y K Bhaskar whose name finds place in the Agreement of Sale and Sale Deed. Based on the discussions and various submissions made by the parties, the State Commission had arrived at the finding that “no purpose would be served to direct the opposite party to complete the pending works and to legalise fee and in such circumstances, the only remedy is to refund the amount invested by complainant nos.1 and 2 with the OP”. It also concluded that based on the legal notice issued by the respondent to the appellant dated 12.12.2016 the building had deviated from the Plan approved by the Competent Authority, that there was no Occupation Certificate that had been obtained by the appellant/ opposite party and that the letter of transfer of electrical meter in the name of the complainants have not been signed despite receiving Rs.25,000/-.

7. From the foregoing it emerges that the respondents who had booked the apartment no. SF 3B, 2<sup>nd</sup> floor, Sabari Nest had by way of sale deed dated 29.12.2016, admittedly executed the Sale Deed and occupied the said flat. As also admitted by the respondent, after residing there for some time, they relocated to another address due to personal reasons. As per the Agreement to Sale dated 19.05.2014, the liability period of the said appellant for structural defect was 12 months and maintenance of the building as per Clause 12 was to be borne equally by contribution by individual flat owners after taking over the flats. According to the

Sale Deed, as per which the respondents took the possession it had been clearly accepted that the Developer had obtained the Building Plan sanctioned from BBMP for the construction of the apartment complex “Sabari Nest”. Therefore, it is evident that once the respondent executed the absolute Sale Deed they accepted the apartment in the condition in which it was handed over since this agreement was voluntary and without any condition. It is also relevant to note that the Complaint before the State Commission was filed only on 29.12.2016, i.e., after one year and 10 months of the Sale Deed having been executed. As agreed in the Agreement to Sale, issues of maintenance were the responsibility of the residents of the building with regard to common facilities by equally sharing the costs. If the facilities in the individual were not as per the specification mentioned in the Annexure to the Agreement to Sell, the respondent should not have accepted the possession of the same. Having accepted the possession of the flat in which they have admittedly resided for several months, it is not open them to contest issues of quality of construction and or incomplete works. As regards common facilities the same is the collective responsibility of all the residents. While no evidence had been provided on record to show whether such a body has been constituted and whether the respondents are members of such an Association, the contention that the appellant is responsible cannot be sustained. As regard incomplete or sub-standard works, the allegation cannot be accepted in the absence of any expert opinion of an independent Commissioner which has not been done by the State Commission. The State Commission’s conclusion therefore, cannot be sustained since they are not based on any expert report pursuant to an enquiry into the allegation of incomplete sub-standard works and bringing on record whether the responsibility lay with the appellant or with the Association or residents who were required to maintain the common area and facilities in the apartment complex.

**8.** For the aforesaid reason, we are not inclined to uphold the findings of the State Commission. The order of the State Commission is set aside including its findings relating to deficiency in service and unfair trade practices which have not been established on the basis of any independent expert opinion and is a subjective assessment which lacks basis. The order has erred in holding that after the respondents took the possession of the apartment without demur the appellant was responsible for deficiency in service regarding the flat and common areas and maintenance. For such a finding to be sustained, it is necessary that a technical report of an independent technical agency should have been obtained. Clearly that has not been done.

**9.** For the aforesaid reasons, in the facts and circumstances of the case, we find merit in the appeal which is accordingly upheld. The order of the State Commission in Complaint No. 315 of 2016 dated 22.12.2020 is set aside. Parties shall bear their own costs.

**10.** Pending, IAs, if any, also stand disposed of with this order.

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**SUBHASH CHANDRA**  
**PRESIDING MEMBER**

.....  
**DR. SADHNA SHANKER**  
**MEMBER**