

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 95 OF 2020

(Against the Order dated 13/12/2019 in Complaint No. 227/2018 of the State Commission
Telangana)

1. M/S. RHC VENTURES LIMITED & 2 ORS.

REPRESENTED BY ITS MANAGING PARTNER, HAVING
ITS OFFICE AT FLAT NO.A-403, NATRAJAN RESIDENCY,
PADMARAO NAGAR,
HYDERABAD-500025
TELENGANA

2. MR. K RANGA RAO

S/O MR K RAMA RAO, R/O FLAT NO.504, SAMALA
ROYALE, BEGUMPET,
HYDERABAD-500016
MAHARASHTRA

3. MR. P. NITHIN

S/O P. SURESH R/O FLAT NO. A-403, NATRAJAN
RESIDENCY, PARMARAO NAGAR,
HYDERABAD-500025
TELENGANA

.....Appellant(s)

Versus

1. KITCHANNAGARI SARVESHWARA REDDY & ANR.

S/O LATE SRI K.RAMI REDDY, R/O FLAT NO.501, SRI
RANGA APARTMENTS, BESIDE VELLODI HOSPITAL,
SEETHAPHALMANDI,
HYDERABAD-500061,
TELENGANA

2. MR. K. SHIVA KUMAR

H.NO.3-4-424,FIRST FLOOR, RAHUL TOWERS NEXTTO
BLOOD BANK OPPOSITE H.P.PETROL PUMP,
NARYANAGUDA,
HYDERABAD-500029
TELENGANA

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE APPELLANT :

Dated : 12 April 2024

ORDER

For the Appellants

Mr Siddhartha Jha, Advocate

For the Respondents

Mr Nikhil Swami, Advocate for R 1

Mr Anand, Advocate for R 2 with

Ms Rajeshri Nivurattirao Reddy, AOR

ORDER

1. This first appeal under section 19 of the Consumer Protection Act, 1986 (in short, 'the Act') challenges the order dated 13.12.2019 in Complaint no.227 of 2018 of the Telangana State Consumer Disputes Redressal Commission, Hyderabad (in short, 'the State Commission') partly allowing the complaint and holding the appellant nos. 1 and 3 to be jointly and severally liable and directing them to refund Rs.30 lakh with interest @ 12% per annum and from the respective payment till realisation together with cost of Rs.10,000/- within four weeks.

2. The relevant facts, in brief, are that the respondent no.1 had entered into an Agreement to Sale with appellant no.1, 2 and 3 on 22.12.2014 for the purchase of a residential flat no.509 5th Floor, 'Symphony Royale' Narayanaguda, Hyderabad, ad-measuring 1200 sq ft (super area) along with undivided share of land approximately 35 sq yds including 2 car parking slots for a sale consideration of Rs.42 lakh. As per clause 2 of this agreement an advance Rs.30 lakh was paid by respondent no.1 by way of three cheques dated 15.12.2014, 22.12.2014 and 26.12.2014. As per Clause 4 (a), construction was to be completed within 24 months from the date of agreement, i.e., 22.12.2016 with grace period of six months i.e., by 22.06.2017. As the construction work had not been completed and no offer of possession was made, respondent no.1 sent a legal notice to appellant no.1 on 22.12.2016 which did not elicit any reply. Respondent no.1 approached an Arbitrator as per hearing notice dated 27.03.2017. The Arbitrator, after hearing both the sides, returned the claim on 30.05.2018 on the ground that the appellant had not agreed for the arbitral reference. Respondent no.1, thereafter filed CC no.227 of 2018 before the State Commission praying for directions to appellant to complete construction early and hand over the flat after receiving the balance sale consideration and to register the flat in his name. In the alternative, it was prayed to refund Rs.30 lakh with interest @ 24% per annum from the date of payment till realisation with compensation of Rs.10 lakh and Rs.2.00 lakh towards cost and legal expenses. Despite issue of several notices by the State Commission to appellant no.1, the appellant remained unrepresented and notices were returned unserved with the endorsement "left" or "unclaimed". With the permission of the State Commission, service of notice was affected by way of publication on 13.05.2019 in a local newspaper 'Namasthe Telangana'. As the appellant continued to remain unrepresented, the State Commission proceeded *ex parte* vide impugned order dated 13.12.2019 and noted that:

The notices sent by this Commission to the opposite parties 2 and 3 were returned as 'unclaimed' which amounts to refusal and by fiction, the notice is deemed to have been served on them. Though the opposite party no.4 received the notice, he failed to make his appearance while the opposite party no.1 remained absent despite causing publication in the newspaper, hence, all the opposite parties are set *ex parte*.

The State Commission ordered as under:

13. In the result, the complaint is allowed in part holding that opposite parties 1 to 3 are jointly and severally liable and they are directed to refund Rs.30,00,000/- with interest @ 12% per annum from the date of respective payments till realisation together with cost of Rs.10,000/-. In the facts and circumstances of the case, rest of the claim is dismissed. Further, the complaint against opposite party no.4 is dismissed. Time for compliance four weeks.

3. This order is impugned before us.

4. I have heard the learned counsel for both the parties and perused the material on record carefully.

5. The appellant has contended that the State Commission has erroneously decided CC no.227 of 2018 without appreciating there was no proof of service of notice upon the appellant and has erred in placing the appellant *ex parte* while deciding the matter. It is contended that the appellants were never served any notice and that the State Commission has itself recorded in its order dated 28.01.2019 that the notices were returned unserved with endorsement "left" in respect of appellant no.1 and "not claimed" in respect of appellant nos.2 and 3. The State Commission has also proceeded *ex parte* against the appellant nos.2 and 3. Thereafter on 01.04.2019 the appellant no.1 was directed to be served by way of substituted service / publication in the local newspaper which was done in the newspaper 'Namasthe Telangana'. It is contended that the appellant had no knowledge of the complaint and therefore could not participate in the proceedings and were denied opportunity of being represented of the case. It is submitted that the impugned order came to their notice during the course of proceedings in another matter in CC no.52 of 2017 on 30.12.2019. It is therefore, prayed that the order of the State Commission in CC no.227 of 2018 be set aside with any other order or orders as may be deemed fit.

6. Counsel for the respondent on the other hand contended that the State Commission has rightly held that the appellant was served through publication since they were found to be wilfully evading service of notice in order to avoid being held liable in the Consumer Complaint. It was contended that despite service of legal notice, and being aware of arbitration proceedings, as was evident from the order of the Arbitrator, the appellants' appeal is based on incorrect submissions, that it was not aware of the issues. It is therefore, prayed that the appeal be dismissed.

7. From the material on record and submissions of the counsel, it is manifest that despite the Agreement for Sale on 22.12.2014, the appellant failed to complete the construction within the committed time as undertaken by it, including the grace period of six months. Respondent no.1 made several efforts as is evident from the legal notice served and the process of arbitration initiated to seek redressal of the issues. It is not denied by the appellant that the legal notice was not received by it. It is also not averred that arbitration proceedings were initiated against it by the respondent.

8. In view of this admission, it is apparent that the appellant, who was holding a deposit of Rs.30 lakh by the respondent no.1, was aware of the delay in the execution of the project. It

has been held in a catena of judgments, notably in ***Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra***, II (2019) CPJ 29 SC decided on 25.03.2021, ***Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan***, II (2019) CPJ 34 (SC) decided on 02.04.2019, and ***Fortune Infrastructure & Anr. Vs. Trevor D'Lima & Ors.*** (2018) 5 SCC 442 that an allottee in a residential project who is a *bona fide* consumer cannot be expected to wait inordinately for handing over the possession of the flat especially if he has not defaulted in payments. There are no mitigating *force majeure* circumstances advanced by the appellant. In the instant case, it is not denied that respondent paid Rs.30 lakh after the signing of the Agreement to Sale. No evidence has been brought on record to establish that the project was completed or that it had obtained the Occupation Certificate from the concerned authorities. As laid down by the Hon'ble Supreme Court in ***Kolkata West International City Pvt. Ltd.***, (supra) ***Pioneer Urban Land & Infrastructure Ltd.***, (supra) and ***Trevor D'Lima & Ors.***, (supra), an allottee would be within his rights to seek cancellation of the agreement and to seek refund of his money. In the instant case, the delay of almost 31 months is evident.

9. Under such circumstances and in view of the inordinate delay, this contention of the appellant that it had not been noticed, cannot be accepted since they did not deny the receipt of the legal notice and the fact that they participated in the arbitration proceedings which did not proceed on account of lack of cooperation by the appellant themselves. In any case, the State Commission had ensured service of notice by way of publication.

10. In view of the foregoing, the order of the State Commission directing refund of Rs.30 lakh with 12% interest within four weeks along with litigation cost of Rs.10,000/- cannot be found fault with. I do not find any reason to interfere with the order of the State Commission which is reasoned and logical.

11. In view of the above discussion, the appeal is liable to be rejected and is accordingly dismissed and the order of the State Commission is affirmed.

12. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER