

Date of Filing:16.03.2023

Date of Order:15.06.2024

**BEFORE THE BANGALORE I ADDITIONAL DISTRICT
CONSUMER DISPUTES REDRESSAL COMMISSION
SHANTHINAGAR BANGALORE - 27.**

CONSUMER COMPLAINT NO.77/2023

DATED ON THIS THE 15TH JUNE 2024

PRESENT

Sri.B. Narayanappa, M.A., LL.B. - PRESIDENT

Smt.Jyothi N, B.A, LL.B. L.L.M. MEMBER

Smt.Sharavathi S.M, B.A, LL.B., MEMBER

COMPLAINANT :

Sri. R. Ramesh Babu,
S/o. Sri. Hazarathaiyah,
Aged about 65 years,
R/at No.25/1/316,
8th Cross Road,
Postal Colony,
Nellore-524004.
Andra Pradesh

Adv: Sri.E.Venkatarami Reddy

Vs

OPPOSITE PARTY:

- 1** M/s.Nishitha's Developers,
A Proprietorship Concern having its
Office at No.698, 2nd Floor,
29th Main, 100 Feet Ring Road,
BTM Layout 2nd Stage,
Bangalore-560076.
Represented by its Proprietor
Mr.P.Raja, S/o.Sri.Hanasaiah,
Aged about 37 Years,

Also AT: R/at No.4-7-39,

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FCI Colony, Ramakrishna Nagar,
9/3 Sawachalayam, Nawabpet,
Nellore-524002, Andhra Pradesh.

Adv: Sri.Ramesh.M.N.

OPPOSITE PARTY: **2 Sri. Subhash V,**
S/o. Velayudhan. V,
Aged about 34 years,
R/at. Flat No.003, Ground Floor,
Nishitha's MBVS Apartment,
No.47/A, 3rd Cross, 3rd Main,
Nyanappashetty Palya (N. S. Palya),
Bannerghatta Road, Bangalore.

Exparte

| | |
|------------------------------------|------------------------------|
| Nature of complaint | Deficiency in service |
| Date of filing of complaint | 16.03.2023 |
| Date of Issue notice | 21.03.2023 |
| Date of Order | 15.06.2024 |
| Duration of Proceeding | 01 Year 03 Months |

ORDERS PASSED BY SMT.SHARAVATHI S.M MEMBER

1. This is the complaint filed by the complainant against the Opposite Party (herein referred to short as OP) U/s.35 of the Consumer Protection Act, 2019 for the deficiency in service praying to direct the OP to execute necessary sale deed and get the flat registered in favour of complainant or in alternative direct the OP to refund advance amount sum of Rs.36,00,000/- along with interest at 12%p.a and to pay compensation of Rs.13,33,000/- towards

financial loss, damages, hardship and mental agony caused and to grant such other relief as this commission deems fit to grant under the facts and circumstances of this case.

2. The brief facts are that:

The OP being property developer represented by its proprietor namely Mr.P.Raja, S/o.Hasanaiah is the proprietor of OP No.1 he is the builder by profession and constructing apartments if around Bengaluru city in the name and style "Nishith's MBVS" and he is owner of apartment flat bearing No.003 in the Ground Floor, property bearing No.47A, Old No.41/47, later corporation No.47/A-41-47, present BBMP Khatha No.6, PID No.65-358-6 and BBMP No.7, PID No.65-358-7, situated at 3rd Cross, 3rd Main, Nyanappashettapalya (N.S.Palya) Village, Begur Hobli, Bangalore South Taluk, measuring 1000 sq.ft of super built up area consisting two bed rooms along with one car parking together with 285 sq.ft undivided share of the land and amenities. The OP offered to convey and sell the complainant. The sale

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consideration was fixed for sum of Rs.37,72,000/-. The OP executed registered agreement of sale dated 23.11.2015 vide document No.BTM-1-03847/2015-16 of Book No.1 dated 23.11.2015 stored in CD No.BTMD93 in the Sub-Registrar, BTM layout, Bengaluru. The complainant has paid as sum of Rs.36,00,000/- and also OP acknowledged the receipt of the payment and also agreed to pay remaining balance amount of Rs.1,72,000/- at the time of registration of sale deed within a period of 8 months with a grace period of 2 months from the date of sale agreement. OP also agreed to hand over the possession of the property within 10 months from the date of execution of sale deed as per Clause 2(a). In spite of several request of the complainant, the OP has not taken any interest and not received any remaining balance payment sum of Rs.1,72,000/- and OP has not handed over the possession of flat. The complainant lodged a complaint before Mico Layout Police Station on 23.02.2022 and also endorsement dated 22.09.2022. The OP has not executed and registered sale deed in favour of the complainant. Hence, the complainant got issued legal

notice to OP on 01.10.2022 demanding to execute the Sale Deed in favour of complainant by receiving the balance sale consideration. In spite of service of notice, OP neither come forward to comply the demands made in the notice nor refund the amount which results in mental harassment to the complainant. Therefore, it is alleged deficiency in service on the part of OP. Hence, this complaint.

3. Upon the service of the notice, OP No.1 appeared before the Commission through the counsel and filed their version OP No.2 not appeared before this commission. Hence, placed ex-parte. OP No.1 contending that the complaint is not maintainable and not admitted that the brother of complainant has paid Rs.36,00,000/- by way of cash to the OP under the agreement of sale and remaining amount of Rs.1,72,000/- is required to be payable are denied as false.

The OP is the proprietorship concern of "Nishith's MBVS" developer is true. The brother of the complainant entered into the agreement of sale for purchase of the schedule property bearing flat No.003

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in the ground floor in the apartment building known as "Nishitha's MBVS" is denied as false.

It is submitted that schedule property land is not owned by the OP, but he had entered into joint development agreement with owner wherein he had constructed the residential apartment. But, the brother of the complainant is not agreement holder, but he was financier to the project. Subsequently, the said project was taken over by the land owner itself. The OP never ever received any cash amount under the agreement of sale, which was executed for security purpose to financing on the project, but same was not complied the complainant. Hence, the said agreement of sale is not enforceable agreement under the income tax act and also specific relief Act. The complainant has not issued any notice or legal notice to the OP in respect of deficiency of service or unfair trade practice on their part. Hence, OP prays to dismiss the complaint.

4. In order to prove the case, the complainant has filed his affidavit evidence by the way of chief examination, the same was taken as PW-1 and got

marked Ex.P-1 to P-10. On the other side OP has also filed his affidavit evidence by way of chief examination, the same was taken as RW-1 and not furnished and marked any documents. We have heard the argument of complainant counsel. OP has not addressed his arguments inspite of giving sufficient opportunity.

5. The points that would arise for our consideration are as under:

1. Whether the complainant has proved deficiency in service on the part of the OP?

2. Whether the complainant is entitled to the relief prayed for in the complainant?

6. Our findings on the aforesaid points are as under:

Point No.1: Partly in the Affirmative

**Point No.2: As per final order
for the following**

::REASONS::

7. Point No.1: Perused the complaint averments, version, affidavit evidence and documents produced by the complainant intending to purchase flat bearing

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No.003 in ground floor, of the apartment building known as "Nishta's MBVS" situated at 3rd Cross, 3rd Main, NyanappaShettyapalya (NS Palya) Village, Begur Hobli, Bengaluru South Taluk, Bangalore. As per Ex.P-1 the complainant entered into an registered agreement of sale dated 23.11.2015 registered vide document No.BTM-1-03844/2015-2016 of Book No-1 dated 23.11.2015 stored in CD No.BTMD93, in the office of Sub Registrar, BTM Layout, Bengaluru. The flat consisting of two bed rooms along with one car parking together with 285 sq.ft. it was undivided share of the land. As per Ex.P-1 sale of agreement Para No.2 it is clearly mentioned that the complainant has paid a sum of Rs.36,00,000/- and also agreed to pay remaining balance sale consideration of Rs.1,72,000/- at the time of registration of sale deed. As per the sale agreement, the OP assured that he will complete the construction and execute the sale deed in favour of the complainant. The OP has not made a demand for remaining balance payment and not delivered and executed registered sale deed in favour of complainant in respect of said flat. The complainant

has also filed complaint against OP and police have register FIR and copy of the legal notice is also produced. After lapse of 8 years, OP has not shown any interest to hand over the possession of the flat. Hence, OP failed to hand over the flat to the complainant which itself is nothing but deficiency in service on the part of OP. The complainant has successfully proved the alleged deficiency in service on the part of OP. **Hence, we answer Point No.1 Partly in the Affirmative.**

8. Point No.2: For the aforesaid reasons, we proceed to pass the following.

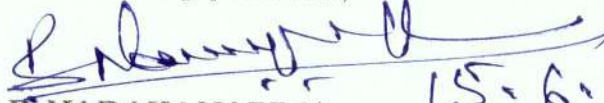
ORDER

1. The complaint of the complainant is partly allowed with cost.
2. OP No.1 and 2 hereby directed to receive balance sale consideration sum of Rs.1,72,000/- from the complainant and execute the registered sale deed in favour of the complainant in respect of schedule property flat No.003 in the apartment building known as "NISHITHA'S MBVS" within 3 months from the date of this order.

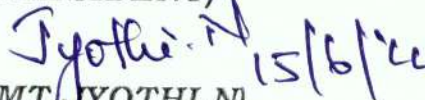
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3. Further OP No.1 and 2 hereby directed to pay compensation of Rs.1,00,000/- and Rs.5,000/- towards cost of the litigation to the complainant within 3 months from the date of this order, failing which, the compensation of Rs.1,00,000/- + cost of litigation of Rs.5,000/- totally Rs.1,05,000/- shall carry interest at 10% per annum till payment.
4. The complainant is at liberty to take action against the OP U/s.70 of the Consumer Protection Act, 2019 for non-compliance of this order.
5. Furnish the copy of order to both parties at Free of cost.


(Dictated to the Stenographer transcribed, typed by his, corrected by us and then pronounced in Open Commission on this the 15th day of June 2024)


(SRI.B NARAYANAPPA) 15.6.2024

PRESIDENT)


(SMT. JYOTHI.N) 15/6/24

MEMBER


(SMT.SHARAVATHI.S.M) 15.06.2024
MEMBER