The Managing Director (Shri Grish ... vs The General Secretary (Shri Amol ... on 28 September, 2021

Equivalent citations: AIR 2021 SUPREME COURT 4627, AIRONLINE 2021 SC 801

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Bench: V. Ramasubramanian, Hemant Gupta

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2998 OF 2010

THE MANAGING DIRECTOR (SHRI GRISH BATRA)
M/S.PADMINI INFRASTRUCTURE
DEVELOPERS (I) LTD. … APPELLANT(S)

VERSUS

THE GENERAL SECRETARY
(SHRI AMOL MAHAPATRA) ROYAL
GARDEN RESDIENTS WELFARE
ASSOCIATION … RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4085 OF 2010

JUDGMENT

V. Ramasubramanian, J.

1. Both the consumer (who was the complainant) as well as the opposite party before the National Consumer Disputes Redressal Commission, have come up with these appeals, the former aggrieved by the rejection of some of the reliefs sought and 16:36:46 IST Reason:

the latter, challenging the reliefs granted in favour of the consumer.

2. We have heard the learned counsel appearing on both sides.

3. A residential apartment complex was promoted by M/s Padmini Infrastructure Developers (India) Ltd. (hereinafter referred to as 'the opposite party'), on a land allotted by New Okhla Development Authority ('NOIDA' for short). It appears that the opposite party constructed about 282 apartments and offered them for sale. The purchasers were put in possession during the period from 1998□2001, but the completion certificate itself was issued only in December, 2001.

4. The purchasers of flats formed themselves into an association known as Royale Garden Residents Welfare Association and got it registered on 30.09.2003 under the Societies Registration Act, 1860.

5. The Residents Welfare Association entered into an agreement on 15.11.2003 with the opposite party for taking over the maintenance of the apartment complex. Thereafter, the Residents Welfare Association ((hereinafter referred to as the 'complainant'), filed a consumer complaint in Complaint No.9 of 2007 before the National Consumer Disputes Redressal Commission.

6. The reliefs sought by the complainant before the National Commission were as follows:□"1. to pay the monthly maintenance charges for unsold flats amounting to Rs. 9,05,810/□

2. to complete the water softening plant and make it operational.

3. to complete fire fighting equipments and make the same operational and to obtain safe working certificate from Fire Safety Department of NOIDA and handover the same to the Complainant.

4. to furnish and equip a second health club for which space is available in half portion of basement of Tower Blue Heaven□2.

5. to complete a second swimming pool and get cement plastered and white washed the stilts.

6. to provide furnished space for a, Club House in the basement of Eden Tower which is existing but locked.

7. to get the rented portion of the terrace (roof) vacated meant for the resident of Tower Eden of the Complainant rented out by the Opposite Party to HUTCH (P) Limited and earned rent after on 15.11.2003 to be returned to RWA with 24% interest.

8. not to sell or rent out the remaining flats about 45 till the facilities mentioned above are provided to the Complainant.

9. to direct the OP not be sell stilt and open car parking to future or present purchasers.

10. to pay the cost to the Complaint and damages for harassment mental torture, agony etc. caused to the Complainant by the OP.

11. to pass any other or further orders which this August Commission deems fit in the circumstances of the case to meet the ends of justice."

7. The complaint was resisted by the opposite party both on merits and on the ground of limitation. The opposite party also claimed that the Agreement dated 15.11.2003, entered into with the complainant contained an arbitration clause and that whatever facilities/amenities were promised at the time of promotion of the complex, have been put in place.

8. The National Commission by its interim order dated 04.06.2008, appointed a local Commissioner, to inspect the systems/facilities relatable to the reliefs claimed in prayer clause nos. 2 to 6 of the complaint and to submit a report. The said Commissioner submitted a report on 08.07.2008 after making a local inspection, in the presence of the representatives of both the parties.

9. Accepting the report of the local Commissioner and overruling the contention of the opposite party regarding limitation, the National Commission allowed the complaint partly by an order dated 05.01.2010. The operative part of the order of the Consumer Commission reads as follows:

> "Consequently, complaint is partly allowed with cost of Rs. 25,000/□with direction to the opposite party to make the systems/facilities as at Sl. Nos. 2,3,4,5 and 6 of the prayer clause of the complaint operational/complete and to obtain and supply fire safety certificate of the complex to the complainant association within ten weeks from today. The opposite party will submit a report within two weeks thereafter from an independent Architect certifying that the systems/facilities in question have been fully made operational/complete by the opposite party. In the event of not making operational/complete the systems/facilities referred to above within the time allowed, the opposite party will pay through a demand draft the costs thereof as mentioned in aforesaid report dated 8.07.2008 within two weeks from after the expiry of 12 weeks time to the complainant association."

10. Aggrieved by the order of the National Commission, the opposite party (builder), has come up with one appeal in C.A.No.2998 of 2010. Aggrieved by the refusal of the National Commission to grant the reliefs as per prayer clause nos. 1, 7, 8, 9 & 10, the consumer□complainant has come up with another appeal in C.A.No.4085 of 2010.

11. As observed earlier, the consumer complaint was contested by the opposite party both on merits and on the ground of limitation. Since it is easy to deal with the objection relating to limitation without much ado, we shall take it up first.

12. Section 24A(1) of the Consumer Protection Act, 1986 prescribes a period of limitation of two years from the date on which the cause of action has arisen for the admission of a complaint, by the

District Forum, State Commission or the National Commission. In the case on hand, the opposite party handed over the work of maintenance of the complex to the complainant, under an Agreement dated 15.11.2003. As seen from the preamble to the Agreement, the Agreement covered common essential services such as generators, lifts, tube-well, water softening plant, electric substation, cabling, fire fighting system, pipelines, swimming pool, health and fitness centre, parking, club-house, water supply, drainage/sewerage system, horticulture, water tanks/pumps and lawns/parks.

13. But different timelines were prescribed under the said Agreement for different obligations still remaining to be performed by the opposite party, towards the purchasers of flats. The last of such timeline was indicated to be 31.03.2004.

14. There were specific obligations to be performed by the opposite party under the said Agreement, in relation to certain services. It may be useful in this regard to extract clauses 13, 14 and 19 of the Agreement as follows:-"13. The FIRST PARTY shall bear the contractual obligations of lift, generator, health club and equipments fitted at swimming pool. FIRST PARTY shall also bear the maintenance of these equipments till these contracts are concluded. FIRST PARTY shall bear any/all expenses on maintenance/repair/replacement of these equipments.

14. To FIRST PARTY shall make the softening plant and tube will in working condition and hand it over to SECOND PARTY separately on or before 31.1.2004. The FIRST PARTY shall also bring the fire fighting Equipments/generators in working condition and hand it over to the SECOND PARTY separately on or before 31.12.2003.

... ...

19. The FIRST PARTY shall construct the second Health Club and second swimming pool on or before 31.3.2004 and provide space for Club house in one of the basements for the residents as promised and assured at the time of selling the apartments on or before 31.12.2003."

15. Therefore, the cause of action for the complaint, as per the above clauses continued even after the date of the Agreement namely 15.11.2003.

16. In the affidavit filed by the local Manager of the opposite party by way of evidence, it was admitted that certain works in relation to fire-fighting equipment continued up to the year 2005. In fact, the opposite party filed certain bills, which were dated 27.02.2005, 22.04.2005, 01.05.2005, 19.07.2005, 29.10.2005 and 12.12.2005, to show that the opposite party was honest and diligent in carrying out their obligations.

17. The affidavit in evidence filed by the opposite party and the aforesaid bills establish that the cause of action continued at least till December, 2005. The complaint before the National Commission was filed in February, 2007. Therefore, the National Commission was right in rejecting the objection relating to limitation.

18. Coming to the merits, let us first take up the challenge to correctness of the reliefs granted by the National Commission in favour of the complainant, as the appeal filed by the opposite party appears to be first in point of time.

19. The reliefs granted by the National Consumer Commission related to water softening plant, fire-fighting, second health club equipment, second swimming pool and space for club house in Eden Tower. These reliefs were granted by the National Commission on the basis of the Report of the local Commissioner.

20. It appears that opposite party filed objections to the report of the local Commissioner, contending inter alia, (i) that the water softening plant was fully functional when the complex was taken over by the complainant association; (ii) that any deficiency or defect relating to the fire-fighting equipment is wholly attributable to the lack of maintenance and wrongful practices adopted by the complainant association; (iii) that they are not contractually liable to provide a second health club and the finding of the local Commissioner that one of the health clubs is fully functional and in good condition has to be accepted; and (iv) that the second swimming pool was completed and made operational by the opposite party, but what remained was the filling up of water after filtration, which was the job of the maintenance agency.

21. Interestingly the affidavit of objections to the Report of the local Commissioner, filed on behalf of the opposite party on 06.08.2008, covered only the findings relating to, (i) water softening plant; (ii) fire-fighting equipment; (iii) second health club; and (iv) second swimming pool, but did not cover the finding relating to the liability of the opposite party to provide furnished space for a club house in the basement of Eden Tower (relatable to relief no.6 of the complaint). However, the affidavit covered the claim of the complainant for maintenance charges, though the local Commissioner had nothing to do with the same.

22. The Commissioner appointed by the National Commission was an architect by name Amit Bahl. When he carried out the inspection, 4 persons representing the opposite party, which included the advocate of the opposite party and the deponent to the affidavit of objections were present. The architect examined each one of the items and not only found that they were not operational on date but also found, (i) that the equipment for the water softening plant was incomplete, ineffective and inadequate;

(ii) that the fire-fighting equipments were not in operation due to incomplete commissioning of the system as a whole and that even the fire safety certificate dated 05.11.2001 noted down the same; (iii) that while the first health club in the basement of the Tower Blue Heaven-2 was fully furnished and functional, the second health club was not adequately furnished though the civil works are complete; (iv) that the second swimming pool was not complete and operational, as the filtration plant was non-functional and the pump was removed after installation and that even the change rooms and showers have not been provided for; and (v) that in so far as the club house in the basement of Eden tower is concerned it was kept under lock and key by the opposite party and found to have been used as a store for keeping various building materials.

23. In the light of the aforesaid findings by an independent architect appointed by the National Commission it is not open to the opposite party to create a façade as though all essential services and amenities were handed over in a fully functional state. If all the aforesaid services had been handed over in a fully functional state, the opposite party should have taken an acknowledgment in writing from the complainant. In the alternative, the opposite party should have insisted upon an appropriate provision in the Agreement dated 15.11.2003.

24. As noted by the Commissioner, even the fire safety certificate dated 05.11.2001 states that though the majority of the equipment have been satisfactorily installed, some equipment have been removed and stored for security purposes and that the inference therefore is that the system never got commissioned.

25. It is not impossible for an experienced architect to find out whether the condition in which the aforesaid amenities and services were found on the date of the inspection, was entirely due to lack of maintenance or due to non□commissioning or incomplete commissioning.

26. As noted by the National Commission, the affidavit of objections filed on behalf of the opposite party to the Report of the local Commissioner does not deal with the cost of estimates indicated by the Commissioner in his Report. In addition, the affidavit of objections does not even deal with the finding relating to the club house at Eden Tower, said to have been kept under lock and key by the opposite party for storing building materials. The very fact that at the time of inspection by the local Commissioner, the possession of the club house in Eden Tower was with the opposite party, goes to show that the opposite party was still retaining control of at least some part or certain services in the complex, perhaps due to the fact that there were about 45 unsold flats.

27. In view of the above, we are not convinced that the reliefs granted by the National commission in favour of the complainant warrant any interference. Therefore, the appeal in C.A. No.2998 of 2010 is liable to be dismissed.

28. But before we do that, we should take note of the fact that as per the operative portion of the order of the National Commission (which we have extracted elsewhere) the opposite party is obliged to make the systems/facilities at prayer clauses 2, 3, 4, 5 & 6 of the complaint, fully operational/complete and they are also obliged to obtain a certificate of completion from an independent architect. If the opposite party failed to do so within the time stipulated by the National Commission, the opposite party was obliged to pay the cost as estimated by the Commissioner in his Report dated 08.07.2008.

29. The costs estimated by the local Commissioner in his Report dated 08.07.2008 are as follows :□
1 Water softening plant Rs. 20,29,962 .

2 Fire fighting equipment Rs. 83,00,000 .

3 Second health club Rs. 7,60,000 .

4 Second swimming pool Rs. 2,70,000 .

5 Furnishing the club house in Eden Rs. 2,75,000 . Tower Total Rs.1,16,34,962

30. While ordering notice in C.A.No.2998 of 2010, on 29.03.2010, this Court granted stay of operation of the impugned order on condition that the opposite party–builder deposit Rs.60,00,000/□within 8 weeks. Subsequently, the order was modified on 14.05.2010, permitting the opposite party to deposit the sum in two equal instalments, the first instalment before 22.05.2010 and 2nd instalment before 15.07.2010. It appears that the amount has been accordingly deposited and the amount has been invested in a Fixed Deposit which is renewed from time to time by the orders of this Court.

31. In view of the fact that the possession of the common amenities were handed over by the opposite party to the complainant Association 18 years ago (under the Agreement dated 15.11.2003), it may not be possible at this distance of time to compel the opposite party to make those facilities/systems at relief clauses 2, 3, 4, 5 and 6, fully operational now. The cost of estimate which works out to approximately Rs.1.16 crores, includes within itself the cost of fire fighting equipment and this constitutes the major component (it works out to Rs. 83 lakhs). As seen from the Commissioner's Report, the mistake committed by the opposite party was in removing a part of the equipment but not putting them back. This finding is as per the fire safety certificate. Therefore, it may not be appropriate to ask the opposite party to bear the entire burden.

32. Therefore, taking into account the overall picture, we are of the considered view that interests of justice will be met if the order of the National Commission is modified in such a manner

(i) that the complainant Association shall receive in full and final settlement, the deposit now lying in the Registry of this court, towards adequate compensation for the reliefs that they are held entitled to by the National Commission; and (ii) that the opposite party is directed to remove all building material stored in the club house in the basement of Tower Eden and hand over possession of the club house to the complainant.

33. Now coming to the appeal CA No.4085 of 2010 filed by the complainant against the refusal of the reliefs in prayer clause nos.1, 7, 8, 9 and 10, we think that the National Commission was justified in rejecting those reliefs. The claim for monthly maintenance charges for the unsold flats, amounting to Rs.9,05,810/□sought as per prayer clause no.1, was made by the complainant on the basis of clause 10 of the Agreement dated 15.11.2003 which reads as follows:

> "10. The FIRST PARTY agrees to pay to the SECOND PARTY the monthly maintenance charges @ 50 paise per square feet for the unsold flats w.e.f. 16.11.2003. FIRST PARTY shall make the advance payment for 6 months within 7 days of signing of the agreement. Subsequently these charges will be paid yearly in advance."

> 34. The averments relating to the relief claimed at prayer clause no.1 are found in paragraph 16 of the complaint which reads as follows:□"16. That the amount of such

> advance payment upto 31.12.2006 is Rs.619568/□approx. an advance for the year 2007 comes to Rs.286242/□ Thus the OP has to make the total payment amounting to Rs. 905810/□approx. with interest @ 24% for the delayed period for which OP had agreed vide agreement dated 15.11.2003 Clause No.6 last two lines."
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> 35. Though the National Commission did not deal with the relief claimed at prayer clause No.1 in sufficient detail and the National Commission did not also provide cogent reasons for rejecting the relief, we find that the complainant may not be entitled to the said relief. There are two reasons as to why we say so. The first reason is that the complainant did not provide detailed calculations about the plinth area of the unsold flats, the period during which they remained unsold and the manner in which the amount indicated in para 16 of the complaint was arrived at. In any case the payments were to be made under clause 10 of the agreement, first within seven days of the agreement in respect of the advance payment for six months and thereafter by way of annual payments in advance. Therefore, a major portion of the claim for money was obviously barred by limitation when the complaint was filed. Moreover, the opposite party raised a dispute about the quantum and asserted in para

16 of their reply before the National Commission that what was due was only Rs.232750/□ Thus, the question became a disputed question of fact on which both parties did not lead sufficient evidence. Therefore, the rejection of the claim at prayer clause No.1 was legally correct.

36. The relief claimed at prayer clause no.8 is to direct the opposite party not to sell or rent out the unsold flats till the facilities mentioned in prayer clause nos.2 to 6 are provided. By its very nature, this relief is in the nature of an interim relief and, hence, was rightly rejected by the National Commission in the final judgment.

37. The relief claimed in prayer clause no.9 relates to stilt and open car parking. There was no evidence before the National Commission to grant such a relief and, hence, the refusal to grant the relief mentioned in prayer clause no.9 is in order.

38. The claim for costs and damages for harassment, mental torture, agony etc., made in prayer clause no.10 was not granted by the National Commission, and rightly so, in view of the fact that after handing over the common amenities under the Agreement dated 15.11.2003, the opposite party continued to carry out at least some works. This is why the complaint was lodged in 2007. Therefore, we find no reason to grant the relief prayed for in prayer clause no.10.

39. That leaves us with the relief claimed in prayer clause no.7. This was for a direction to the opposite party to vacate the tenant occupying the terrace of Tower Eden. According to the complainant, the terrace of Tower Eden was let out by the opposite party to a company, leaving the residents of Tower Eden without a terrace for common use. But the relief of eviction involves a third party and hence the National commission rightly left it to the complainant to pursue the remedy in an appropriate Forum.

40. Thus, we find that the refusal of the National Commission to grant the reliefs mentioned in prayer clause nos.1, 7, 8, 9 and 10 warrant no interference. Therefore, the appeal of the complainant in CA No.4085 of 2010 is liable to be dismissed.

41. Accordingly the appeal of the consumer complainant in C.A. No. 4085 of 2010 is dismissed. The appeal of the builder opposite party in C.A. No. 2998 of 2010 is partly allowed, modifying and substituting the judgment of the National Consumer Disputes Redressal Commission dated 05.01.2010 in Consumer Complaint No. 9 of 2007, to the following effect:

> The complainant shall be entitled to all told monetary compensation in a sum of Rs. 60 lakhs, now lying in deposit with the Registry of this court, together with the interest accrued thereon, in lieu of the reliefs sought in prayer clauses 2, 3, 4, 5 and 6 of the complaint. The opposite party shall, within two weeks, remove all building material stored by them in the club house in the basement of Tower Eden and hand over possession of the club house to the complainant. The complaint shall stand dismissed in all other respects. No costs.

42. The parties are to bear their respective costs in these appeals. The Registry shall liquidate the fixed deposit standing to the credit of the above appeal and make payment of the proceeds to the complainant namely, Royal Garden Residents welfare Association. All interlocutory applications if any are closed.

.....J. (Hemant Gupta) .....J. (V. Ramasubramanian) New Delhi September 28, 2021