

TULIP PARK CO-OPERATIVE HOUSING SOCIETY LTD.

v

M/S. SAI OVERSEAS IMPORT AND EXPORT

SEPTEMBER 14, 1999

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

Consumer Protection Act, 1986—Section 2(g), 2(o)—Deficiency in service—Housing construction—Appellant alleging short fall in saleable area by developer—Claim for refund—Original Claim rejected by National Commission—Building constructed as per sanctioned plan—Agreement by Appellant not to raise any dispute regarding saleable area—Whether any deficiency in service—Held, No.

The Appellant filed a complaint before the National Consumer Disputes Redressal Commission against the Respondent alleging deficiency in service rendered in the housing construction. The Appellant contended that the Respondent failed to provide 34361 sq.ft. of the area as per terms of contract, there was a shortfall of 4572.66 sq.ft. in the constructed area and sought for a refund of Rs. 28,80,776/-. As per the agreement between the Appellant and Respondent a declaration was made by the Respondent-builder that the building is sanctioned as per Bombay Municipal Corporation. The agreement specifically recorded that there will be no dispute on the saleable area by the purchasers on any grounds and on any reasons. The building was constructed as per the sanctioned plan and each flat had the area as given in the plan annexed to the agreement.

The Appellant—Complainant filed a certificate and an affidavit by its architect mentioning that the saleable area is only 29,788.34 sq.ft. The National Commission dismissed the complaint holding that there is no deficiency in service.

Dismissing the Appeal, the Court

HELD: 1.1. The Orders of the National Commission rejecting the prayer of the Complainant is upheld. There is no deficiency in service in “housing construction” provided by the respondent, 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

A any dispute regarding saleable area, particularly when permitted area of construction was to the extent of 34361 sq.ft. [381-D]

1.2. The report of the architect is bereft of particulars. The National Commission is right in rejecting the report. [381-C]

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 13417 of 1996.

From the Judgment and Order dated 21.6.96 of the National Consumer Dispute Redressal Commission, New Delhi in O.P. No. 111 of 1994.

C S.S. Javali and Rustom B. Hathikhanawala for the Appellant.

Joseph Vellapally, R. Narain, Ashok Sagar, Ms. Punita Singh and Amitabh Marwah for the Respondent for JBD & Co.

The Judgment of the Court was delivered by

D **D.P. WADHWA, J.** Appellant was complainant before the National Consumer Disputes Redressal Commission (for short 'National Commission'). Proceedings were initiated under the Consumer Protection Act, 1986, under which National Commission has been constituted to entertain complaints where value of the goods or services and compensation, if any, claimed exceeds Rs. 20 lacs. National Commission is also an Appellate Authority. It hears the appeals from orders of the State Commission.

E The complainant, a co-operative housing society, had complained short-fall 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 June 21, 1996 of the National Commission in one aspect and it is that while under the agreement dated May 10, 1990 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 short fall of 4,572.66 sq. ft. in the constructed area. Since complainant had 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 (4, 572.66 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.

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 for 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 complaint lies if there is deficiency in service of housing construction. “Service” under clause (o) of Section 2 means service of housing construction as well. 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 on stilts. Price of land is included in the cost of construction calculated at the rate of Rs. 630 per sq. ft. Actual total saleable area given was 29,788.34 sq. ft. and thus there was the shortfall of the actual area. The respondent was liable to return the amount for the shortfalls of this area aggregating to Rs. 28,80, 776.

We may at this stage refer to some of the terms of the agreement 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. Respondent was to construct the building as per sanctioned plan granted by the Bombay Municipal Corporation. As per the sanctioned plan respondent was required to construct 64 flats in two wings ‘A’ and ‘B’. Wing ‘A’ has seven floors with four flats on each floor totalling 28 flats. Wing ‘B’ has six floors with six flats on each floor totalling 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. Agreement specifically records the declaration of the builder that the building is sanctioned for development and construction as per the sanctioned plan granted by the Bombay Municipal Corporation. Orders of the Bombay Municipal Corporation and the sanctioned plan were part of the agreement. Members of the complainant are the employees of the Air India and they formed themselves into a cooperative society called Tulip Park Co-operative Society Ltd. They entered into 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 our purpose are as under :

- A "1. The Developer shall sell and the Purchaser herein as Chief
 Promoter representing himself, and the enrolled members of the
 proposed Co-operative Housing Society to be formed and
 registered under the Maharashtra Co-operative Societies Act
 have 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. mts., hearing C.T.S. No. 263, Sr No.7-
 A, Hissa 13, being, lying and situated at village Marol, within the
 registration district of Bombay Suburban 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 specification 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 there will be no dispute on the saleable area by the
 purchasers on any grounds and on any reasons.
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- E 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 34361 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 Crore Sixteen Lacs Forty Seven
 Thousand Four hundred and Thirty Only)."
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G 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. 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 the 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
 H are not going into the question if the area under the stilts was to be paid

separately as claimed by the respondent or not as that has been negated by the National Commission. We repeatedly 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, shortfall, which is alleged. There was no answer to that and there could not be any as the building was constructed as per the sanctioned plan. Complainant has brought on record a certificate by its architect giving the saleable area as 29,788,34 sq. ft. There is also an affidavit in support of the report of the architect but what we find is that the report of the architect is bereft of particulars. The report did not find favour with the National Commission and we think rightly. A B

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 that complainant had agreed not to raise any dispute regarding saleable area, particularly when 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 orders of the National Commission in rejecting that prayer of the complainant wherein it had claimed that respondent be directed to refund Rs. 28,80,776 towards the shortfall of the saleable area. C D

The appeal is dismissed. We, however, leave the parties to bear their own costs. E

VM

Appeal dismissed.