DR. VAYALIL PARAMESWARAN RADHAKRISHNA Vs. M/S. HEBRON PROPERTIES PVT. LTD. & 4 ORS.

DR. VAYALIL PARAMESWARAN RADHAKRISHNA Vs. M/S. HEBRON PROPERTIES PVT. LTD. & 4 ORS.

1. DR. VAYALIL PARAMESWARAN RADHAKRISHNA
PILLAI
Son of Parameswaran Pillai, Resident of Flat No. 6L, Cotton Hill Heights Vazhuthacaud,
THIRVANANTHAPURAM
KERALA

……..Complainant(s)

Versus

1. M/S. HEBRON PROPERTIES PVT. LTD. & 4 ORS.
HAVING OFFICE AT NO.74/4, VISWANATHAPURAM,
ARAKERE POST, RAJANUKUNTE, BANGLORE-561203
KARNATAKA STATE.
2. MR. SATISH KOSHY, DIRECTOR
HAVING OFFICE NO.74/4, VISWANATHAPURAM,
ARAKERE POST, RAJANUKUNTE, BANGLORE-561203
KARNATAKA STATE
3. PREENAND PREMACHANDRAN
HAVING OFFICE AT NO.74/.4, VISWANATHAPURAM,
AREKERE POST, RAJANUKUNTE, BANGLORE-561203
4. DEAN J. MATHEWS
HAVING OFFICE AT NO.74/.4, VISWANATHAPURAM,
AREKERE POST, RAJANUKUNTE, BANGLORE-561203
5. MR. SANTHOSH KOSHY
HAVING OFFICE AT NO.74/.4, VISWANATHAPURAM,

AREKERE POST, RAJANUKUNTE, BANGLORE-561203

……..Opp. Party(s)

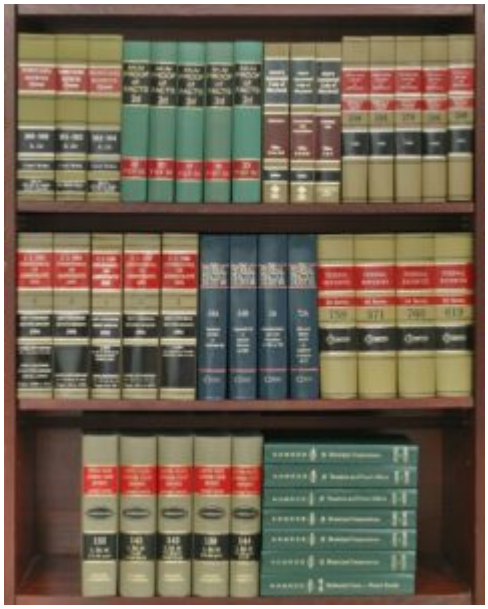
Case No. : CONSUMER CASE NO. 140 OF 2019

Date of Judgement : 06 December 2023

Judges : MR. JUSTICE RAM SURAT RAM MAURYA

For Complainant : MR. M. GIREESH KUMAR, ADVOCATE

For Opposite Party : MR. ARINDAM GHOSH, ADVOCATE



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Full text of Judgement :

1. Heard Mr. M. Gireesh Kumar Advocate, for the complainant and Mr. Arindam Ghosh, Advocate, for the opposite parties.
2. Dr. Vayalil Parameswaran Radhakrishna Pillai has filed above complaint for directing the opposite parties to (a) refund a sum of Rs.22500000/- alongwith 24% interest from the respective dates of deposits till realization; (b) pay Rs.12500000/- as compensation in terms of the confirmation

letter dated 05.05.2016 with interest @ 24% from 05.05.2016; (c) pay a sum of Rs.6000000/- towards rental for two years as per addendum-1 clause 2 with interest @ 24% from 02.07.2016 (d) pay compensation of Rs.2 crore/1 crore for mental agony, hardship and financial loss on account of interest paid to the bank; (e) pay cost of litigation; and (f) any other relief which is deemed fit and proper in the facts and circumstances of the case.

3. The complainant stated that he is a Doctor by profession and after his retirement working as part time in United Kingdom. Opposite party-1 is a private limited company incorporated under the Companies Act, 1956 and opposite parties-2 to 5 are its Directors. In the year 2010, Mr. Alexander Daniel, (the then Director) of opposite party-1 in their promotional meeting in London approached the complainant for purchase of villas to be constructed by opposite party-1 in Bangalore and Cochin. He also proposed for investment in the land for the purpose of plantation in Goa. The complainant purchased three villas at Thripunithura, Cochin, for which part payment was made. The complainant also made part payment for investment in the land in Goa, which was later on adjusted towards purchase of villa No.68, Hebron Enclave, Bangalore. The dispute relates to villa No.68, Hebron Enclave, Bangalore.

(a) On 22.06.2011, an agreement was executed between the complainant and opposite party-1 for purchase of the land and construction of villa No.68 in Hebron Enclave, Bangalore having area of 5100 sq. ft., for a total consideration of Rs.2.25 crore. As per agreement, the complainant was required to pay Rs.50 lacs in advance and balance payment within a period of 3 to 6 months. The complainant wanted to purchase the villa in the joint name of himself and his son Anuroop Pillai. Therefore, another agreement dated 02.07.2011 was also executed between the complainant and his son on one hand and the land owners (represented through opposite party-1 being the power of attorney) on the other hand. On 02.07.2011 a construction agreement was also executed between the complainant including his son and opposite party-1 for

construction of villa No.68 on the above land. The cost of the construction of the villa was fixed at Rs.1 crore. As per construction agreement, possession of the villa was to be handed over within 3 years, subject to force majeure conditions, failing which the opposite party was liable to pay Rs.2.5 lacs per month as rentals for two years. On 02.07.2011, the complainant made payment of Rs.35000 pounds through cheque, which was credited to the account of opposite party-1 on 08.07.2011. On same day, the complainant also issued another cheque of 35000 pounds in favour of Alexander Daniel (Director of OP-1) in respect of another properties. On 03.07.2011, the complainant issued cheque of 100000 pounds in respect of villa No.68. On 16.11.2011, opposite party-4 sent an email to the complainant confirming receipt of payment of Rs.1.5 crore against villa No.68. On 27.03.2013, the complainant sent an email to opposite party-4 requesting him to dispose of the villa for Rs.4.1 crore. The complainant also sent an email dated 18.03.2014 to opposite party-4 requesting to issue payment receipts and also expressed his disappointment regarding progress in the construction of villa. On 24.11.2014, opposite party-4 sent an email to the complainant stating that due to shortage of sand and unexpected rain in Bangalore, they cannot complete the project by December, 2014 and deliver the possession by June, 2015. On 09.03.2015, the complainant sent an email to opposite party-4 requesting him to give certain clarifications including monthly rent of Rs.2.5 lacs as per agreement. As the opposite party failed to fulfil its obligation for delivery of possession, the complainant requested for refund of the entire amount. The opposite party also agreed to refund the entire amount along with compensation of Rs.1.25 crores. Accordingly, cancellation agreement dated 05.05.2016 was entered between the complainant and the opposite party-1. Opposite party also sent letter dated 05.05.2016 to refund the entire amount with Rs.1.25 crores as compensation for cancellation of villa No.68. Thereafter, on 07.11.2016, opposite party-1 issued a cheque of Rs.1.25 crores in favour of the complainant as

compensation. Opposite party-1 also informed the complainant that it cannot sell the villa on behalf of the complainant and asked the complainant either to take possession of the villa or sell it directly. The complainant presented the cheque for encashment but the same was dishonoured due to insufficient funds. Therefore, complainant sent legal notice dated 05.12.2016 to the opposite parties and also filed complaint under Section 138 of Negotiable Instruments Act. Thereafter, the opposite parties approached the complainant for settlement of dispute, but the matter could not be settled. Alleging deficiency in service on the part of the opposite parties, the complainant filed above complaint.

4. This Commission, vide judgment dated 25.01.2019, dismissed the complaint as not maintainable with the observation that as the agreement dated 02.07.2011 for construction of villa was cancelled, vide cancellation agreement dated 05.05.2016 by the complainant, the relationship of consumer and service provider between the parties came to an end. It was also observed that the complaint was filed after expiry of limitation period. The complainant challenged the judgment dated 25.01.2019 before the Supreme Court and the Supreme Court, vide order dated 06.02.2020 set aside the order of this Commission with the direction to decide the complaint on merit.

5. Thereafter, this Commission vide order dated 12.03.2020 restored the complaint to its original number and issued notice to the opposite parties. Opposite parties-1 & 2 filed their written reply on 04.04.2022. Opposite parties-3 to 5 failed to file their written reply despite service through publication. Opposite parties-1 & 2 stated that they have every intention to perform their liability as per cancellation agreement dated 05.05.2016. Even the opposite parties have issued a cheque of Rs.10 lacs which was encashed by the complainant. The opposite parties also offered the possession of the villa to the complainant vide letter dated 29.02.2016, which was not accepted by the complainant. There is no deficiency in service on their part.

6. Opposite parties-1 & 2 also raised the preliminary issue of

maintainability stating that after cancellation of agreement for construction of villa, the relationship of consumer and service provider came to an end, therefore, the complainant is not a consumer. It was also stated that as a complaint under Section 138 of Negotiable Instruments Act is already pending, the present complaint on the same cause of action is not maintainable.

(a) It was also stated that the complaint is barred by limitation as the cause of action for filing the complaint arose on 05.05.2016 when the cancellation agreement was executed between the parties and the complaint ought to have been field on or before 05.05.2018. (b) Opposite parties-1 & 2 further stated that the sale agreement dated 22.06.2011 as well as construction agreement dated 05.05.2016 specifically provided for redressal of dispute by arbitration. On the aforesaid grounds, the complaint is liable to be dismissed.

7. As per construction agreement dated 02.07.2011, possession was to be handed over within a period of 3 years from the date of the agreement (i.e. on or before 02.07.2014). The opposite parties failed to fulfil their obligation by completing the construction and delivering the possession to the complainant. Supreme Court in Fortune Infrastructure & Anr. v. Trevor D'Lima & Ors., (2018) 5 SCC 442, held that a person cannot be made to wait indefinitely for possession of the flat allotted to him/her, and is entitled to seek refund of the amount paid by him, along with compensation. Counsel for the complainant also relied on the judgment of Supreme Court in Pioneer Urban Land and Infrastructure Ltd. vs. Govindan Raghavan (2019) 5 SCC 725 wherein it has been held that the buyer cannot be compelled to take possession when there is delay in possession by the builder. Therefore, the complainant is entitled for refund of the amount with compensation. Regarding the issue of limitation as well as maintainability raised by opposite parties-1 &

2 ţhis Commission vide order dated 25.01.2019 has considered both the issues and dismissed the complaint with the observation that the complainant is not a consumer as well as

the complaint was barred by limitation. Since the Supreme Court has set aside the order dated 25.01.2019 and directed this Commission to decide the complaint expeditiously, therefore, again this Commission again cannot go into the question of maintainability as well as limitation. Regarding pendency of case under Section 138 of Negotiable Instruments Act, Supreme Court has also taken this fact into consideration. As far as question of arbitration is concerned, Hon'ble Supreme Court in M/s Emaar MGF Land Limited vs. Aftab Singh – I (2019) CPJ 5 (SC), laid down that Arbitration clause in the Agreement does not bar the jurisdiction of the Consumer Fora to entertain the Complaint.

8. On the assurance of the opposite parties, the complainant executed cancellation agreement dated 05.05.2016, cancelling previous agreements dated 22.06.2011 and 02.07.2011. But the opposite parties neither refunded principal amount deposited by the complainant nor agreed compensation. The opposite parties failed to fulfil their obligation in the agreement dated 22.06.2011, 02.07.2011 and now 05.05.2016, therefore they are not entitled to retain the money of the complainant.

ORDER

ln view of aforesaid discussions, the complaint is partly allowed. The opposite parties are directed to refund the entire amount with interest @ 9% per annum from the respective dates of deposits till realization, within two months from the date of this judgment. If any amount has been refunded, it may be adjusted.

–END–