

MANOHARA RAO KODAVOOR V. M/S. TATYA INFRABUILD PRIVATE LIMITED

Manohara Rao Kodavoor Vs. M/S Taty Infrabuild Pvt. Ltd.

1. MANOHARA RAO KODAVOOR

.....Complainant(s)

Versus

1. M/S. TATYA INFRABUILD PRIVATE LIMITED

.....Opp.Party(s)

Case No. : CONSUMER CASE NO. 1846 OF 2018

Date of Judgement : 04 December 2023

Judges : MR. SUBHASH CHANDRA

For Complainant : MR AMIT BHAGAT AND MR ARZOO RAJ, ADVOCATES

For Opposite Party : NONE – EX PARTE ON 11.07.2023

Facts

- Complainant Manohara Rao Kodavoor engaged Opposite Party (OP) Taty Infrabuild Pvt. Ltd in Feb 2014 to construct a house in Bangalore.***
- OP provided architectural design services and turnkey contracting solutions, estimating project cost at Rs. 1.43 crores to be completed by Oct 2015.***
- Complainant made payments of Rs. 1.85 crores to OP against invoices till April 2017.***
- Despite time extensions, construction was behind***

schedule. Audit report in Feb 2017 found excess expenditure of Rs. 96.67 lakhs charged by OP.

- *Complainant sent legal notice to OP in Jan 2018 seeking refund of excess amount and compensation. OP denied allegations.*
- *Complainant filed police complaint against OP alleging cheating and fraud in July 2017.*
- *Complainant approached National Consumer Disputes Redressal Commission citing deficiency in service and unfair trade practice.*

Court's Opinions

- *OP failed to submit written statement despite opportunities. Hence complainant's uncontroverted statements and evidence are admitted.*
- *Audit report established excess expenditure of Rs. 96.67 lakhs charged by OP without authority.*
- *OP offered construction service against consideration. Failure to complete construction despite extensions amounts to deficiency in service.*
- *Consumer cannot be made to wait indefinitely for possession of house as per Supreme Court rulings.*
- *Delay in offering possession entitled consumer to seek refund and compensation.*

Sections and Laws Referred

- *Complaint filed under Section 21 of Consumer Protection Act, 1986.*
- *Lucknow Development Authority vs M.L. Gupta (1993) cited regarding house construction being a 'service'.*
- *Ruling in Fortune Infrastructure vs Trevor D'Lima (2018) cited entitling refund and compensation for delay in offering possession.*

Orders

- *Complaint allowed.*

- *OP directed to refund excess amount of Rs. 96.67 lakhs with 9% interest till realisation within 2 months.*
- *OP directed to pay litigation cost of Rs. 25,000 to complainant.*

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Court

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Full text of Judgement :

1. This complaint under section 21 of the Consumer Protection Act, 1986 (in short, 'the Act') alleges deficiency in service by the opposite party who is a civil construction company and was engaged by the complainant to construct a house for him on plot no. 8 Ferns North Star, Huttenhalli, Jala Hobli, Bangalore (North) 526 149 in 2014.

2. The facts as, stated by the complainant, are that on 17.02.2014, the opposite party offered their services for Architectural Design and Turn Key Contracting Solutions with the complainant for construction of his house and offered to appoint its associates M/s 4Site Architects for Architectural Design Service. Bill of Quantities was provided on 24.02.2014 and 19.02.2014 and the scope of the work was outlined. Cost of the project was estimated at Rs.1,43,81,520/-. As per the

demand notice, the complainant paid an advance of Rs.15,66,780/- and it was agreed that the project would be completed by October 2015. Payments were to be made by the complainant on a construction linked basis and certain items were to be sourced directly by the complainant on payment to the supplier. Complainant states that he made regular payments against the invoice raised. As the opposite party insisted that the complainant should release the payment directly to it, between 07.04.2014 and 25.04.2017 the complainant states that he paid Rs.1,85,25,370/- to the opposite party. However, in October 2015, the construction was found to be behind schedule and the opposite party extended the date of completion to May 2016. Thereafter, this date was extended to November 2016 and on 31.12.2016, the complainant called upon the opposite party to fix a firm date by way of an e-mail. The opposite party assured that the project would be completed by 30.03.2017. Since the complainant had already spent nearly Rs.2.00 crores and the villa was far from complete, the work executed was audited by mutual agreement by the site architects and by a reputed audit firm, M/s Rohini Project Management Consultant Pvt., Ltd. Measurement for verification at the site was jointly undertaken by the opposite party and the audit firm and in the report sent by e-mail on 06.02.2017 it was stated that the work was not as per the work order and that various items had been shown without measurement for which the rates were at variance from the rates agreed and without the approval of the complainant or the architects. An excess expenditure of Rs.96,67,720/- was estimated on the basis of this report. The complainant sent a legal notice dated 25.01.2018 calling upon the opposite party to refund Rs.96,67,720/- along with Rs.25 lakh as compensation for mental harassment which was duly received by the opposite party on 29.01.2018. The opposite party failed to refund this amount and vide reply dated 12.02.2018 denied the allegations in an evasive manner. The complainant then filed a complaint with the police alleging cheating and fraud by the opposite party and an FIR dated 15.07.2017 (no. 0131 of 2017) was

filed. The complainant is before this Commission with the following prayer:

i. Direct the opposite party pay to pay a sum of Rs.96,67,720/- to the complainant towards refund of amount paid by the complainant along with interest @ 18% from the date when the amount was paid by the complainant;

ii. Direct the opposite party to pay a sum of Rs.25 lakh towards compensation for harassment and mental agony suffered by the complainant;

iii. Direct the opposite party to pay a sum of Rs.2.00 lakh towards litigation expenses incurred by the complainant; and

iv. Pass any other or such further order (s) as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.

3. The opposite party failed to enter appearance despite notice which was served on him on 15.01.2018. On 15.02.2109, his right to file written version was closed and the matter was listed for hearing after issuance of notice to the parties by e-mail on 08.08.2022. Since the opposite party continued to remain absent on the subsequent dates of hearing, the matter was finally heard on 11.07.2023, when the opposite party was placed ex parte in view of a last opportunity having been provided to him on 21.06.2023.

4. I have gone through the averments of the complainant and evidence filed by him. It is evident from the documents on record that there was indeed an offer by the opposite party on 17.02.2014 to construct a villa on the land owned by the complainant and that certain Bills of Quantities had been worked out and an estimate was prepared for the construction. It was also agreed that the construction would be completed by October 2015. The contention of the complainant is supported by documents which have been filed by him by way of evidence on affidavit. The opposite party failed to enter appearance or file its written submissions. In the absence of any reply or evidence to controvert the allegations

of the complainant, the averments made by the complainant which are supported by way of evidence are taken to be admitted by the opposite party based on the report of the audit firm which had undertaken by M/s Rohini Project Management Consultant Pvt., Ltd. Audit of work executed with reference to the estimate and bills/ invoice for the materials used establish that there was excess expenditure charged of Rs.96,67,720/- which though charged by the opposite party was found to be unsupported by authority or proper rates. This report has also not been contradicted by way of any reply by the opposite party. It is salient to note that the opposite party was itself associated with the verification process along with the audit firm appointed for the purpose. It is, therefore, manifest that this amount is admitted by the opposite party.

5. In Lucknow Development Authority vs M L Gupta, Civil Appeal no. 6237 of 1990 dated 05.11.1993 (1194) 1 SCC 243, the Hon'ble Supreme Court has held that "construction of a house or flat for the benefit of a person for whom it is constructed. He may do it himself or hire services of a builder or contractor, the latter being considered "services" as defined in the Act". It has also been held by the Hon'ble Supreme Court in a catena of cases that a consumer cannot be made to wait indefinitely for handing over the possession of his house or flat. In Fortune Infrastructure Vs Trevor D'Lima (2018) 5 SCC 442 the Hon'ble Supreme Court laid down that:

'a buyer cannot be expected to wait indefinitely for possession and in a case of an unreasonable delay in offering possession, the consumer cannot be compelled to accept possession at a belated stage and is entitled to seek refund of the amount paid with compensation'.

In view of the fact that there was promise of service of construction of a residential house against a consideration by the opposite party qua the complainant dated 17.02.2014, and the fact that the construction of the house has not been

completed and handed over despite extension of dates of completion on three occasions. It is established that there was deficiency in service and unfair trade practice on the part of the opposite party with reference to the arrangements between the complainant and the opposite party.

6. In view of the foregoing, the complaint is allowed with the directions that the opposite party shall refund a sum of Rs.96,67,720/- along with interest @ 9% per annum from the date of respective payments till realisation within two months from the date of receipt of this order failing which the applicable rate of interest will be 12%. In addition, the opposite party shall also pay a sum of Rs.25,000/- as litigation cost to the complainant.

7. With these directions, the consumer complaint stands disposed of along with all pending IAs, if any.

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