

1 - 11 -

**BEFORE THE TELANGANA STATE CONSUMER DISPUTES REDRESSAL
COMMISSION : HYDERABAD**

**FA NO.138 OF 2015 AGAINST CC NO.137 OF 2014
ON THE FILE OF DISTRICT FORUM, RANGAREDDY**



Between:

Modi & Modi Constructions,
Having its office at 5-4-187/3 & 4,
IInd Floor, Soham Mansion, M.G. Road,
Secunderabad, rep. by its partner
Mr.Soham Modi S/o Sri Satish Modi,
Aged 44 years.

...Appellant/Opposite party

And

1) Mrs.Angadi Vijaya Laxmi
W/o Bhaskar, aged 56 years,

2) Mr.Angadi Mahesh Kumar
S/o Bhaskar, aged 33 years,

Both R/o 1-24-253/1, Flat No.32,
Sri Sainagar, Lothukunta,
Alwal, Secunderabad - 500 015.

...Respondents/Complainants

Counsel for the Appellant : Sri C.Bala Gopal
Counsel for the Respondents : Sri G.L.Narasimha Rao
R2 to R4 Served with notice.

**FA NO.152 OF 2015 AGAINST CC NO.137 OF 2014
ON THE FILE OF DISTRICT FORUM, RANGAREDDY**

Between:

1) Mrs.Angadi Vijaya Laxmi,
W/o Bhaskar, aged 56 years, Occ: Housewife,

2) Angadi Mahesh Kumar S/o Bhaskar,
Aged 33 years,

Both R/o 1-24-253/1, Flat No.32,
Sri Sainagar, Lothukunta,
Alwal, Secunderabad - 500 015.

...Appellants/Complainants

And

Modi & Modi Constructions,
Rep. by its Partner Soham Modi,
H.No.5-4-187/3 & 4, 2nd Floor,
M.G. Road, Secunderabad - 500 003.

...Respondent/Opposite party

Counsel for the Appellants : Sri G.L.Narasimha Rao
Counsel for the Respondent : Sri C.Bala Gopal
R2 to R4 Served with notice.

Coram :

Hon'ble Sri Justice B.N.Rao Nalla ... President

and
Sri Patil Vithal Rao ... Member

Tuesday, the Eighteenth day of October
Two thousand Sixteen

Oral Order : (per Hon'ble Sri Justice B.N.Rao Nalla, Hon'ble President)

- 1) These appeals are proposed to be disposed of by a common order in view of similar facts and circumstances obtained therein.
- 2) For the sake of convenience, the parties are referred to as arrayed in the complaint.
- 3) The case of the complainants, in brief, is that attracted by the publicity made by the Opposite party, husband of Complainant No.1 and father of Complainant No.2 had chosen to purchase independent Villa No.46 for a consideration of Rs.39.00 lakhs payable over a period of 9 months. As a token advance, Rs.25,000/- was received by the OP on 02.02.2013 vide cheque No.315818, dated 20.02.2013. The Complainants further paid Rs.2,00,000/- on 16.02.2013 towards 1st instalment; Rs.5,00,000/- towards 2nd instalment on 26.02.2013, altogether, amounting to Rs.7,25,000/-. On 25.02.2014, the OP entered into an agreement. The personnel of OP failed to show the span of time and obtained the signatures of Complainants on the agreement and thereby pressurized to pay Rs.14,75,000/- at a time in terms of agreement.
- 4) Complainants made representation on 09.05.2014 bringing the said fact, but there is no response, as such, sought for refund of Rs.7,25,000/- paid by them. On the application, the LIC Housing Finance sanctioned the loan of Rs.22,00,000/- and Complainants were required to pay the margin money of Rs.17,00,000/- for sanction of loan. As complainants were short of funds to the tune of Rs.9,75,000/-, the OP came forward to finance as handloan with a view to honour their short term payment. In that regard, the OP took letter on 09.05.2013 from the Complainants and reduced the 9 months span to 4 months. The OP paid Rs.2,43,750/- as instalment in a rotation manner obtaining undated cheques from the Complainant's father.
- 5) Thus, the OP paid Rs.9,75,000/- in four instalments from May 2013 to November 2013, resulting in expiry of housing loan validity and thereby dishonour of one cheque. Had the OP stucked to its promise, the said loss could not have occasioned. Added to it, the OP forcedly registered the villa on the name of Complainants though it was not made ready for occupation, in a skeleton condition and got released the loan amount in their favour, amounting to Rs.18,70,000/- leaving a balance of Rs.3,30,000/- with the financier. In spite of making correspondence and e-mails, the OP failed to respond, but demanded Rs.14,20,690/- duly adding the service tax of Rs.1,15,690/- without producing any receipt, which put the complainants to shock.

6) The Complainants are due only Rs.3,30,000/- which is retained by the financier. The OP failed to complete the villa in all respects though it promised to complete by October 2013 leading mental agony to the Complainants. For which, the Complainants are entitled to Rs.25,000/- per month from October 2013 till handing over of the possession. As such, complainants got issued a notice on 12.03.2014, to which, OP replied on 10.04.2014 with false allegations, hence, another notice was got issued on 21.04.2014 to which there is no reply. Hence the complaint praying to direct the OP to handover the Villa No.46 situated in Sy.Nos.128, 129, 130 to 136, Rampally village, Keesara mandal, R.R. district with immediate effect duly completing entire works together with Occupation Certificate; to pay Rs.25,000/- per month towards damages, from October 2013; to pay Rs.5,00,000/- to each of the Complainants towards mental agony and award costs of the complaint along with other reliefs.

7) Opposite party resisted the claim contending that it agreed to sell Villa No.46 after completing the construction and handover the same on receipt of total sale consideration of Rs.39.00 lakhs as per the schedule mentioned in clause-3 of the agreement of sale and the terms and conditions are enumerated thereunder. It admitted receipt of Rs.25,000/- as token advance; Rs.2,00,000/- on 16.02.2013 towards 1st instalment; Rs.5,00,000/- on 26.02.2013 towards 2nd instalment, altogether Rs.7,25,000/- as on 25.02.2013. The agreement was only signed by the Complainant No.2 and not by both. The proposal for payment of amount in 9 months was not accepted by it. It has no knowledge about obtaining of loan from LIC Housing Finance. It admitted to have paid Rs.9,75,000/- to the complainant in four instalments.

8) It denied to have forcibly registered the villa on the name of Complainant though it was not ready and also denied to have got released the loan amount from LIC Housing Finance without the knowledge of Complainants. The dues of Rs.14,20,690/- is inclusive of interest on late payment of instalments and the service tax of Rs.1,15,690/- is payable to the government authorities and no separate receipt will be given for the same. The OP pays the service tax to the government authorities on a monthly basis based on all the transactions done in the month. In fact, the villa is completed in all respects and but for sanitary fittings which would be done just before handing over the possession to avoid damage to the fittings. Possession will be given subject to settlement of all dues by its customers.

9) The OP has always been requesting the Complainants to settle the dues and take over possession. The OP filed suit for recovery of dues from the complainants bearing OS 98/2014 on the file of I-Additional Chief Judge, Secunderabad. As a matter of fact, OP developed a project named as NILGIRI HOMES at Rampally village, Keesara mandal, R.R. District consisting of independent villas and Complainants approached to purchase Villa No.46 for a consideration of Rs.39.00 lakhs. Satisfied with the progress of the project, Complainants agreed to all the terms and conditions as specified by the OP and on such agreement, the OP executed a sale deed registered



-14-

as document No.8452 of 2013 for the land admeasuring 125 sq.yards on 16.11.2013 at SRO, Keesara. On the same day, Complainants also executed an agreement for construction in favour of OP which spells out the terms of payment, period of completion and interest on late payments besides other terms and conditions.

10) The Complainants have abnormally delayed in payment of instalments. The OP received Rs.35,70,000/- and further an amount of Rs.11,23,523/- is still due to them towards full and final settlement of the cost of the Villa along with interest, which includes service tax of Rs.2,15,420/-; interest on delayed payment of Rs.4,87,177/-; court fee and legal expenses of Rs.50,926/- and corpus fund of Rs.40,000/-. The Complainants have not taken into consideration these amounts, but they took the difference amount of Rs.3,30,000/-. As per clause-11 of agreement, the Complainants are responsible for payment of sales tax, VAT and service tax. The OP waived off the payment of VAT but not the service tax amounting to Rs.2,15,420/-. Clause-4 of the agreement contemplates for payment of interest on delayed payments while clause-23 stipulates for payment of corpus fund for a row house, since the unit purchased by the Complainants is a row house.

11) The villa is ready in all aspects and it will be in a position to handover to the Complainants after they clear all the dues as specified. The OP got issued a notice dated 18.04.2014 calling upon the Complainants to make payment of Rs.20,48,497/-. Hence, there is no deficiency of service on their part and hence prayed to dismiss the complaint.

12) During the course of enquiry before the District Forum, in order to prove his case, the Complainant No.1 got filed her evidence affidavit and Exs.A1 to A17 and on behalf of the Ops, one Soham Modi, its partner filed the affidavit and the documents Ex.B1 and B2.

13) The District Forum after considering the material available on record, partly allowed the complaint bearing CC No.137/2014 by orders dated 24.07.2015 directing the OP to deliver the Villa No.46 situated at Rampally village of Keesara mandal in Ranga Reddy district to the Complainants after receiving the balance sale consideration of Rs.3,30,000/- from their financier on production of Occupancy Certificate and further directing to complete the minor works, if any, as agreed under the Agreement of Sale dated 25.02.2013 granting time of one month. It is further observed that the order does not absolve the Complainants from their liability to pay the due amounts, if any, to the Opposite party, to be decided by the civil court.

FA No.138 OF 2015 (CC No.137/2014)

14) Aggrieved by the said orders, the Appellant/Opposite party preferred the above appeal contending that the forum below (a) erred in allowing the complaint and ought to have dismissed the complaint; (b) inspite of being aggrieved by the order of the District Forum, the Appellant was ready to deliver possession after receiving the total outstanding amount of Rs.11,23,523/- and the respondent instead of coming forward to take possession after clearing the dues, had filed the complaint without any basis;

(c) has not appreciated the pleadings of the Appellant and thereby allowed the complaint. Hence prayed to allow the appeal by setting aside the orders of forum below.



FA No.152 OF 2015 (CC No.137/2014)

15) Aggrieved by the said orders, the Appellants/Complainants preferred the above appeal contending that the forum below (a) erred in partly allowing the complaint though the Respondent accepted they did not complete and handed over the villa; (b) failed to appreciate the fact that the Respondent is liable to pay Rs.25,000/- per month towards damages and rents until the villa is handed over; (c) failed to appreciate the fraud played by the Respondent in withdrawing the loan amount from LIC housing finance without intimation to appellants; (d) failed to appreciate that Respondent is liable to pay rents and damages for the delay; (e) failed to understand that the delay in release of balance amount occasioned only for not obtaining possession certificate by the Respondent. Hence prayed to allow the appeal by fully awarding the claims instead of allowing in part.

16) The point that arises for consideration is whether the impugned orders as passed by the District Forum suffer from any error or irregularity or whether they are liable to be set aside, modified or interfered with, in any manner? To what relief?

17) It is not in dispute that the Complainant purchasers agreed to purchase the Villa No.46 for a total sale consideration of Rs.39,00,000/- from the Opposite party Builder. It is also not in dispute that purchasers paid the amount of Rs.7,25,000/- on their own and Rs.18,70,000/- by the financier and Rs.9,75,000/- through arrangement of finance by the Builder, to the Builder. It is also not in dispute that the parties entered into an Agreement of Sale on 25.02.2013, which is binding on either of them. It is also not in dispute that the financier retained an amount of Rs.3,30,000/- towards the loan sanctioned in favour of the Purchasers.

18) The only dispute is that the Villa is not completed in all respects and the Purchasers are required to pay only Rs.3,30,000/- as against the demand of Rs.14,20,690/- of the Builder. Apart from Rs.3,30,000/-, the Builder is claiming an amount of Rs.7,92,523/- which includes service tax of Rs.2,15,420/-; interest on delayed payment of Rs.4,87,177/-; court fee and legal expenses of Rs.50,926/- and corpus fund of Rs.40,000/-. It is also not in dispute that, altogether, the Builder received an amount of Rs.35,70,000/- from the Purchasers.

19) The aspects as regards the payment of service tax, corpus fund and court fees and legal expenses are concerned, the same are answered by the forum below. Hence, we do not feel it necessary to go into those aspects. In so far as the demand for interest on delayed payments is concerned, the Builder has already invoked the jurisdiction of civil court, which is pending adjudication. Admittedly, the villa in question is not completed and still some minor works are remained to be attended. For that matter, both the parties are throwing burden on each other. The Purchasers state that they are ready to instruct their financier to release the amount of

-16-

6



Rs.3,30,000/- provided the Builder obtains the Occupancy Certificate and the Builder on other hand states that if the Purchasers clear-off all the dues, they would complete the left-over minor works. As can be seen from the photos exhibited, most of the works in the Villa are completed except fixing of fixtures in toilets and other minor works. As a matter of fact, except filing the account statement, the Builder has not made any demand demanding the Purchasers to pay the dues amount. From the documents exhibited, it is clear that the Builder has agreed to deliver the possession of the villa within one month after receiving the final disbursements.

20) It is only after the Purchasers got issued a notice dated 12.03.2014 under Ex.A15, the Builder got issued a reply on 10.04.2014 under Ex.A16 claiming an amount of Rs.20,48,497/- inclusive of service tax, corpus fund and interest upto 05.04.2014, without furnishing the particulars of entitlement. Again, the Purchasers got issued another notice on 21.04.2014 under Ex.A17, to which, no reply is given by the Builder. Instead, laid the suit bearing OS No.98/2014 for recovery of Rs.20,48,497/- before the I-Addl. Chief Judge, City Civil Court at Secunderabad, which, admittedly, is pending adjudication.

21) For the reasons stated supra, we do not see any infirmities in the orders passed by the forum below. Hence, we answer this point accordingly.

22) In the result, both the appeals fail and are accordingly dismissed but in the circumstances, parties to bear their own costs.

Sd/-
PRESIDENT

Sd/-
MEMBER

//CERTIFIED TRUE COPY//

Case No. FA 138/15 and FA 152/15

Date of Disposal 18/10/16

Free copy of order delivered to

Complainant/Appellant/Respondent

by hand or dispatched on 27/10/16

CC. To,

Dis: 1941

1. The President, District Forum,
2. Petitioner's. 3. Respondents.

[Signature]
DESIGNATED OFFICER
Designated Officer-cum-
Asst. Registrar

Telangana State Consumer
Disputes Redressal Commission
Hyderabad