

amended

BEFORE THE NATIONAL CONSUMER DISPUTES REDRESS
COMMISSION AT NEW DELHI

R.P. NO. 3377 OF 2016

IN THE MATTER OF :

1) Mrs. Angadi Vijaya Laxmi, W/o Bhaskar,
Age 58 years, Occ: House Wife.

2) Angadi Mahesh Kumar, & Another .

..Petitioners/Compl

Versus

Modi & Modi Constructions,
Rep. by its Partner Soham Modi,
H.No.5-4-187/3 & 4, 2nd Floor,
MG Road, Secunderabad-500003.

.. Respondent/Respondent/O.P.

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

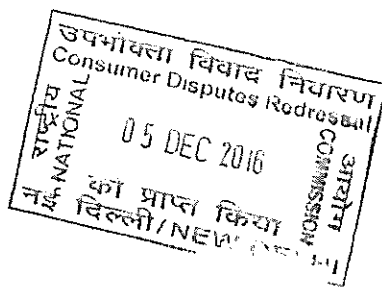
Filed by:

:G.L.Narasimha Rao, Samula Ram Reddy, B.C.S.Reddy &

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LIST OF DATES AND EVENTS

- 2-02-2013. The OP is builder and developer with an negotiations agreed to Sale the Villa No.46 and The petitioner/ Complainant No.1&2 through Bhasker Rao paid Rs. 25,000/- as advance with an oral agreement that to be paid entire amounts within 9 months.
- 16-2-2013 : The Complainant No.1&2 paid Rs. 2,00,000/- vide Cheque No. 315822 as 1st installment
- 26-06-2013 . The petitioner/ ComplainantNo.2 paid Rs. 5,00,000/- vide Cheque No. 024420 as 2nd installment.
As total the Comp. No.1 & 2 paid Rs. 7,25,000/-
- 25-02-2014 : The OP represented by one Mr. Krishna Prasad on behalf of opposite party called the complaints in hurried manner he was not shown the span of time by misleading the complainants the opposite party obtained the signature of the complainants on the agreement of sale and pressurized for the bulky amounts of Rs.14,75,000/- at a time of in terms of shorter duration agreement
- 09-05-2014: Immediately, after knowing the same, the complainants through their family elder A. Bhaskar. submitted a representation on 09-05-2014 with a proposal payment schedule in terms of 9 months opted plan and the same was received by the opposite party (represented Mr.Venkat Reddy and acknowledged the same). But there is no any replied received by the complainants.
- Last week of May 2013: The complainants visited the office of the opposite party in the last week of May,2013 for their reply / answer either to execute their acceptance or to return back the amount of Rs.7,25,000/-already paid by the complainants. But there is no any response from the side of opposite party. That means it is deemed to admitted and accepted the span of 9 months time by the opposite party.
- 20-03-2013: The Complainants No.1&2 obtained Housing Loan for Rs. 22,00,000/- from LIC Housing Finance (17,00,000/- + 7,25,000/- already Paid) there is short fall of Rs. 9,75,000/- and the OP come forward to assist finance the same as instead of agreed 9 months entered in agreement of sale as 4 months.
- 20-08-2013.: Accordingly, the complainants applied in writing as formality of the opposite party in support of un-dated cheque for Rs.9.75 lakhs as desired on 20-08-2013.
- 17-Sep-13 to 13-Nov-13 The opposite party came forwarded to assist financial assistance because of their business promotion and reduced the 9 months span period to 4 months time, instead of paying entire short fall amount of Rs.9,75,000/-. The opposite party intentionally paid Rs.2,43,750/- as installments in a rotation manner duly obtained pre-undated cheques from the complaints' father and the complainant No.2. The details and modus operandi of the opposite party rotation is as below.

Amount	Date of credit to A.Bhaskar's account by M/s Modi	Date of debit from Bhaskar account to AV Mahesh Kumar A/C	Date of Credit to AV Mahesh Kumar A/C from A Bhaskar	Date of debit to M/s Modi account from Mahesh Kumar A/C
243750	17-Sep-13	21-Sep-13	21-Sep-13	24-Sep-13
243750	28-Sep-13	10-Oct-13	10-Oct-13	17-Oct-13
243750	21-Oct-13	25-Oct-13	25-Oct-13	31-Oct-13
243750	08-Nov-13	13-Nov-13	13-Nov-13	18-Nov-13

975000

(From May 2013 to Nov.2013)

The opposite party has paid an amount of Rs.9,75,000/- to the complainants in four (4) installments by means of rotating Rs.2,43,750/- in 4 transactions in the span of 6 months (from May 2013 to Nov.2013) thus resulted expiry of Housing loan validity and one cheque bounce issue. The same as stated above discloses the attitude of the opposite party in providing financial assistance. He was made Rs.2,43,750/- as Rs.9,75,000/- as such the opposite party was intentionally delayed 6 months. It is only made by them for not dropping the sale proposals by the complainants. But not else.

20-11-2 2013:

immediately after completion fulfillment of margin money as per above rotation manner, the opposite party forcedly and registered the villa on the complainants name though the villa was not made ready to occupy and it was in Skelton condition and got released the below mentioned amounts directly from the Housing loan financier without any intimation to the complainants.

1. 27th Nov. 2013 Rs.12,48,000/-
2. 27th Nov.2013 Rs.6,22,000/-
3. Total Rs.18,70,000/-

(Rupees eithteen lakhs seventy thousands only) got released from the financier (i.e. LIC Housing) without any intimation to the complainants. And remaining Rs.3,30,000/- retained with the financier awaiting the occupation letter from the opposite party to release those amounts till today .

16th Feb.2014:

09-6-2014 :

Rs.9.75,000/- which was not reimbursed by the father / husband of the complainants which is amounts kept in his bank awaiting for relaxation of said interest on delayed payments ready to pay and kept in the bank i.e. A.P. VardhamanMahila Cooperated Urban

- 3 -

Bank Limited, Lothugunta Branch, vide A/c No.2291 since. 16-02-2014 and paid on 09-6-2014 vide Cheque No.064939 encashed by OP.

- 01-12-2013 : The Complaints No.1& 2 entitled for Rs. 25,000/- as rent from 1-12-2013 to till the issuing the physical occupation .
- 12-03-2014 : the complainants issued a statutory notice to the opposite party on 12-03-2014 for handing over the villa No.46.
- 10-04-2014: Otherwise, demanding damages and mental agony and the opposite party replied on 10-04-2014 with false allegations. Again the complainants issued another notice on 21-04-2014 for that there is no further reply from the opposite party.
- 21-04-2014 :
- 26-05-2014 : The Complaints No.1& 2 field CD No. 137 of 2014 claiming reliefs therein.
- 09-06-2014 ; The Op Filed Suit vide O.S.No. 98 of 2014 on the file of Hon'ble 1 ACJ Court at Secunderabad, Hyderabad. claiming the amounts Rs. 20,48,497/- instead of Rs. 3,30,000/-
- 7-10-2014 : The Complainant No.1&2 field W.S. denying the claim and narrating the part of the lapse of the OP.
- 24-07-2015: The District Forum disposed with a direction to the OP. to handover the Villa No.46 and get amounts Rs. 3,30,000/- within one month.
- 18-10-2016: The State Forum dismissed the F.A.No. 152 filed by Complainants as well F.A.No. 138 of 2015 field by the OP. in common orders confirming the District Forum orders.
- : Hence , The Revision Petition.

NEAT COPY
BEFORE THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AT NEW DELHI
R.P.NO. 3377 OF 2016

In the matter of:

1) Mrs. Angadi Vijaya Laxmi, W/o Bhaskar,
Age 58 years, Occ:House Wife.

2) Angadi Mahesh Kumar, S/o Bhaskar, Age:35 years,
rep by his GPA Holder

Both are R/o 1-24-253/1, Flat No.32, Sri Sainagar,
Lotugunta, Alwal, Secunderabad-Telangana State. 500015.

..Petitioners/Compl

Versus

Modi & Modi Constructions,
Rep. by its Partner Soham Modi,
H.No.5-4-187/3 & 4, 2nd Floor,
MG Road, Secunderabad-500003.

.. Respondent/Respondent/O.P.

REVISION PETITION IS FIELD UNDER SEC. 21 OF THE CONSUMER PROTECTION ACT

Most respectfully showed:

That aggrieved by the judgment and Order dated 18-10-2016 passed the Hon'ble STATE CUNSUMER DISPUTES REDRESSAL COMMISSIN of TELANGANA STATE at Hyderabad in F.A. No. 152 OF 2015 the petitioner are filing the present revision petition on the following amongst other

G R O U N D S

- a. Whether the state forum can pass such orders without giving any rents which caused loss to the complaints to pay Rents Rs. 25,000/- P.M. admittedly the condition to handed over the villa No.46 in the month of October 2013. Even after getting entire hard earned amounts except Rs. 3,30,000/-retaining and awaiting for occupation letter by the Financer.
- b. Whether the Hon'ble state forum can came to the conclusion to dismiss the claim when the OP failed to complete the villa and handed over the same with in stipulated time. i.e. October 2013.
- c. whether the sufferings of the petitioner were justified with the impugned orders

- d. The main object of the petitioners to purchased the Own house by spending huge amounts Rs.39,00,000/-defeated. And attending Rs. 25,000/- P.M. as interest to the Financer and Rs.25,000/- P.M. as paying Rent to the his rented house.
- e. Whether the state forum with dismissal of the FA. meets the ends of justice where as the petitioners claim in his complaint to award his mental agony loss and damages .
- f. The State forum can pass orders without any loss or interest for the said huge amounts paid and the OP. Field suit O.S.No. 98 of 2014 for his amounts Claiming with interest therein. If the Hon'ble consumers Forums failed to protect the interest of the consumer by taking lenient view for non compliance of the clause in agreement if the OS. Filed by the OP may decreed , the huge loss will be caused to the petitioners.
- g. The both forums failed to asses the mental agony and monitory loss for consumer who wants to purchased the property but the OP did not completed the same handed over the same meantime filed the Suit for his late payments and other incidental charges .
- i. The Ld. State commission failed to appreciate the grounds raised by the petitioners in the memo of appeal filed before it.
- j. The O.P. even got entire amounts from hard earned amount of the petitioners and not completed the constructions and not at all handed over the petitioners will caused loss on part of the negligence of the O.P.
- K. The both Forums below failed to impose the compensation or interest to the amounts which the OP has already received Rs. 35,70,000/- out of Rs.39,00,000/- and remaining Rs. 3,30,000/- retained by Housing financier and petitioners constrained to pay interest to the Financers for entire sanctioned amounts of Rs.22,00,000/- and when the OP claiming interest on Rs. 3,30,000/-due because of his delay of made constructions physical handover, the Banker not give the same. And field suit vide O.S. No. 98 of 2014 . the Forum ought be awarded by following the judgment rendered by this Hon'ble Court in Rajanpaul case dated. 5-7-2016.

- k. Because the state forum of Telangana has erred in concluding by dismissing the FA without any FINE , LOSS , MENTAL AGONY, INTEREST ON LOAN, PAYING RENTS TO RESIDE BY THEM, caused due to the OP for delay of compensation of constructions, when the OP Filed suit for his amounts.
- l. Without appreciation of mind proper evidence on record and hearing the first appeal the State consumer Redressal forum passed present impugned orders which will not satisfied the mental agony of the complainants which is affected the petitioners which is contrary to the law, and settled by the rulings.
- m. For that the Petitioners have prima facie good case and in all likelihood will succeed before this Hon'ble Court.
- n. The balance of convenience is in favour of these petitioners.
- o. The other grounds that may urged at time of hearing of the revision petition with the permission of the Hon'ble commission.

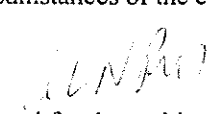
PRAYER

A "It is most respectfully prayed that this Hon'ble Commission may be pleased to allow the Revision Petition by modified/ set-a-side the orders Dated 18-10-2016 made in F.A.No. 152 of 2015 of the Telangana State Commission , Hyderabad while granting the compensation and mental agony for Rs. 5,00,000/- and Rs. 25,000/- P.M. from October 2013 to until handed over the villa i.e November 2016 38 months X 25,000= 9,50,000/- as damages/rents and allow the Complaint as prayed for and

- b. pass any other or further orders as this Hon'ble Commission may be deemed fit and proper in the facts and circumstances of the case.

New Delhi

Date. 20-2-2017.


Counsel for the petitioner

IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO.3377 OF 2016

(From the order dated 18.10.2016 in First Appeal No. 152/2015 of the
Telangana State Consumer Disputes Redressal Commission, Hyderabad)

Angadi Vijaya Laxmi & Anr.

...Petitioners

Versus

Modi & Modi Constructions

... Respondent

BEFORE:

HON'BLE DR. B. C. GUPTA, PRESIDING MEMBER
HON'BLE DR. S. M. KANTIKAR, MEMBER

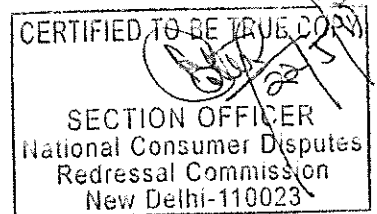
For the Petitioners : Mr. G. L. Narasimha Rao, Advocate

05-05-2017

ORDER

Heard the learned counsel for the petitioners.

Issue notice to the respondent returnable on 11-08-2017.

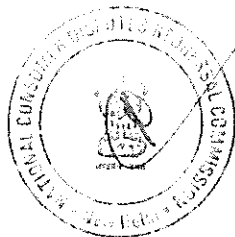


Sd/-

(DR. B.C. GUPTA)
PRESIDING MEMBER

Sd/-

(DR. S.M. KANTIKAR)
MEMBER



rk.16

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION,
NEW DELHI**

REVISION PETITION NO. 3377 OF 2016

(From order dated 18.10.2016 in Appeal No. 152 of 2015 of the
Telangana State Consumer Disputes Redressal Commission)

1. Mrs. Angadi Vijaya Laxmi,
W/o Bhaskar,

2. Angadi Mahesh Kumar
S/o Bhaskar, Rep. by his GPA Holder
Angadi Vijaya Laxmi

Both are R/o 1-24-253/1, Flat No. 32,
Sri Sainagar, Lotugunta, Alwal, Secunderabad
Telangana State-500015

.... Petitioner

Versus

Modi & Modi Constructions,
Rep. by its Partner Soham Modi,
H. NO. 5-4-187/3 & 4, 2nd Floor,
MG Road, Secunderabad-500003

.... Respondent

BEFORE :

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT
HON'BLE MRS. M. SHREESHA, MEMBER

For the Petitioner : Mr. M. Reddy, Advocate

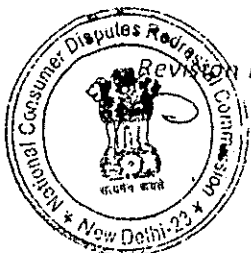
For the Respondent : Nemo

Pronounced on : 28th March, 2019

ORDER

MRS. M. SHREESHA, MEMBER

Challenge in this Revision Petition under Section 21 (b) of the Consumer Protection Act, 1986 (in short "the Act") is to the order dated 18.10.2016 passed by the Telangana State Consumer Disputes Redressal Commission (in short "the State Commission") in First Appeal No. 152 of 2015. By the impugned order, the State Commission has concurred with the finding of the



Revision Petition No. 3377 of 2016

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Complainants reducing the 9 months span period to 4 months. The Developer paid ₹2,43,750/- as an instalment and obtained undated cheques from the husband of the first Complainant. The details of the payment of ₹9,75,000/- by the Developer towards Housing Loan is detailed as hereunder:

Amount	Date of credit to A. Bhaskar's account by M/s Modi	Date of debit from Bhaskar account to AV Mahesh Kumar A/C	Date of Credit to AV Mahesh Kumar A/C from A. Bhaskar	Date of debit to M/s Modi Account from Mahesh Kumar A/C
243750	17-Sep-13	21-Sep-13	21-Sep-13	24-Sep-13
243750	28-Sep-13	10-Oct-13	10-Oct-13	17-Oct-13
243750	21-Oct-13	25-Oct-13	25-Oct-13	31-Oct-13
243750	08-Nov-13	13-Nov-13	13-Nov-13	18-Nov-13
975000				

3. On 20.11.2013, after the fulfilment of margin money, the Developer registered the Villa in the name of the Complainants, though it was not fit to be occupied as forcible possession was given, the Developer got the entire amount released from the financier without intimating the Complainant. The details of the amount released are as follows:

S. No.	Date	Amount (₹)
1	27.11.2013	12,48,000/-
2	27.11.2013	6,22,000/-
	Total	18,70,000/-

The remaining amount of ₹3,30,000/- was retained with the financier awaiting the Occupation Certificate from the Developer. Despite several requests and repeated correspondence, the Developer has failed to respond, but further demanded ₹14,20,690/- adding the service tax of ₹1,15,690/-.



months. It is admitted that an amount of ₹9,75,000/- was paid to the Complainant in four instalments. It was denied that the Complainants were forced to register Villa despite the fact that it was not ready. It was averred that dues of ₹14,20,690/- was inclusive of interest on late payment of instalments together with service tax of ₹1,15,690/-, which is payable to the Government authorities. It was pleaded that the Villa was complete in all respects except for the sanitary fittings, which are done just before the handing over of the possession of the subject Villa.

6. The Developer also filed suit for recovery of the dues bearing No. OS 98 of 2013 on the file of 1st Additional Chief Judge of Secunderabad. It was averred that the Complainants have withheld the payments of the instalments and that the Developer received only ₹35,70,000/- and further an amount of ₹11,23,523/- is still due towards final settlement of the cost of the Villa along with interest and service tax, interest on delayed payments, corpus fund etc. A legal notice was issued on 18.04.2014 calling upon to pay an amount of ₹20,48,497/-. It is pleaded that as the Complainants were liable to pay these amounts, there is no deficiency of service on their behalf.

7. The District Forum based on the evidence adduced allowed the Complaint in part directing the Developer to deliver the Villa No. 46 after receiving the balance sale consideration of ₹3,30,000/- from the financier on production of Occupation Certificate and also directed the Developer to

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 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."

10. Dissatisfied by the said order, the Complainants preferred this Revision Petition on the ground that the State Commission did not take into consideration that the Developer has already received ₹35,70,000/- out of ₹39,00,000/- and it was only ₹3,30,000/-, which needed to be paid by the Housing Financer and that the Developer cannot claim interest on ₹3,30,000/- because there was inordinate delay on their behalf in handing over possession and that the State Commission ought to have awarded the compensation amount prayed for.

13. In the result this Revision Petition is allowed in part directing the Developer to pay the interest @ 9% p.a. on the amounts paid by the Complainant i.e. ₹35,70,000/- from 01.03.2014 till the date of production of Occupation Certificate together with costs of ₹10,000/-. Time for compliance is four weeks, failing which, the amount shall attract interest @ 12% p.a. for the same period.

Sd/-

(R.K. AGRAWAL, J.)
PRESIDENT

Sd/-

(M. SHREESHA)
MEMBER

Free Certified Copy
Serial No. of the Application _____
Date of receipt of Application _____
Case No. 3377/2016
Name of the Applicant _____
Date of receipt of copy _____
Date of receipt of copy _____
Date of receipt of copy _____
Date of receipt of copy _____
By Hand _____
By Post _____

Brahm/

Assistant Registrar/ Section Officer
National Consumer Disputes
Redressal Commission, New Delhi

NILGIRI HOMES

Site Office: Sy. No. 128, Rampally, Keesara,
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✉ mmn@modiproperties.com

Owned & Developed by : MODI & MODI CONSTRUCTIONS



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✉ info@modiproperties.com www.modiproperties.com

To,
Mrs. Angadi Vijaya Laxmi & Mr. Angadi Mahesh Kumar,
R/o. 1-24-253/1, Flat. No. 32, Sri Sai Nagar,
Lothukunta, Alwal,
Secunderabad - 500 015.

Date: 01-08-2019

Subject: Settlement of all dues with respect to complaint filed by you in the District Consumer Redressal Forum Ranga Reddy District.

Reference:

1. Agreement of sale dated 25-02-2013 for purchase of villa no. 46, in the project known as Nilgiri Homes situated at Sy.No.134,135,136, Rampally Village, Keesera Mandal, Ranga Reddy District.
2. Sale deed for villa no. 46 - registered as document no. 8452/2013 dated 16-11-2013 at SRO Keesara.
3. Complaint filed by you in the District Consumer Redressal Forum Ranga Reddy District dated 18-06-2014.
4. Order of District Consumer Redressal Forum Ranga Reddy District dated 24-07-2015.
5. Order of Telangana State Commission Redressal Consumer Forum Hyderabad dated 18-10-2016 with reference to appeal filed by us.
6. Appeal filed by you in the National Consumer Disputes Redressal Commission New Delhi dated 20-02-2017.
7. Order of the National Consumer Disputes Redressal Commission New Delhi dated 28-03-2019.

Sir,

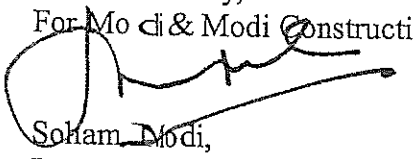
You have purchased the above referred villa from us and in that regard you have preferred a complaint against us as given in reference above. The matter was finally decided by the National Consumer Disputes Redressal Commission as per their order given in reference no. 7 above. In order not to protract the litigation any further we have agreed to settle this matter amicably. We have agreed to pay you a compensation of Rs. 10.60 lakhs by way of payorder no. 082376 dated 05.08.2019, drawn on YES Bank towards full and final settlement of all claims made by you against M/s. Modi and Modi Constructions (including its associated firms/companies/partners/directors)

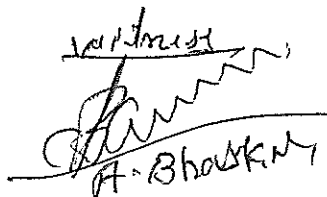
You shall have no further claim of what so ever nature against M/s. Modi and Modi Constructions (including its associated firms/companies/partners/directors). All claims made by you have been deemed to be settled on this day.

Please sign a copy of this letter as your confirmation of the above.

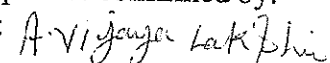
Thank You.

Yours sincerely,
For Modi & Modi Constructions

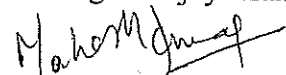

Soham Modi,
Partner.


A. Bhaskar

Accepted & confirmed by:

Sign: 

Mrs. Angadi Vijaya Laxmi


Mr. Angadi Mahesh Kumar,