

BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES
REDESSAL COMMISSION, RANGA REDDY DISTRICT
AT: LB NAGAR
C.C. No.296 OF 2021

BETWEEN:

Smt. Kusuma Kumari & another

.....Complainants

AND

Silver Oak Villas LLP,
Rep by its Authorised Representative.

....Opposite Party

WRITTEIN SUBMISSION FILED ON BEHALF OF THE OPPOSITE
PARTY

1. This Opposite Party humbly prays that this Hon'ble Commission, may be pleased to read the pleading of both the parties and documents as part and parcel of this Written Version and the same was not reiterated to avoid lengthy submissions.
2. It is submitted that the claim of the Complainant is that: (1) to pay Rs.10,00,000/- towards entire loss and damages caused due to delay and poor quality of construction and negligent acts of Opposite Party (2) to pay Rs.10,000/- towards cost of the Complaint (3) and grant such other relief or relief's as this Hon'ble Commission deems fit and proper in the interest of justice and equity.
3. It is not disputed that the Complainant approached the Opposite Party for purchase of Open Plot No.93 and Construction of Villa therein and the Complainant made Booking Application with the Opposite Party and also subsequently entered into Agreement of Sale for registration of plot and Construction Agreement for villa.

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4. The dispute between the parties herein is with regard to the amount alleged to have been paid by the Complainant but as per the Opposite Party, they have not paid total amount as agreed by them. As per the Booking Application form, Ex.B2 dt.04-05-2018, the Complainant agreed to pay the plot cost as well as the consideration of the Villa cost plus applicable taxes including GST & other taxes. Thus, Ex.B1 specifically mentioned the value of the villa including the plot amount as Rs.57,00,000/-. This was agreed by the Complainant at the time of Booking. Thereafter the Complainant and the Opposite Party entered the Ex.B.2 Agreement of Sale, dt.31-07-2018 for the same plot wherein also the Complainant agreed to pay the amount as per the schedule mentioned plus GST and in case of any delay in payment in schedule, the Complainant agreed to pay interest. As per Annexure-A of the Ex.B2 it is mentioned that the total consideration of the plot is Rs.28,50,000/- and consideration for agreement of construction is Rs.28,50,000/-. The said sale consideration of plot was also confirmed in Ex.B.3 sale deed under document no.6242/2021. The Complainants and Opposite Party entered Agreement of construction dt.25-03-2022 and the same is marked as Ex.B.4, wherein the consideration is specifically mentioned under clause 3 and in Annexure-A of it, the total Sale Consideration is Rs.28,50,000/- and out of it an amount of Rs.21,86,000/- is paid and the balance amount of Rs.6,64,000/- is payable in instalments.

5. In addition to that, in case of any delay, as mentioned in Ex.B1, clause 4 deals with delayed payment, wherein it clearly mentions that in case of delay in payments, the Complainants/Purchasers are liable to pay interest as specified in Booking Form which was confirmed in the subsequent agreement of

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sale dated dt.31.07.2018, which is marked as Ex.B2, wherein the clause 9 deals with delay in payments,.

6. The Complainant already paid total Sale Consideration of the plot cost but he has failed to pay the total consideration for the construction of villa of Rs.28,50,000/-, though he agreed to pay the interest on instalments, as he failed to pay the instalments within the stipulated period, the complainant issued a legal notice under Exhibit B.7 dated 13.7.2021 demanding the complainant to pay the interest for the delay period on the due amount plus other charges and in total Rs.4,08,991/- failing which to proceed as per Law.

7. It is not out of place to state that the Complainant prior to issue of legal notice, he expressed his inability to pay instalment within time and requested for time under the emails, dt.11-05-2021 which was mentioned as Exhibit.B.6 for which the Opposite Party replied by Letter, dt.13-5-2021. This was extracted in the version as well as in the Evidence Affidavit. Contrary to the said facts, the Complainant filed the present Complaint alleging the deficiencies in services. As it is not disputed as per the Agreement of Sale, the Construction Agreement, the Opposite Party completed the sale deed of the Plot and subsequently as per the Construction Agreement, this Opposite Party completed entire construction of the villa. The Complainant also not made any allegation with regard to non-completion of the villa but only allegation is that they paid entire amount and need not pay any taxes and interest and sought for the damages only, but not for release of the property.


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8. As stated above the Complainant admitted in his email dated 11.5.21 part Ex.B.6, that he is unable to pay amounts and requested for time and also waive the interest as well as the taxes but falsely filed this complaint alleging that he paid entire amount. Thus as per the Agreement the complainant has to pay due amounts and they cannot deny. Thus the principles of estoppel is applicable for the present and the complainants are estopped to say that they paid the entire amounts. The said principles is accepted the Hon'ble State Commission (combined state of AP) in

The Hon'ble Supreme Court in "Hope Plantations Ltd Vs Taluk Land Board, Peer made and another" (1999) 5 SCC 590 considered the scope of estoppel and its effect on the party to the contract.

14. In " Hope Plantations Ltd" (supra) , the Hon'ble Supreme Court considered the distinction between the doctrines of res-judicata and estoppel. The facts of the case are that south India Tea Estate Company Ltd filed return/statement surrendering 267.16acres as falling in the category of excess of ceiling area under the provisions of The Kerala Land Reforms (Ceiling) Rules,1970 before the Land Board and claimed exemption under four heads,1. Tea plantation, 2. Roads and Buildings, 3. Area for the Fuel Trees and 4,Other Agricultural lands interspersed. The Taluk Land Board disallowed the claim for exemption as 'fuel area' and 'rested tea area' and the Kerala High Court allowed the revision preferred by the claimant restoring the claims made for fuel area and rested tea area and remanded the matter to Taluk Board for redetermination of ceiling area under the heads, 'Roads and Buildings' and 'Other Agricultural Lands Interspersed' .

15. On appeal against the order of the High Court preferred by the State of Kerala, the Supreme Court restored the order of the Taluk Land Board. On remand, the Taluk Land Board decided the matter in favour of the claimant. On revision, the High Court had set aside the order as regards 'fuel area' and 'rested tea area' and directed the Taluk Land Board to re-determine the question afresh

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The Taluk Land Board preferred appeal against the Judgment of the High Court. As such the matter reached the Supreme Court which had considered the matter as hit by the principles of estoppel. The Supreme Court distinguished res-judicata from estoppel as under:

"It is settled law that principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even demonstratively wrong. When the proceedings have attained finality, parties are bound by the Judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'. These two terms are of common law origin.

17. The cause of action estoppel and issue estoppel again are distinguished holding:

"Again once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that issue was wrongly determined. their only remedy is to approach the higher forum if available. the determination of the issue between the parties gives rise to as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operated in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

In Arnold & Others. Vs. National Westminster Bank Plc. [(1991) 2 AC 93] House of Lords noticed the distinction between cause of action estoppel and issue estoppel. Cause of action estoppel arises where the cause of action in the later proceedings, the latter having been between the same parties or their previous and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier Judgment. The discovery of new factual

matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not according to the law of England, prevent the latter to be re-opened. Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to re-open that issue.

18. Having consciously issued the life insurance policy to the insured suffering from disability sustained due to polio, the appellant is estopped from stating that the insured suppressed his disability and his being affected with polio. The repudiation of the claim is arbitrary and the appeal filed by the insurance company is frivolous. ...”

Thus, claim of the Complainants to damages of Rs.10,00,000/- is nothing but a black mailing tactics. In addition to that the Complainants also made claim for Rs.2,00,000/- for pain and suffering and payment of Rs.10,000/- for costs. As stated above, the Complainant himself admitted under email dated.11.05.2021 that he is unable to pay due amount, thus he cannot say that there is deficiency on the part of the Opposite Party either in providing services under the Contract. Thus Complainant is not entitled for any claim.

9. It is submitted that the contractual terms are binding on the parties, and as per his email, now he cannot say that he is not due to pay any GST and interest, and the Complainant is bound to pay the amount as per the agreed Contractual terms as per the Judgment of Hon'ble Apex Court and Apex Commission.

Supreme Court of India

**Bharathi Knitting Company Vs Dhl Worldwide Express Courier ...
on 9 May, 1996**


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Bench: K. Ramaswamy, Faizan Uddin, G.B. Pattanaik

".....The National Commission in the impugned order pointed out as under:

"We have considered the submissions of the counsel for the parties on the facts of the case and having regard the earlier decisions of this Commission. The consignment containing the documents sent in the cover had been accepted by the Appellant and was subject to the terms and conditions mentioned on the consignment note. The Complainant had signed the said note at the time of entrusting the consignment and had agreed to and accepted the terms and conditions mentioned therein. Clauses 5 and 7 of the terms and conditions as also the important notice mentioned on The consignment note are reproduced below:

Clause 6: "Limitation of liability: Without prejudice to clause 7 the liability of DHL for any loss or damage to the shipment, which term shall include all documents or parcels consigned to DHL under this Air bill and shall not mean any one document or envelope included in the shipment is limited to the lessor of

- a) US \$ 100
- b) The amount of loss or damage to a document or parcel actually sustained or
- c) The actual value of the document or parcel as determined under Section 6 hereof, without regard to the commercial utility or special value to the shipper.

Clause 7: Consequent damages excluded: DHL shall not be liable in any event for any consequential or special damages or other indirect loss however arising whether or not DHL had knowledge that such damage might be incurred including but not limited to loss of income, profits interest, utility or loss of market. Important Notice: by the conditions set out below DHL and its servants and agents are firstly not to be liable at all for certain losses and damages and secondly wherever they are to be liable the amount of liability strictly limited to the amount stated in condition and customers are therefore advised to purchase insurance cover to ensure that their interests are fully protected in all event. Under clause 5 of the terms and conditions of the contracts the liability of the Appellant for any loss or damage to the consignment: was limited to US \$ 100. Clause 7 of the contract specifically provided that the liability of the Appellant for any consequential or Especial damages or any other indirect loss, that may occur including the loss of market or profits etc. was excluded. It is also pertinent to note that despite the advice in the

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important notice, the Complainant has not did at the time or Consignment the contents of the cover and also not purchased the insurance cover to ensure that their interests are fully protected in all events."

In view of the above consideration and findings we are of the opinion that the national Commission was right in limiting the liability undertaken in the contract entered into by the. parties and in awarding the amount for deficiency service to the extent of the liability undertaken by the respondent. Therefore, we do not think that there is any illegality in the order passed by the Commission. Shri Krishnamani has brought to our notice that there are number of Judgment covering divergent views. In view of the above Judgment we have expressed above, it is now settled law and the Tribunals would follow the same."

Now the complainant cannot say that he is not liable to pay the amount including the GST and interest on the due amount.

As stated above there is no deficiency on the part of the Opposite Party. Hence the complaint is liable to be dismissed with exemplary costs.

For SILVER OAK VILLAS LLP

Designated Partner
OPPOSITE PARTY

Place : Hyderabad
Dated :

Counsel for Opposite Party