

Date of Filing: 23.01.2017
Date of Order: 12.03.2019



DISTRICT CONSUMER DISPUTES REDRESSAL FORUM: RANGA REDDY

Present

SMT CHITNENI LATHA KUMARI, LL M, M.A., M.Sc, B.Ed, PRESIDENT
SRI G.SREENIVASA RAO, M.Sc, B.Ed.,LL.B., PGDADR (NALSAR) MEMBER

CC 27/2017

Between:

Smt.B.Bhavani, W/o Sri BSS. Satyanarayana,
Aged about 58 years, Indian, Occupation: Housewife,
R/o. Flat No.102, B-Block, "Vista Homes",
Kushaiguda, Hyderabad – 500 062.

... Complainant

AND

1. M/s. Vista Homes, D.No.5-4-187/3 & 4,
2nd Floor, Soham Mansion, MG Road,
Secunderabad – 500 003,
Rep. by its Partner Sri Bhavesh V.Mehta,
Uttam Towers, DV Colony,
Secunderabad – 500 003.
2. Mr.Soham Modi, S/o Sri Satish Modi,
Aged about 46 years, Indian,
Occupation: Business, Partner: M/s. Vista Homes,
R/o Plot No.280, Road No.25, Jubilee Hills,
Hyderabad – 500 034.

... Opposite Parties

Counsel for Complainant : M/s K.Yadagiri Rao, Advocates
Counsel for Opposite Parties : M/s G.Jagannadam, Advocates

This complaint is filed by the complainant U/Sec.12 of Consumer Protection Act, 1986 requesting this Forum to direct the Opposite Parties (i) to provide drinking water and sewerage connections duly sanctioned by HMWS & SB to Vista Homes situated at Kushaiguda, Kapra, R.R.District (ii) to provide wooden flooring in the master bedroom of the complainant to her flat No.102, 1st floor, B-Block in Vista Homes or in the alternative to pay Rs.50,000/- to compensate the same (iii) to pay compensation of Rs.5,00,000/- towards mental agony and (iv) to pay costs of Rs.25,000/-, and pass such other order or der which the Hon'ble Forum deems fit.

ORDER

(PER HON'BLE Smt CHITNENI LATHA KUMARI,
PRESIDENT ON BEHALF OF THE BENCH)

TUESDAY, THE TWELTH DAY OF MARCH
TWO THOUSAND NINETEEN

1. Brief averments of the complaint are as follows:

The complainant submits that the Opposite Party No.1 is in partnership firm engaged in the construction of residential flats in and around Hyderabad city. The Opposite Parties are the partners of M/s Vista Homes. They issued wide publicity and colorful brochures representing the general public that they were constructing "Vista Homes" at Kushaiguda, Hyderabad. The Opposite Parties represented that for the



said venture, the plans were approved by GHMC, clear title, 403 flats on 5.6 acres of land, basement+5 floors, choice of semi-deluxe, deluxe and luxury flats, gated community, one car park for each flat in the basement, ground floor fully land scaped, restricted to pedestrians; pollution free environment etc. The Opposite Parties offered to provide common amenities like 10,000 sq.ft., club house consisting of Banquet Hall, Cafeteria, General Stores, Crèche, Library, Recreation Room, Gym, Yoga Room, Society Office, Swimming Pool, Open air badminton courts etc. Being induced by the representations made by the Opposite Parties, the complainant intended to purchase a flat.

It is further submitted that on 26.04.2013 the Opposite Party No.1 represented by the Opposite Party No.2 also executed an Agreement of Sale in favour of the complainant for the sale of flat No.102, 1st floor in Block No.B admeasuring 1220 sq.ft., super built up area together with proportionate undivided share of land of 74.12 sq.yds and a reserved car parking slot admeasuring 100 sq.ft., in Vista Homes in Sy.Nos.193, 194 & 195 situated at Kapra Village, Keesara Mandal, Ranga Reddy District for a total sale consideration of Rs.29,95,750/- schedule-C of the Agreement of Sale contains this specifications of the internal flats. The complainant has paid the total sale consideration as agreed and on 10.04.2015 the Opposite Parties executed the sale deed.

It is further submitted that the Opposite Parties failed to provide several common amenities and internal specifications as agreed. The Opposite Parties failed to provide laminated wooden flooring in the master bedroom as undertaken in Schedule-C of the Agreement of Sale. The quality of construction, fixers and fittings were very poor. Because of heavy winds on 31.03.2016 the main door frame along with the door itself was blown out and came out. The surrounding cement concrete was broken and fell down. Such kind of poor construction of "Luxury Flat" claimed by the Opposite Parties is unexpected and unheard. After complaining the collapse of the main door with frame, however the Opposite Parties have simply repaired the same.

It is further submitted that the Opposite Parties utterly failed to provide official drinking water and drainage connections to the residential complex duly sanctioned by HMWS & SB. Without providing municipal drinking water connection, the Opposite Parties are providing drinking water through RO plant by collecting maintenance charges. Since there was no proper response for various personal visits and phone calls made by the complainant and her hand, she was constrained to issue a legal notice dt.05.11.2016 to the Opposite Parties. The Opposite Parties got issued a reply notice dt.17.11.2016 to the complainant stating that laminated wooden flooring in the master bedroom was not provided as per the instructions of the complainant and that they never promised either in the Agreement or the brochure to provide municipal water supply. The complainant never instructed the Opposite Parties not to lay wooden flooring in the master bedroom. The said allegation is absolutely false and incorrect. Supply of drinking water and sewerage connection is mandatory in nature.

It is further submitted that in fact on 24.04.2013 the Opposite Party No.1 represented by Opposite Party No.2 submitted an application bearing No.2013-4-2221 (File No.2013-4-2221) to HMWS & SB for providing drinking water and sewerage connections by paying Rs.2,25,000/- towards processing fee. Subsequently, for the reasons best known to the Opposite Parties, they have not yet further processed the application, not paid requisite fee to HMWS & SB and ultimately failed in obtaining official drinking water and sewerage connections to Vista Homes duly sanctioned by HMWS & SB. Suppressing the said facts, the Opposite Parties are giving evasive, false and misleading statements to the flat purchasers and subjecting them to perennial problem of drinking water. The Opposite Parties are trying to escape their legal obligations in providing drinking water and sewerage connections, to the Gated Community which are basic amenities to lead a meaningful life in cities like Hyderabad. Collapse of the main door with frame itself within one year of taking possession of the flat is of great adverse sentimental value

and shows the inadequacy in the safety and security of the inmates.

Hence the complainant approached this Forum for redressal.



2. The Opposite Party No.1 filed counter and the same was adopted by Opposite Party No.2 by filing a Memo. In their written version, Opposite Party No.1 denied the allegations made by the complainant. The complaint is not maintainable either on facts or in law. That it is absolutely false to say that the flat No.102 was handed over on 10.04.2015 without providing the agreed amenities as per the Agreement of Sale and Sale deed. It is not true to say that the complainant had requested several times to the Opposite Parties to provide amenities and to attend the agreed amenities. The amenities that the Opposite Party No.1 have provided was as per the agreed terms between the complainant and Opposite Parties.

- a) Laminated wooden flooring the same was not provided as per instructions of the complainant.
- b) The clause No.23 of Agreement of Sale does not speak about Municipal Water connection and the complainant was wrongly mentioned in the matter. With regard to the quality of the water being supplied through RO Plant there has been no complaints being received from any of the Occupants regarding the health hazards as alleged by the complainant. That the Opposite Parties has collected an amount of Rs.35,000/- towards electricity connection and provisions of RO Plant. That the Opposite Parties never promised anywhere either in the brochure and subsequent document like agreement of sale regarding the provision of Municipal Water supply.
- c) The main door and door frame have been rectified as soon as the complainant brought the same to the notice of the Opposite Parties and there has been no further complaints in this regard. It is mentioned in the complaint that the facilities provided by Opposite Parties are substandard. The statement is rather vague and does not specify the facility which has got problem.

That all the amenities as agreed by the Opposite Party No.1 with the owners through the Agreement of Sale have been completed and a sale

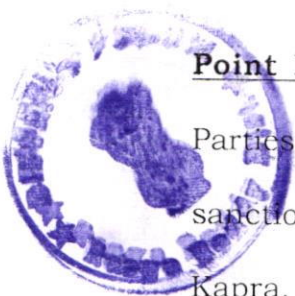
deed dt.10.04.2015 was executed by the Opposite Party No.1 herein. That the Opposite Party No.1 handed over the possession to the complainant on 30.05.2015, the possession letter and the No Due Certificate dt.30.05.2015 issued by the Opposite Party No.1 was received by husband of the complainant as he has signed the necessary papers on behalf of the complainant and has not raised any objections regarding the incompleteness or not providing the agreed amenities. The membership enrollment form of the association was signed by the husband of the complainant. The corpus fund was also paid. The maintenance charges are also being regularly paid by the complainant. The complainant had in fact being extremely happy with the flat and project, her husband has recommended three other customers and further collected three gold coins as per the norms of the referral scheme of the Opposite Party No.1. That the Opposite Party No.1 has co-opted several residents as co-opted members for a better coordination in so far as the maintenance of the housing complex is concerned.

That the complainant had recently demanded for an additional discount on the sale consideration after more than one year of taking possession. This is not at all tenable and the Opposite Party No.1 had informed the same to the complainant. That the complainant being aggrieved by such refusal by the Opposite Party No.1 has got issued the notice with all false allegations against the Opposite Party No.2, but not against the Opposite Party No.1. As there was no cause of action against the Opposite Party No.1, as the complainant did not issue any legal notice to the Opposite Party No.1, it is prayed to dismiss the complaint.

3. The complainant filed her evidence affidavit and got marked the documents as Ex.A1 to A7. The Opposite Parties filed evidence affidavit and documents were marked as Ex.B1 to B14 on their behalf. Both parties filed their respective written arguments.

4. Now the points for consideration in this case are:

- 1) Whether there is any deficiency in service and unfair trade practice on the part of the Opposite Parties?
- 2) To What relief?

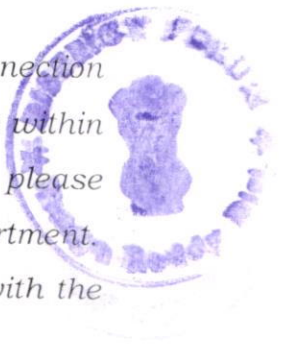


Point No.1: The complainant filed this complaint to direct the Opposite Parties (i) to provide drinking water and sewerage connections duly sanctioned by HMWS & SB to Vista Homes situated at Kushaiguda, Kapra, R.R.District (ii) to provide wooden flooring in the master bedroom of the complainant to her flat No.102, 1st floor, B-Block in Vista Homes or in the alternative to pay Rs.50,000/- to compensate the same (iii) to pay compensation of Rs.5,00,000/- towards mental agony and (iv) to pay costs of Rs.25,000/-.

Undisputedly, the main door of the complainant's flat was damaged on 31.03.2016 i.e. within the six months of purchase of the branded Luxury flat, which itself conclusive proof of the inferior construction of the said flat by the Opposite Parties and thereby the Opposite Parties acts certainly amounts to deficiency in service U/Sec.2(g) of the C.P.Act 1986. This point is answered in favour of the complainant and against Opposite Parties.

Another issue raised by the complainant is that – the Opposite Parties not provided drinking water and sewerage connections to the said Vista Homes. Opposite Party has taken a plea that clause No.23 of the Agreement of Sale does not speak about the municipal water connection and the complainant wrongly pleaded the same. It is the bounden duty of the Opposite Parties builder/developer to provide public amenities to the flat purchasers under Sanction Order (Ex.B10). The Opposite Parties submitted the sanction order issued by HMWS & SB dt.01.06.2017 wherein the HMWS & SB informed the Vista Homes that the application for water and sewerage connection has been formally sanctioned but the connection will be made only adhering to the confirming of the following conditions:

- i. *Connection will be made only after the customer purchases water meter conforming to ISO-4064, Class-B.*
- ii. *Connection will be made only after constructing Meter Chamber of Size:0.45 Mtr X .45 Mtr (1.5 ft X 1.5 ft) in case of 15mm, 0.75 Mtr X 0.75 Mtr (2.5 ft X 2.5 ft) for 20 mm to 40mm dia.*

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- iii. For applications having more than 200 Sq.Mtrs plot area, connection will be made only after constructing Rain Water Harvesting structure within the customer's premises to recharge ground water. For assistance please contact Rain Water Harvesting Cell, HMWSSB or Ground Water Department.
- iv. The onus of maintaining the meter in working condition lies with the customer.
- v. Connection will be made only after a sump with minimum 1000 liters capacity is to be constructed for 15 mm dia connection. The location of the sump should be within 3 meters from the compound wall where the connection is given to ensure minimum pressure loss and adequate supply.
- vi. In cases where road cutting is required, the applicant has to get the road cutting permission from GHMC/R&B as the case may be.
- vii. This sanction and the consequent connection does not confer any legal right regarding the property.
- viii. Internal water supply & sewerage lines have to be laid by the applicant at his/her cost as per standards in vogue.

The Opposite Parties failed to file any documentary evidence adhering the terms and conditions imposed by the HMWS & SB. Hence, assumption is there is no HMWS & SB connection to the Vista Homes.

The next issue raised by the complainant is that the Opposite Parties failed to lay wooden flooring in the master bedroom of the complainant flat No.102: Opposite Parties had taken a plea that the said flat was handed over to the complainant on 30.05.2015, the possession letter (Ex.B2) and the No Due Certificate dt.30.05.2015 (Ex.B3) issued by the Opposite Parties was received by the husband of the complainant and the complainant cannot claim the same after 2 years of possession. The said possession letter itself shows that the said letter signed by the complainant's husband on 25.08.2015. The complainant made an allegation that at the time of house warming ceremony, the main door of the said flat was damaged on 31.03.2016. Hence cause of action arose on 25.08.2015 and in 31.03.2016. Hence, according to the Agreement of Sale, the Vista Homes is bound to provide wooden flooring in the master bedroom of the complainant's Luxury flat. It is the plea of the Opposite Parties that the wooden flooring to the said flat was not provided as per the instructions of the complainant, but failed to furnish the instructions provided by the complainant with regard to non-necessity of wooden



flooring. Hence, they cannot take such defence of non-provision of wooden floor on account of instructions of complainant.

Considering the aforementioned facts and circumstances, it is apparent on the record that the main door provided by the Opposite Parties got damaged within short span of the purchase which certainly creates great mental agony as which hurts the sentiments of the every individual and hence certainly amounts to deficiency in service on the part of the Opposite Parties and thereby the Opposite Parties are liable to compensate the same. Hence the point is answered in favour of the complainant and against the Opposite Parties.

Point No.2: In the result, the complaint is partly allowed and the Opposite Parties are jointly and severally directed:

- (i) To provide drinking water and sewerage connections duly sanctioned by HMWS & SB to Vista Homes situated at Kushaiguda, Kapra, R.R.District.
- (ii) To provide wooden flooring in the master bedroom of the complainant's flat No.102, 1st floor, B-Block in Vista Homes or in the alternate pay Rs.50,000/- (Rupees Fifty Thousand only) to the complainant.
- (iii) To pay compensation of Rs.50,000/- (Rupees Fifty Thousand only) towards mental agony and damages.
- (iv) To pay costs of Rs.10,000/- (Rupees Ten Thousand only) to the complainant.

The Opposite Parties are directed to comply the order within 30 days of receipt of this order.

Dictated to the Steno-typist, transcribed by her, corrected by me and pronounced by us in the Open Forum on this the 12th day of March, 2019.

Sd/-
MEMBER

Sd/-
PRESIDENT

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant
Affidavit filed

For Opposite Parties
Affidavit filed

EXHIBITS MARKED

For Complainant

Ex.A1 – Copy of Sale Deed dt.10.04.2015



- Ex.A2 – Copy of Agreement of Sale dt.26.04.2013
 Ex.A3 – Copy of Building Permit Order dt.11.12.2012
 Ex.A4 – Copy of Query and Response Report dt.01.04.2016
 Ex.A5 – Copy of Legal Notice dt.05.11.2016
 Ex.A6 – Copy of Reply Notice dt.17.11.2016
 Ex.A7 – Copy of Brochure

Exhibits marked for the Opposite Parties

- Ex.B1 – Booking Form
 Ex.B2 – Letter of Possession dt.30.05.2015
 Ex.B3 – No Due Certificate dt.30.05.2015
 Ex.B4 – Work Order
 Ex.B5 – Sale Deed dt.10.04.2015
 Ex.B6 – Copy of Agreement of Sale dt.26.04.2013
 Ex.B7 – Reply Notice dt.17.11.2016
 Ex.B8 – Copy of Legal Notice dt.05.11.2016
 Ex.B9 – Receipts of Gift (3)
 Ex.B10 – Copy of Sanction Order of HMWS & SB dt.01.06.2017
 Ex.B11 – Photos
 Ex.B12 – Copy of Letter dt.01.12.2016
 Ex.B13 – Copy of Membership Enrolment Form dt.30.05.2015
 Ex.B14 – Copy of Acknowledgement of Registration of Society (Under Sec.3)

Sd/-
MEMBER

Sd/-
PRESIDENT

Dis. No. 339 Dt. 22-3-19
 Date of Order 12-3-19
 Date of Rady 22-3-19
 Date of Dispatch 22-3-19
 Date of Delivery 22-3-19

D. Radwige 22/3/2019
 Sachin Kumar / Head
 Consumer Protection
 District Forum,
 Mandya District