



Date of registration: 22.07.2022
Date of order : 29.05.2023

**BEFORE THE DISTRICT CONSUMERS COMMISSION-I,
VISAKHAPATNAM : AP**

PRESENT: Smt. Gudla Tanuja B.Com., M.A (HRSA), LL.M., (Ph.D)
President

Sri Varri Krishna Murthy M.A., M.B.A., A.I.I.I.,
(Associateship in Insurance Institute of India)
Male Member

Smt. Rahimunnisa Begum, M.Com, LL.M, M.HRM (Ph.D).,
Woman Member

Monday, the 29th day of May, 2023

Consumer Complaint No:243/2022

Between:

Dr.Vikas Pandey S/o late Mohan Pandey, Hindu, aged 42 years, D.No.2-69, Rajeevnagar Visakhapatnam, National Secretary and Incharge(Organisation & Complaint), rep. by The Consumer Rights Organisation(CRO)/Upbhokta Adhikar Sangthan.

... Complainant

Dr.Nittala Rajyalakshmi W/o Dr.Nittala Subrahmanya Sarma, Hindu, aged 67 years, residing at D.No.2-50-10, Plot No.72, Sector-11, MVP Colony, Visakhapatnam-53017.

... Defacto Complainant

And:

1. Shriram Properties Limited, represents by its Authorising Signatory, No.31 (old No.192), 2nd Main Road, T.Chowdaiah Road (near Bhasyam Circle), Sadashiva Nagar, Bangalore-560080.

2. Global Entropolis Vizag Pvt. Ltd., Assistant General Manager, Sales & Marketing represent by its Authorising Signatory, Door No.9-7-7/1, CBM Compound, Suit No.101-103, VIP Road, Visakhapatnam-530003.

... Opposite Parties

This case came for final hearing on 22-05-2023 in the presence of defacto Complainant appeared through Consumer Rights Organisation and of Sri V.Kasi Viswanath & K.Sunil Reddy Advocates for Opposite parties and having stood over till this date, the Commission delivered the following:

: ORDER :

(Per Smt.Gudla Tanuja, President on behalf of the Bench)

1. Complaint filed under Section-35 of Consumer Protection Act 2019 praying this Commission to direct the opposite parties to register and deliver physical possession of 3 BHK flat in any similar project in the same location constructed/constructing by the opposite parties for the price that was at booking time or else to refund booking amount of Rs.2,00,000/- with interest @ 24% p.a. from 31.01.2016 till the date of realisation; Rs.50,00,000/- towards compensation for causing mental tension, Rs.10,00,000/- towards

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compensation for gross negligence, deficiency of service and unfair trade practise and to pay Rs.1,00,000/- towards litigation charges with the following averments:

2. The facts that germane for filing this complaint are as follows:

The 1st opposite party gave wide publicity in newspapers as well as in pamphlets inviting the attention of general public to the newly proposed venture in "Presidential Towers" @ Shriram Properties Limited. Impressed by the advertisements, the defacto complainant approached 1st opposite party on 19.01.2016 for booking a Flat in the said project. The representatives of 1st opposite party took the defacto complainant and her family members to the location of the proposed construction and said that the construction going to commence and after completing negotiations, the defacto complainant paid Rs.2,00,000/- towards booking price by means of cheque drawn on State Bank of India. The opposite parties having realised the cheque amount issued Acknowledgment dated 29.02.2016 promising that the Flat would be handed over in March, 2019. Thereafter, the defacto complainant has been contacting the sales officer of opposite parties through phone as well as personal visit. Every time they went on saying that they are waiting for the permission for construction of 30 floors in the proposed project. While so, on 15.04.2021 while, the defacto complainant was on tour, received a whats app call from T.Ravishankar Assistant General Manager, Sales and Marketing asking the defacto complainant to take back the booking amount as they have not started the project. The defacto complainant requested him to send the message through email for confirmation as she has been receiving different versions from their office. Accordingly, an email dated 19.08.2021 was sent to the complainant with regretting note that the project was not commenced as they are ready to refund the booking amount to the defacto complainant. The Opposite parties having consumed six years of time not even commenced the work at the site obtaining necessary permissions and offered to refund the booking price causing financial loss and untold mental agony and thereby the acts clearly falls under the deficiency of service and hence approached this Commission for renderance of justice.

3. The opposite parties resisted the claim by filling counter inter alia contending that Dr.Vikas Pandey Authorised representative of the Complainant

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organisation has no locus standi to file the complaint and the complaint is barred by limitation. That apart, the defacto complainant has no financial capacity to conclude the contract fulfilling her part of obligation and in terms of the receipt issued by the opposite parties having received the booking price the defacto complainant had to enter into an agreement of sale within 30 days from the date of allotment letter failing which the booking is liable to be cancelled and as the defacto complainant has not come forward to enter into an agreement, she is not entitled for refund of the entire amount, still the opposite parties have offered to repay the entire amount and requested the complainant to provide particulars of the bank, but the defacto complainant insisted for payment of interest and there was no deficiency of service on part of opposite parties and prayed for dismissal of the complaint.

4. During the course of enquiry, the Authorised Representative of the complainant filed Evidence Affidavit and got marked Exhibits A1 to A6.

5. On behalf of opposite parties Mr.R.Balaji, C.O.O of opposite parties filed Evidence Affidavit and got marked Exs.B1 to B3.

6. Both parties filed their written arguments reiterating their versions. Heard the Ld. counsels of both parties.

7. Now the points that would arise for consideration are as follows:

- i) Whether the complainant organisation has locus standi to file the complaint?
- ii) Whether the complaint is barred by limitation?
- iii) Whether there is any deficiency in service on part of the opposite parties?
- iv) Whether the complainant is entitled for the reliefs claimed in the complaint?
- v) To what relief?

8. Point No: 1:

This is the case when the opposite parties raised questions about the existence of locus standi of the complainant. The opposite parties being mighty organisation equipped with Infrastructure did not tried to place on record the material which is basis for questioning the very locus standi of the complainant. Unfortunately, in a summary procedure, this Commission cannot rove the genuineness and otherwise, the existence of the complainant organisation. So far as the complaint is concerned, It was placed on record

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Ex.A1 Certificate of Incorporation appears to have been issued by the Registrar of Societies, Government of M.P. which shows the existence of the complainant organisation. A closer look of Section-2(1)(b) of Consumer Protection Act, 1986 shows that the

- (i) It is the Consumer himself as aggrieved person who could be the complainant to maintain an action.
- (ii) A voluntary organisation or association may espouse the cause of action of such aggrieved person.

By virtue of Section-2(1)(b)(i)(ii) the voluntary organisation or association has locus standi to maintain an action on behalf of the aggrieved person. Ex.A2 evidences that the aggrieved person who has arraigned as defacto complainant authorised the complainant organisation to prosecute her grievance before this Commission. Until and unless the document placed by the complainant to prove its existence were declared null and void by the Competent Court authority, this Commission should act upon those documents. Therefore, we hold that the complainant is having a locus standi to maintain the complaint.

9. Point No.2:

It is the case of the opposite parties that the complaint is barred by limitation on the premise that the cause of action for the complaint arose on 01.03.2016 and the period prescribed under the Act was expired by 28.02.2018. The complaint was filed on 01.07.2022, as such, the complaint is barred by limitation. On the other hand, the complainant contended that the opposite parties having received the booking price issued receipt on 31.01.2016 promising to handover the Flat in the month of March, 2019. Accordingly, the defacto complainant visited the site and noticed that there was no progress in the construction activity and on questioning, the opposite parties responded through Whats app message to take back the booking price on 15.04.2021 and so also reiterated the same by mail dated 19.08.2021.

10. It is needless to say that limitation involves mixed question of law and fact. The factual position (Ex.A5) projected before this Commission goes to show that the opposite parties expressed their inability in completing the project and offered to refund the booking price provided, the defacto complainant sent a Letter of Cancellation of booking. The opposite parties have not denied it and in fact it is the positive case that due to technical

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defects, the project could not even be commenced till date. At this stage, it is trite to refer judgment of Apex Court reported in-I(2022) CPJ 109 (SC) wherein, the Honourable Apex Court held that continuous failure to obtain necessary permissions from the appropriate authority for completion of project is a breach of obligation imposed and it amounts to continuing ground. Placing reliance on the ruling, if we examine the record, it is evident that the opposite parties from 2016 to 2021 did not even obtained required permission to commence the work and at the fag end of the time the opposite parties offered to return the booking price which is nothing, but violation of the obligation cast upon them which gave cause of action to present the present complaint, hence, we hold that the complaint is in time.

11. Point Nos.3 & 4:

It is admitted case of either parties to the lis and evident from Ex.A3, the opposite parties collected Rs.2,00,000/- towards booking price for the Flat as shown in Ex.A4 and as per Ex.A5, the opposite parties unable to complete the construction and deliver the flat receiving the balance sale consideration and offered to return the booking amount after lapse of nearly six years. Normally the proposed buyers going by advertisements and back ground of firms/companies evincing interest to enter into contracts to fulfil their dreams of owning a house. When their dreams were shattered due to inaction on part of the builders definitely will cause great hardship and mental agony. The Opposite parties have ^{inf}been undertaken to build sky towers by obtaining necessary permissions accepting deposits from the proposed buyers is bound to complete and deliver the flats as promised. Failure will definitely lead to deficiency in service. From the admission in Ex.A5 mail the opposite parties unable to obtain necessary permission whatever may be the reason definitely tantamount to deficiency in service. Hence, we consistently hold that the opposite parties are liable to refund the amount with 6% p.a. from 31.01.2016 till the date of realisation. While coming to the claim of damages is concerned, the complainant claimed Rs.50,00,000/- towards mental agony and harassment and Rs.10,00,000/- towards negligence, deficiency in service and unfair trade practise. The complainant except producing Exs.A3 & A4, the forms that were filled in by the complainant was not produced. The opposite parties got it marked as Ex.B2 Clause-10 of the said Ex.B2 mandates that allottee should enter into agreement with the developer within 30 days from

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the date of allotment, failing which the booking stands cancelled. The defacto complainant having paid Rs.2,00,000/- towards booking price is expected to make the payment either periodically or lumpsum by entering into an agreement required under Ex.B2. The complaint is completely silent about the efforts made by the defacto complainant to fulfil her part of obligation to complete the contract in the absence of which it can be inferred that the defacto complainant also contributed negligence in performing her part of obligation, as such, we are unable to award compensation either towards mental agony or towards deficiency in service.

We answered the points accordingly.

12. In the result, the Complaint is partly allowed directing the opposite parties to refund the principal amount of Rs.2,00,000/- with interest @ 6% p.a. from 31.01.2016 till the date of realisation and further directed to pay costs of Rs.5,000/- (Rupees Five thousand only).

Time for compliance is one month from the date of receipt of this order.

The rest of the reliefs claimed by the complainant are dismissed.

Dictated to the Shorthand Writer, transcribed by her, corrected and pronounced by us in the open Commission on this the 29th day of May, 2023.

[Signature]
Woman Member
12/06/23

[Signature]
Male Member
12/06/23

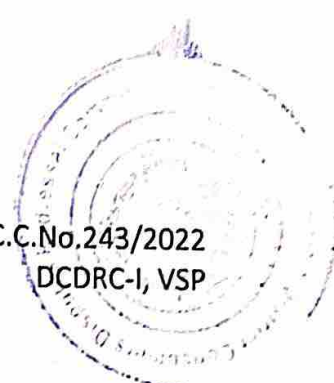
[Signature]
President 5.06.23

APPENDIX OF EVIDENCE

1. Witnesses examined for the complainant: NIL
2. Witnesses examined for the opposite parties: NIL

Exhibits Marked for the Complainant:

Ex.A1	07.04.2010	Incorporation Certificate of Organisation and its True translation.	Photocopy
Ex.A2	27.05.2022	Authorisation Letter	Original
Ex.A3	31.01.2016	Acknowledgment customer care along with receipt issued by the opposite parties.	Originals
Ex.A4	19.01.2016	Pre-Booking Confirmation of Flat in Presidential Towers along with Floor plan.	Photocopy
Ex.A5	19.08.2021	E-mail conversation	Downloaded copy
Ex.A6	--	Presidential Tower Broacher	Original



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Exhibits Marked for the Opposite Parties:

Ex.B1	19.04.2019	Letter of Authorisation in favour of R.Balaji	True copy
Ex.B2	27.06.2019	Letter of Authorisation in favour of R.Balaji	True copy
Ex.B3	30.01.2016	Booking form of Dr.Nittala Rajaylakshmi	True copy


Woman Member
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