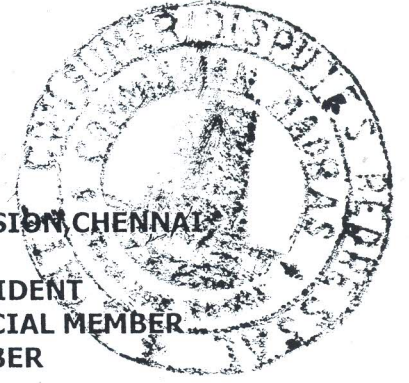


BEFORE THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION, CHENNAI

BEFORE : HON'BLE THIRU JUSTICE R.REGUPATHI
THIRU.J.JAYARAM
TMT.P.BAKIYAVATHI

PRESIDENT
JUDICIAL MEMBER
MEMBER



F.A.NO.250/2014

(Against the order in CC.No.29/2012, dated 29.04.2014 on the file of DCDRF, Thiruvallur)

DATED THIS THE 5TH DAY OF FEBRUARY 2015

1. D.Thiruvateeswaran
L 13A, Sarvamangala Colony
Ashoknagar, Chennai 600 083

2. Shivakumar K Iyer
14 F2, Guru Brindavan
Jeevan Nagar, 4th street
Adambakkam
Chennai 600 088

Appellants/complainants

Vs

The Chief Executive Officer,
Central Govt.Employees' Welfare
Housing Organization,
6th Floor, A Wing Janpath Bhavan,
New Delhi 110 001

Respondent/opposite party

This appeal coming before us for final hearing on 25.11.2014 and on hearing the arguments of both sides and upon perusing the material records, this Commission made the following order:

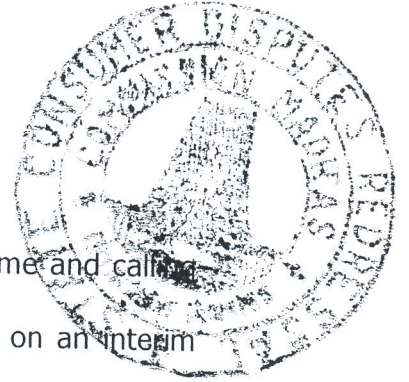
Appellants/ Complainants : In person

Counsel for Respondent/Opposite party : M/s.M.Krishnamurthy ✓

J.JAYARAM, JUDICIAL MEMBER

This appeal is filed by the complainants against the order of the District Forum, Tiruvallur in CC.No.29/2012, dated 29.4.2014 dismissing the complaint.

2. The case of the complainants is that they were allotted a Type 'D' and Type 'B' dwelling units respectively by the opposite party in February 2006. The cost of the dwelling units was to be paid in six months as per the allotment letter and the payment schedule given in the Rule Book supplied. In addition, escalation cost was demanded by the opposite party which also was paid in full in three parts. As per para 8 Part A of the Rule Book, the opposite party was under an obligation to deliver the dwelling unit within 30 months of commencement of the construction slated for 2006. Further the opposite party did not adhere to the target date but offered possession illegally on 16.1.2012 before getting the mandatory completion certificate from CMDA. Many items of work are still pending and lot of major & minor defects were unattended. Till date the CMDA has not given Completion Certificate for 10 out of the 37 blocks. According to the payment schedule in the Rule Book, Para 7 Part A in Note-III an amount equal to 1.5% of the total cost is to be paid by each beneficiary towards reserve fund, along with the sixth & final instalment. The opposite party sent a letter stating that those funds called Contingency Reserve Fund is created to cater to any unforeseen requirements and it is common for all projects and the amounts were paid by both the complainants. All the housing schemes of the opposite party are self financing projects and the scheme is on "no loss no profit" basis. The accounts of the project are closed and the contractor had quoted Rs.896/- per sq.ft for the construction of dwelling unit and it was accepted by the opposite party and inter alia 2% of the amount towards contingency and 1.5% towards reserve fund and 2% towards CGEWHO overheads and fixed the



initial cost at Rs.1051/- per sq.ft at the time of announcing the scheme and calling for applications for allotment. This was hiked to Rs.1350/- per sq.ft on an interim costing and further increased to Rs.1352/- per sq.ft on final costing later. The opposite party is having nearly Rs.30 crores in CRF. All these amount to deficiency in service on the part of the opposite party and the opposite party has adopted unfair trade practice and hence the complaint.

3. According to the opposite party the complainants have already filed the complaint in CC.No.40/2010 over the same subject matter and the issues raised in the present second complaint are already addressed and decided in the earlier complaint by the District Forum and nothing survives in the present second complaint for disposal. Further two complainants cannot jointly file a single complaint without the permission of the District Forum and so the complaint is not maintainable. There is no deficiency in service or unfair trade practice.

4. The District Forum considered the rival contentions and dismissed the complaint holding that there is no deficiency in service on the part of the opposite party.

5. Aggrieved by the impugned order the complainants have preferred this appeal.

6. It is pertinent to note, that two individual consumers have jointly filed this common complaint without obtaining the permission of the District Forum as contemplated under Sec.12 (1) (c) of the Consumer Protection Act and therefore the present complaint is not maintainable.

7. Further we find that complex issues are involved in the complaint and for proper decision of the issues detailed enquiry has to be conducted by adducing documentary evidence and the complaint cannot be disposed of adopting summary procedure. This is a fit case which has to be decided by a Civil Court which is the proper Forum. We rely on the following decisions of Hon'ble Supreme court in this regard.

- 1) Oriental Insurance Company Ltd --vs--Munimahesh Patel --- 2007-2 L.W.661.
- 2.CCI Chambers Co.op.HSG.Society Ltd --vs--Development Credit Bank Ltd -- 2003 (4) CTC 299

8. In the result, the appeal is dismissed confirming the order of the District Forum dismissing the complaint and the appellants/ complainants are granted liberty to approach the Civil court or any other appropriate forum for seeking his remedy and the period of pendency of the complaint before the District Forum and this Commission will be excluded while determining the period of limitation as contemplated under Sec.14 of the Limitation Act.

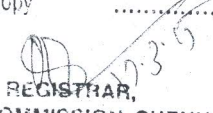
No order as to costs in the appeal.

P. Bakiyavathi
P.BAKIYAVATHI
 MEMBER

J. Jayaram
J.JAYARAM
 (J)MEMBER

R. Regupathi
R.REGUPATHI
 PRESIDENT

INDEX; YES/NO
 VL/D;/PJM/CONSUMER

STATE CONSUMER PROTECTION REDRESSAL COMMISSION, CHENNAI	
TAMIL NADU	
1. Date of Order	24.2.15
2. Date when copy was made ready for issue	17.3.15
3. Date of delivery / dispatch of free copy	26.6.15
4. Date of application for duplicate copy
5. Date of issuance of duplicate copy
 REGISTRAR, STATE COMMISSION, CHENNAI TAMIL NADU	