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Date of filing: 16-11-2017

Date of Order: 30-07-2019

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM
- II, HYDERABAD**

Present

**SRI VAKKANTI NARASIMHA RAO B.A., B.L., PRESIDENT
SMT. MEENA RAMANATHAN, MEMBER**

Tuesday, the 30th day of July, 2019

Consumer Case No.482/2017

Between :

Mr. RAJPUT BALAJI, S/o. Hirasingh, Aged about : 42 years,
Occ : Service in Indian Army, R/o. 4/8 Old Umrao Complex, KLP 2,
Bikaner, Rajasthan. Complainant

AND

1. M/s. Incredible India Projects Private Ltd., Rep. by it's Managing Director, H.No.3-6-98, 2nd Floor, Vasavi Towers, Opp to HDFC Bank, West Maredpally, Secunderabad - 500026.
 2. Mr. Venkat Rao Akondi, Asst. General Manager, M/s. Incredible India Projects Private Ltd., H.No.3-6-98, 2nd Floor, Vasavi Towers, Opp to HDFC Bank, West Maredpally, Secunderabad - 500026.
- Opposite parties

Consumer Case No.483/2017

Between:

Mr. Rajput Balaji, S/o. Hirasingh, Aged about: 42 years, Indian, Occ :
Service in Indian Army, R/o. 4/8 Old Umrao Complex, KLP 2, Bikaner,
Rajasthan.Complainant

AND

1. M/s. Incredible India Projects Private Ltd., Rep. by it's Managing Director, H.No.3-6-98, 2nd Floor, Vasavi Towers, Opp to HDFC Bank, West Maredpally, Secunderabad - 500026.
 2. Mr. Venkat Rao Akondi, Asst. General Manager, M/s. Incredible India Projects Private Ltd., H.No.3-6-98, 2nd Floor, Vasavi Towers, Opp to HDFC Bank, West Maredpally, Secunderabad - 500026.
- Opposite parties

Counsel for the Complainant

Counsel for the Opposite parties 1 & 2

: M/s. K. Visweswara Rao

: M/s. Nelson Mathew

**ORDER**

(By Sri Vakkanti Narasimha Rao, Hon'ble President on behalf of the bench)

The above both the complaints in CC No. 482 of 2017 and CC No. 483 of 2017 filed by the complainant under Section 12 of Consumer Protection Act, 1986 with a prayer to direct the opposite parties in each complaint:-

- 1) To refund a sum of Rs.1,33,800/- (Rupees One lakh thirty three thousand and eight hundred only) in each complaint with interest @ 18% p.a. from 21.07.2014 till the date of realization.
- 2) To pay a sum of Rs. 60,000/- in each complaint towards the compensation for mental agony, hardship and serious inconvenience.
- 3) To pay a cost of Rs.15,000/-in each complaint.

BRIEF FACTS OF THE COMPLAINTS:

The complainant states that the opp. party No.1 is a company registered under the companies Act of 1956 engaged in the business of Real Estate such as procuring the vacant sites, dividing the same into the residential plots by undertaking to provide developments, basic amenities and infrastructure for making the said residential plots "fit for habitation". The opp. parties have represented that they have floated a venture at Hussainabad Village, Hanumanpur Village, Bhongir Village, of Bhongir Mandal, which is surrounded by the educational Hubs, Raheja IT, Infosys, NIMS Hospital, CCMB, Singapore Township, Genpact, and Rajiv Gandhi Stadium etc., and the same has the possibility for vast development in some few months and that the opp. parties offered the conversion of the land into the residential land, all Black top roads 60' and 40' road, Electricity with transformer and street lighting, underground drainage with septic tank, water lines with overhead tank and sump, kerbing with footpath tilling, Avenue Plantation, open places



development with greenery and children play area, round the clock security, fully gated community and water harvesting pits etc., and that the investment on the land is an exciting investment opportunity for rewarding returns and that the opp. parties induced the complainant through the colorful brochures, literature, etc., and lured the complainant to subscribe for two plots in the venture of the opp. parties. The opp. parties further informed that "it is a HMDA approved layout first in Bhongir Town. The opp. parties further represented that the venture is just five minutes drive to market, Railway and bus station surrounded by lush lush greens cape and abundant portable ground water etc., and induced the complainant to purchase the plots in their venture. The opp. party No.2 is the Assistant General Manager, who is very actively participated in inducing the complainant towards the scheme of the opp. party No.1. It is further submitted that, being induced by the representations of both opp. parties, the complainant subscribed for two plots vide plot No. 947-B-E/F Extension-03+A vide passbook No. WS 4284 and plot No. 948-A-E/F Extension -03+A vide passbook No. WS 4285 of 150 Sq. yards each.

The complaint in CC No. 482 of 2017 is being filed for the plot no. 947-B-E/F Extension-03+A vide passbook No. WS 4284 for an extent of 150 Sq. yards.

It is further submitted that, the opp. parties represented the cost of each plot 2,38,725/- and in addition to the said cost an amount of Rs.1,000/- towards admission fee, Rs. 6,650/- towards enrolment fee and a sum of Rs.41,500/- towards the allotment fee is payable. Thus the total cost of the plot works out to Rs. 2, 87,875/-.




The complainant has enrolled himself as a subscriber of the plot on 20.10.2013 by paying a sum of Rs. 56,300/- vide receipt bearing No.23333 dated 20.10.2013, which is duly entered in the passbook bearing No. WS 4284. Subsequently, the complainant paid a further sum of Rs. 52,500/- vide receipt bearing No. 3480 dated 05.07.2014 and further sum of Rs. 25,000/- is paid vide receipt bearing No. 3951 dated 21.07.2014 and thus the complainant paid a total sum of Rs. 1,33,800/ for the claim made in CC No. 482 of 2017.

The complaint in CC. No. 483 of 2017 is being filed for plot No. 948-A-E/F Extension -03+A vide passbook No. WS 4285 for an extent of 150 Sq. yards.

The complainant has enrolled himself as a subscriber of the plot on 20.10.2013 by paying a sum of Rs. 56,300/- vide receipt bearing No.23334 dated 20.10.2013, which is duly entered in the passbook bearing No. WS 4285. Subsequently, the complainant paid a further sum of Rs. 52,500/- vide receipt bearing No. 3480 dated 05.07.2014 and further sum of Rs. 25,000/- is paid vide receipt bearing No. 3952 dated 21.07.2014 and thus the complainant paid a total sum of Rs. 1,33,800/- for the claim under CC No. 483 of 2017.

It is further submitted that, the complainant having paid the said sum of Rs.1,33,800/- for each plot and sought for the proportionate development in the venture for proceeding with the further payment on par with the proportionate to the development works as promised. The complainant also sought for furnishing of all the title documents, link documents approved layout etc., As a matter of fact, the said documents have been asked by the complainant before joining the scheme itself and

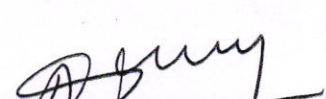
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the opp. parties have stated that they have the clear title over the offered land and as a procedural aspect they provide the documents on payment of around 46% of the cost of the plot. The complainant having no other alternative have paid the said amount of Rs.1,33,800/- for each plot as stated supra and which represents more than 46% and that the complainant having paid the said amount, requested for furnishing the link documents, title documents and approved plans for verification. The opp. parties have been postponing to furnish the same on one pretext or other and so far have not furnished the same. The complainant have on several occasions have requested for the same and the same is of no avail.

It is further submitted that, as the opp. parties are not furnishing the title documents, the complainant has clearly come to the conclusion that the opp. parties without there being the proper approval and title floated the venture. The opp. parties floating the venture without there being clear title, approval and development amounts to a sheer negligence and deficiency in the service on their part.

The complainant in this regard approached the opp. parties to carry the development works and furnish the documents and proportionate to the development, the complainant is ready to pay the further amount provided all the title documents, link documents and approvals are furnished. When the complainant requested in those lines, the opp. parties has stated that the entire scheme period is 39 months and they carry the development works as promised in the scheme schedule and the complainant pay further amount proportionate to the development works on furnishing the documents.





The complainant with a fond hope waiting for the same but the opp. parties inspite of completion of 39 months from 20.10.2013 so far have not completed the development works. The scheme period of 39 months have being completed by 19.01.2017. In spite of the completion of the scheme period, no development works have been completed. The land has also not been laid in even. No dividing stones have been laid for division of plots. No black top roads. No Electricity transformer, no street lighting, no underground septic tank, no water lines with over head tank and sump, no kerbing with footpath tiling, no avenue plantation, no round the clock security, no water harvesting pits etc., are provided. The documents have also not provided. In one word, the opp. parties except naming to the venture as "WILDSTONE", nothing is performed. The opp. parties themselves have canvassed that they are the reality revolution, practically they are so inferior.

The complainant in person visited the opp. Parties on several occasions and requested for the development works and despite the renewing of the promise by the opp. parties, nothing is materialized. However, the complainant has submitted a representation to the opp. parties on 14.09.2017 and on 20.09.2017 stating that the development works have not completed so far and that he visited on 10.04.2017 and requested for completion of the works and the opp. parties promised to complete the same in due course and the complainant again visited the venture in the month of September 2017 and the venture remain as it is as is seen earlier and hence he expressed his readiness to pay the entire amount in onetime cash provided the opp. parties completes the development works.



The opp. parties without proceeding with the development works with a malafide intention and in order to deprive the hard earned amount of the complainant has issued an anti dated final notice dated 01.09.2017, actually posted the same on 21.09.2017 and the same is received by the complainant on 24.09.2017 stating that the complainant defaulted the payment and that they revised the plot cost for this subject plot to a sum of Rs.3, 37,500/- as against the earlier cost of Rs. 2, 87,875/-. As a matter of fact, the complainant is not the defaulter, the defaulters are the opp. parties in failing to proportionately make the development and not providing the documents and hence the opp. parties have no right to revise the cost and however, they are sticking on their stand, the complainant has lost his confidence upon the opp. parties and decided not to further proceed with the scheme in view of the deficiency in the service of the opp. parties and decided to take back his amount with penal interest and heavy compensation.

As such, the complainant requested for the same in that lines and in spite of his several requests, the refund of the amount is not so far materialized. There is a clear inducement of the opp. parties for subscribing a plot with their attractive representations of stupendous offer and for carrying the developments in a time frame manner, the subscription was made and because of the indifferent attitude of the opp. parties, it stands futile.

The action of the opp. parties in failing to carry the developments in the venture within the time frame as promised and the further failure of providing the basic amenities, security, water, electricity etc., and failing to furnish the title documents, link documents etc., despite



several personal visits and written representations of the complainant and the ultimate failure of the opp. parties in refunding the amount with interest is not only amounts to deficiency in the service but also amounts to the unfair trade practices adopted by the opp. parties. Therefore, the opp. parties are bound to refund the amounts paid by the complainant with penal interest, heavy compensation and exemplary costs subjecting the complainant to serious inconvenience, hardship and mental agony.

WRITTEN VERSION OF THE OPPOSITE PARTIES:

The Complaint filed by the petitioner is not maintainable either in law or facts as such the same is liable to be dismissed. That the allegations made in complainant and adverse averments made in the complaint are denied as false and untrue except those averments that are specifically admitted herein. In reply to Para No. 1 of the complaint the opposite party stated that the same is true. In reply to Para No. 2 of the complaint the opposite stated that the same is true. In reply to Para No. 3 of the complaint the opposite party states that the same is true. In reply to Para No. 4 of the complaint the opposite party states that the same may be true subject to the verification of account statement of the complainant by the opposite parties. The complainant has never ever asked the opposite parties for the documents. In fact the complainant after being satisfied with the reputation of the opposite parties entered into the contract with the opposite parties. As there are several customers for the opposite parties and the complainant without any iota of proof is leveling these allegations against the opposite parties to cover up his default act.



The opposite parties are welcoming the complainant to clear the dues at the present rate and the opposite party will complete the project as promised to all its customers. All the development works will be completed very soon. The complainant is resorting to this practice so as to cover up his default in not paying the installments as per the schedule.

The opposite party is a company incorporated under provisions of Indian Companies Act, 1956 involved itself in the business of immovable property dealings. The memorandum and articles of association empowered the company to acquire and alienate immovable properties on behalf of and in the name of the company. The opposite party is abiding by all rules and regulations as per all the statutory acts since its inception in the year 2007. The company is also into various social activities for the welfare of the people.

This Forum may appreciate the question of law in its true perspective that the complainant is not a consumer as defined under section 2(1)(d) of the Consumer Protection Act 1986 as the complainant has invested in the venture of the opposite parties which is evident in the contents of the complainant letter dated 20.09.2017. The same is commercial in nature and for any commercial disputes people have to approach the competent Civil Court. Therefore it is prayed that this Forum may be pleased to dismiss the complaint or pass such other order or orders as the Forum may deem fit and proper in the circumstances of the case.

Evidence Affidavit of the complainant is filed as Pw-1 in both the complaints in CC No. 482 of 2017 and 483 of 2017 and marked Ex. A1 to Ex. A-5 on his behalf.

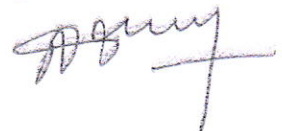
Evidence Affidavit of opposite parties filed through Praveen Kumar who is their Authorized Signatory in both the complaint in CC No. 482 of 2017 and CC No. 483 of 2017. No documents marked on their behalf.

Complainant filed a memo stating that their Evidence Affidavit treated as their written arguments. Heard arguments of both sides in both the Complaints in CC No. 482 of 2017 and CC No. 483 of 2017.

On perusal of entire pleadings and counter pleadings of the parties in both the Complaint in CC No. 482 of 2017 and CC No. 483 of 2017 the points to be answered for determination are:

1. Whether the complainant is a consumer?
2. Whether this Forum has got jurisdiction to entertain the complaint?
3. Whether any deficiency of service is there on the part of the opposite parties as claimed in the complaint?
4. Whether the complainant is entitled for the relief sought?
5. To what relief?

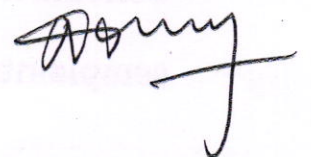
Point No. 1: It is not in dispute that the complainant is the member of the opposite parties in accordance with Ex. A-2 in both the complaints in CC No. 482 of 2017 and 483 of 2017 and he complained through Ex. A-3 for non-compliance of the project till September, 2017. Ex. A-4 is the Final notice dated: 01st September, 2017 issued by the opposite parties to the complainant demanding balance due amount while admitting receipt of Rs. 1, 33,800/- as on 31.08.2017 in each complaint. The complainant claimed that the said Ex. A-4 has been dispatched by the



opposite party on 19.09.2017 in view of the postal stamp under cover in Ex. A-5 which is subsequently issued on acknowledging the receipt under Ex. A-3. The opposite parties had not denying the amount received under Ex. A-2 in each complaint while admitting the same in Ex. A-4 for which admission of it is comes under the ambit of definition of consumer as defined under Section 2 (1) (d) (i) (ii) of the Consumer Protection Act, 1986. Hence we answered this point accordingly in favour of the complainant.

POINT NO. 2: Both the opposite parties are situated within the local limits of this Forum for which it carries its business within the vicinity and local limits of this forum. As such this Forum has got territorial jurisdiction to entertain these complaints and moreover over the value under the claim of the complaints sought for not exceeding Rs. 20.00 Lakhs. As such this Forum has got pecuniary jurisdiction to entertain the complaint.

Point .No. 3 & 4: The contentions of the complainant is that the costs of the plot under each complaint is @ Rs. 2,38,725/- and in addition to an amount of Rs. 1,000/- towards admission fee, Rs. 6,650/- towards enrolment fee and a sum of Rs. 41,500/- towards the allotment fee for which the total costs of each plot works out at Rs. 2, 87,875/-. The payments made under Ex. A-2 in both the complaints in CC No. 482 of 2017 and CC No. 483 of 2017 is not in dispute. The further contention of the complainant is that the entire scheme period is for 39 months for which the opposite parties shall carry the development works so that the complainant shall pay future amounts proportionate to the development works on furnishing the documents.





But neither of the documents filed by the complainant establishes that the entire scheme period is for 39 months and costs of the each plot is @ Rs. 2, 38,725/- apart from an amount of Rs. 1,000/- towards admission fee, Rs. 6,650/- towards enrolment fee and a sum of Rs. 41,500/- towards allotment fee for which the total costs of each plot works out at Rs. 2, 87,875/-. In view of Ex. A-4 the complainant is the defaulter. At this juncture we perused the terms and conditions under Ex. A-2 in which it reveals that as per Condition No. 8 "If a member reserves a plot and becomes default in payments, the company has the right to cancel his/her plot without any notice. If the payment is regularized later, another plot has to be selected from the available vacant plots" and on perusal of Condition No. 11 "All the developments will be completed only by the end of the scheme period" and on perusal of condition No. 18 "Registration of plots will be done after getting Layout approval". As the complainant became defaulter he has to follow the terms and conditions as laid under Ex. A-2 condition No. 8 only. As the complainant failed to prove any of his contentions raised in his complaints in CC No. 482 of 2017 and CC No. 483 of 2017 with substantial documentary evidence having conclusive proof in his favour, we feel it there is no deficiency upon the part of the opposite parties as claimed by the complainant for which we are answering these points accordingly against the complainant. With the above observations we are under the considered view that the complaints in CC No. 482 of 2017 and CC No. 483 of 2017 are meritless to the extent of deficiency of service or adoption of unfair trade practice as envisaged under the Consumer Protection Act, 1986, so that we are dismissing both the complaints without costs.

Point.No.5: In the result both the complaints in CC No. 482 of 2017 and CC No. 483 of 2017 are dismissed without costs.

Dictated to Typist transcribed and typed by her, pronounced by us on this the 30th day of July, 2019.

MEMBER
MEMBER



APPENDIX OF EVIDENCE in CC.No.482/2017

Witnesses examined for complainant

Sri Rajput Balaji (PW1)

Witnesses examined for Opp.Parties

Sri Praveen Kumar (RW1)

Exhibits marked on behalf of the Complainant:-

- Ex.A1 - Brochure
- Ex.A2 - Passbook
- Ex.A3 -Letter of the Complainant Dt. 20.9.2017
- Ex.A4 - Antedated final notice registered by the complainant on 1.9.2017
- Ex.A5 - Postal Envelop

Exhibits marked on behalf of the Opposite parties:-

--Nil--

APPENDIX OF EVIDENCE in CC.No.483/2017

Witnesses examined for complainant

Sri Rajput Balaji (PW1)

Witnesses examined for Opp.Parties

Sri. Praveen Kumar (RW1)

Exhibits marked on behalf of the Complainant:-

- Ex.A1 - Brochure
- Ex.A2 - Passbook
- Ex.A3 -Letter of the Complainant Dt. 20.9.2017
- Ex.A4 - Antedated final notice registered by the complainant on 1.9.2017
- Ex.A5 - Postal Envelop

Exhibits marked on behalf of the Opposite parties:-

--Nil--

MEMBER
MEMBER

GOVERNMENT OF TELANGANA
DISTRICT CONSUMER FORUM-II
HYDERABAD-500 001

Order Pronounced on... 30/07/2019
Order Made Ready on... 01/08/2019
Order Delivered to the Complainant on... 03/08/2019
Order Delivered to the Opposite party on... 03/08/2019

PRESIDENT
PRESIDENT

Dis.No.691
03/08/2019

SHERISTADAR
District Consumer Forum-II
(Under Consumer Protection Act, 1986)
Hyderabad.

3/8/2019

