

**BEFORE THE TELANGANA STATE CONSUMER DISPUTES
REDRESSAL COMMISSION : HYDERABAD.**

**F.A.No. 163 OF 2020
AGAINST ORDERS IN C.C.281/2016
DISTRICT CONSUMER COMMISSION, RANGA REDDY**

Between:

Bharat Sanchar Nigam Ltd., Executives Association (BNSLEA),
Regd. No.1338 of 2012, Represented by :-

1. Sri K.Veera Raghuvulu President BSNLEA,
H.No.1-5-264/2, New Maruthinagar North,
Opp.: Satyanagar Kaman, Kothapet,
Sarrornagar, Hyderabad-500 060,
(Ph.9440000423).
2. Sri R.V.Ramana Murthy General Secretary BSNLEA
H.No.HIG-340, Flat No.01, Samrat Complex,
6th Phase, KPHB Colony, Kukatpally,
Hyderabad-500 072 (Ph.944000365).
3. Sri P.Shyambabu, Treasurer BSNLEA,
Dy. General Manager, TERM (DOT),
Telephone Exchange Complex,
Kavadiguda, Hyderabad-500 080.
(Ph.: 944000019)

.....Appellants/ Opposite Parties

And:

Sri J.Sai Kumar,
H.No.23-78/12/2, Radha Krishna Nagar, Anandbagh,
Malkajgiri, Ranga Reddy District,
Hyderabad-47 (Ph.: 9490202333).

.....Respondent/ Complainant

Counsel for the Appellants/Opposite Parties : M/s K.Visweswara
Rao

Counsel for the Respondents/ Complainant : Sri GLN Murthy.

QUORUM :

**HON'BLE SMT. MEENA RAMANATHAN, I/c PRESIDENT
&
HON'BLE SRI. V.V.SESHUBABU, MEMBER – (JUDICIAL)**

**MONDAY, THE 11th DAY OF NOVEMBER
TWO THOUSAND TWENTY FOUR**

Order : (PER HON'BLE SRI. V.V.SESHUBABU, MEMBER – JUDICIAL)

1. The appeal is filed u/s 15 of Consumer Protection Act, 1986 by the Opposite Parties, aggrieved by the order of District Consumer Commission, Ranga Reddy, dated 27.01.2020 in CC 281/2016, where under the opposite parties jointly and severally directed to receive the development charges from the complainant and register the plot in favour of the complainant. The opposite parties are further directed to pay compensation of Rs.30,000/- to the complainant for the mental agony and physical hardship and costs of Rs.10,000/-. Time for compliance is one month, in default the opposite parties shall pay an additional amount of Rs.25,000/- as punitive damages to the complainant.

2. The brief averments of the complaint are that the complainant became a member in the opposite party society which was registered on 02.06.2012 vide registration No.1338/2012 of A.P. Societies Registration Act, 2001; that the society was formed to ensure collection of requisite funds from amongst members and to identify extent of property and make the same in to fragments and obtain a layout and to allot plots on pro-rate holdings to the members, basing on their contribution by pick and choose of lots; that the Society has purchased Ac.18.5 gts. of agricultural land at Mokila Village, Shankarpally Mandal, Ranga Reddy District, covered by Sy.No.'s 297, 299, 300, 301 and 325; that the complainant became member in the society on 06.08.2012 vide application No.107; that the society agreed to allot plot and by developing the same approximately @ Rs.1,300/- per square yard; that the society issued a confirmation letter to the complainant, agreeing to allot 600 sq. yards of the land; that confirmation letter is also signed by both parties to the complaint; that the complainant in all paid Rs.8,85,000/- by way of cash in 05 installments. However, the receipt was issued only for Rs.1,32,000/- showing that it was received towards cost of the plot at Rs.220 x 600 sq.yards; that basing on a decision of the General Body Meeting held on 20.12.2015, the complainant paid Rs.3,24,000/- @ Rs.540 x 600 sq. yards, vide cheque No.617527

dated 22.02.2016, however, cheque was returned without any valid reason; that on 12.07.2016, the complainant issued another cheque for Rs.3,24,000/- to the society and requested the same to intimate the date of registration of the land; that the complainant altogether paid Rs.12,09,000/- and he was not due to pay any amount; that the draft layout permission was obtained by the society; however, it failed to register the land in the name of the complainant during the last 04 years; hence, the complaint directing the society to register the plot and execute sale deed in favour of the complainant and also to pay compensation of Rs.30,000/- for causing mental agony.

3. The brief averments of the counter of the opposite party No.2 & 3 are that the complainant is put to strict proof of all the averments made in the complaint except, those that are admitted; that the complainant became a member having joined in the society on 06.08.2012; that 600 sq. yards was allotted to the complainant; that the contention of the Association that it fixed the rate @ Rs.1,475/- per sq. yard, is a cock and bull story; that the complainant not paid Rs.8,85,000/- as alleged; that the complainant paid only Rs.1,71,000/- @ Rs. 285/- per sq. yard, out of which a receipt was issued to the tune of Rs.1,32,000/-; that the alleged payment of Rs.12,09,000/- is an utter false story; that the complainant indulged in the anti-society activities by blaming the office bearers with baseless allegations thereby, tarnished their image; that in a General Body Meeting, a decision was taken to expel the complainant from the membership and also contemplated to initiate criminal action against the complainant u/s 499 & 500 IPC; that the society is willing to refund Rs.1,71,000/- to the complainant and informed the same to the complainant to come collect the same; that the society prepared the list of alleged members, and even allotted plots and they are going to register the same within 15 days; that by suppressing all these facts, the complainant has filed this complaint, to make a

wrongful gain. With this, requested to dismiss the complaint with exemplary costs.

4. Before the Commission below, complainant filed evidence affidavit and additional evidence affidavit as PW1 and marked Ex.A1 to A33. One Mr.K.Veera Raghavulu, President BSNLEA, BSNL Executive Association of society filed evidence affidavit as RW1; Mr.V.Ramana Murthy, General Secretary of opposite party society filed evidence affidavit as RW2 and Mr.P.Shyam Babu, Treasurer of opposite party society, filed evidence affidavit as RW3. Ex.B1 & Ex.B2 are marked for opposite parties. Written arguments are filed for the opposite parties. As per the *docket proceedings*, dated 27.07.2018, the complainant represented that their pleadings and evidence may be treated as written arguments.

5. The Commission below, settled the following points for discussion viz..:

- **Whether there is any deficiency in service on the part of Opposite Parties?**
- **To what relief?**

6. Having heard both sides, the Commission below basing on the material available on record, passed the order as stated supra. Aggrieved by the same, the present appeal is filed by the opposite parties with the following grounds:

- The order of the Commission below is contrary to law, weight of evidence and probabilities of the case.
- The Commission below failed to observe that the complainant is not a “Consumer” u/s 2(d) of the Consumer Protection Act and as the house construction activity does not fall under the purview of the C.P.Act, it should have dismissed the complaint.
- The Commission below failed to appreciate the judgment of the Hon’ble High Court of A.P. in W.P.No.31427/2014, since as per the said judgment “failed to handover the possession of the plot of land” simplicitor does not come under the purview of

District Commission or State Commission or the National Commission.

- The Commission below failed to appreciate that the complainant has not paid Rs.8,85,000/- and also failed to observe that how the complainant came to the conclusion that the plot of land was fixed at Rs.1,475/- per sq. yard.
- The complaint is barred by time since the petition is filed u/s 24 A.
- The Commission below failed to appreciate that the complainant was expelled from the membership in the General Body Meeting of the Society for his anti-activities of the society.

With these grounds and others that will be urged at the time of arguments, requested to set aside the impugned order of the Commission below and to allow the appeal.

7. The opposite parties have filed I.A. No.28/2021 and IA No.1216/2021 to receive documents in the appellate stage, under order 41 Rule 27, CPC and those petitions were dismissed. No document is marked .

8. Heard the arguments on both sides on 16.10.2024 and matter was reserved for judgment with a liberty to either side to file written arguments within 10 days, but neither side availed the same. On 30.10.2024, the appeal was posted for orders, but, due to technical problem of the System, it was not pronounced.

For the sake of the convenience the parties will be addressed as they arrayed in the impugned order.

9. Now the points for determination in the appeal are :

- ((1) Whether there is any deficiency of service on the part of the opposite parties?**
- (2) Whether the impugned order under appeal is sustainable under law?**
- (3) Relief?**

10. **POINTS 1 to 3:** Ex.A1 is the application for membership submitted by PW1 and there is no dispute for the same and he was admitted as a member. Ex.A2 goes to show that the society agreed in principle to sell the plots to its members @ Rs.1,300/- per sq. yard, plus or minus 10% to a member and it was informed to PW1 under Ex.A3 confirmation letter. As per the same, the society agreed to allot 600 sq. yards to PW1 and stated that the plot will be allotted by way of lottery after the confirmation of draft technical layout by HMDA and further mentioned that the area of the plot may be increased or decreased by 50 sq. yards. No document is filed by PW1 to show that the society fixed the plot cost @ Rs.1,475/- per sq. yard, as mentioned in the complaint.

11. It is mentioned in the complaint itself that PW1 in all paid Rs.8,85,000/- cash but receipt was given for only Rs.1,32,000/- @ Rs.220/- per sq. yard x 600. It is important to note that when huge amount of Rs.8,85,000/- was paid that too by way of cash to the Executive Officer bearers of the society, it is very difficult to believe that without receiving a scrap of paper, how any person could pay such amount. Added to the same, PW1 agreed to have paid Rs.1,32,000/- by way of cheque. When such facility is available to pay amounts, not issuing the cheques evidencing the payments is big lacuna in the case of complainant. As mentioned in Ex.A2, there is a possibility of allotting plot with plus or minus 10% of the value of the sq. yards @ Rs.1,300/-. The value of the plot will be $\text{Rs.1,300/-} \times 600 = \text{Rs.7,80,000/-}$. If it is 10% value less than, it comes to $\text{Rs.1,170/-} \times 600 = \text{Rs.7,02,000/-}$. If it is 10% excess of the plot cost, it comes to $\text{Rs.1,430} \times 600 = \text{Rs.8,58,000/-}$. As already stated supra, no document is filed to show that the society fixed the rate of sq. yard at Rs.1,475/-. It may as it be there.

12. PW1 contended that he paid Rs.3,24,000/- by way of cheque towards development charges, but the same was returned

by the society without any reason. PW1 assessed the development charges @ Rs.540/- per sq. yard. It is the further contention that subsequently PW1 paid another Rs.3,24,000/- by another cheque No.455272, dated 27.07.2016 and made a request to inform the date of registration and allotment of the particular plot. For the reasons better known to the PW1, no document is filed to show that Cheque No.455272, dated 27.07.2016 for Rs.3,24,000/- was in fact encashed by the society. Including this amount of Rs.3,24,000/-, it is the contention that altogether he paid Rs.12,09,000/-. The opposite parties have vehemently denied the receipt of Rs.12,09,000/-. So, the burden is on PW1 to prove the same and he miserably failed in that regard except to the admitted payment of Rs.1,71,000/- by the society.

13. It is the argument of PW1 that he sent several SMS and also addressed the letters by registered post to the society informing that he paid Rs.12,09,000/- and in the absence of any reply from them, the payment of Rs.12,09,000/- is deemed to have been admitted. We are of the view that in the absence of any documentary evidence regarding the payment of claimed amount, merely because the society failed to give reply, cannot be considered as a payment or deemed payment.

14. Ex.A24 goes to show that the society addressed invitation letter to its members informing them that they are going to conduct lots for the allotment of plots on 19.03.2017 between 12:00 noon and 01:00 P.M. for the eligible members to allot 600 sq. yards plots and it was addressed to PW1. It shows the society offered to allot plot to the PW1 and further mentioned that the members who have not paid development charges shall not be allowed for the draw and also shall be kept in abeyance.

15. It is the argument of PW1 that as nothing is mentioned in the Ex.A24 that, he was liable to pay plot cost and as he was

asked to pay only the development charges, means he was not due any amount to the society towards cost of the plot. The argument sound good, but it is the proforma invitation letter sent to the members and on the other hand, the society vehemently denied payment of total plot cost by PW1. Therefore, basing on Ex.A24, no conclusion can be drawn that PW1 paid total plot cost.

16. Ex.A25 is the Gift Settlement Deed, dated 01.04.2017, means the plots were allotted on 19.03.2017 itself, as mentioned in the Ex.A24. It is his argument that, by colluding with other office bearers of the society, allotted plots for themselves and it is nothing sort of a malafide act. We are of the view that Ex.A25 cannot be taken as yard stick to attribute the malafide acts. A member to whom plot was allotted can gift plot to the kith and kin. There is no evidence to show that, the donor i.e. Executive members of the society, was allotted with more plots or he was allotted with the plot which is subject matter of Ex.A25, without payment of plot cost etc., Ex.A26 to A32 goes to show that PW1 applied for several documents of the society under RTI Act and he even imputed malafides to the members under the guise that he was cheated. The appropriate Forum for the redressal of PW1 is, to approach the police or criminal courts.

17. Ex.B1 is the copy of resolution, dated 19.03.2017 and it goes to show that in a General Body Meeting attended by requisite quorum, PW1 was removed from the membership. This has not the Forum for PW1 to question his expulsion from membership. Therefore, he (PW1) cannot agitate before this Commission on that aspect.

18. A close look at impugned order of the Commission below goes to show that on one hand it had not believed payment of Rs.8,85,000/- i.e. plot cost by PW1 to the society and on the other hand without considering the same, in the result portion directed the society to register the land by receiving the development charges from PW1. The development charges are only

to the tune of Rs.540/- per sq. yard, as per PW1. How can for a mere payment of Rs.3,24,000/-, plot can be registered in favour of PW1 is not answered by the Commission below. Probably, it might have missed the said aspect. For the reasons better known to PW1, he has not filed any cross appeal questioning the observation of Commission below that "PW1 not paid Rs.8,85,000/-". In the written version, the opposite parties agreed to refund Rs.1,71,000/- to PW1. Since, PW1 not paid the plot cost and as he was expelled from the membership, not entitled for the allotment or registration of plot of 600 sq. yards or any other extent of plot in his favour. So, points are answered in favour of the appellants/opposite parties.

19. In the result, the appeal is allowed without costs by setting aside the impugned order dated 27.01.2020 in CC 281/2016 passed by the District Consumer Commission, Ranga Reddy. However, the opposite parties are directed to refund Rs.1,71,000/- with interest @ 8% per annum from the date of receipt of the respective payments from PW1 till the date of actual re-payment, within one month from the date of receipt of this order.

The Complainant is permitted to withdraw the statutory amount deposited by the opposite parties, along with accrued interest after the lapse of revision period towards part satisfaction of the amount, out of the amounts to be received by him from opposite parties.

Typed to my dictation by Stenographer on the System; corrected by me and pronounced by us in the Open Court on this the 11th day of November' 2024.

Sd/-

Sd/-

I/c PRESIDENT

MEMBER-JUDICIAL

Dated : 11.11.2024

*AD