

**(2003) 07 NCDRC CK 0091**

**In the National Consumer Disputes Redressal Commission**

AAR PEE APARTMENTS PVT. LTD.

APPELLANT

Vs

NEELAM CHAWLA

RESPONDENT

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**Date of Decision :** 17-07-2003

**Acts Referred:**

**Citation :** 2004 2 CPJ 150

**Hon'ble Judges :** Lokeshwar Prasad , Rumnita Mittal J.

**Final Decision :** Appeal disposed of

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**Judgement**

1. -THE present appeal has been filed assailing the order dated 18.10.1999 passed by District Forum, Janak Puri, New Delhi in Complaint Case No. 974/98-entitled Mrs. Neelam Chawla v. M/s. Aar Pee Apartments Pvt. Ltd. and Another.

2. BRIEFLY stated, the relevant facts are that the respondent Smt. Neelam Chawla had filed a complaint before the District Forum on the ground that she had booked a part of building to be constructed by the appellants within one year, on Plot No. 6, Janak Puri District Centre, New Delhi and to be handed over to the respondent for the sale price of Rs. 1,76,400/-. The respondent had duly paid a sum of Rs. 5,000/- vide Receipt No. 4779 at the time of booking and another sum of Rs. 21,460/- vide receipt No. 4799 dated 13.11.1988 as part payment towards the price of the premises booked. As per the agreed terms of booking the respondent was to make payment of 15% of the sale price at the time of booking and thereafter to pay in instalments the balance amount linked with the stages of construction and on receiving call letters from the appellant for the payment of the said instalments. However, the appellants failed to start the construction of the building as assured and also did not send any call letters for payment of instalments. Whenever the respondent approached the appellants, no satisfactory reply was given to the respondent. The construction was started after a delay of 6-7 years and when the respondent contacted the appellants in February, 1998, the building was almost complete and as such the respondent requested the appellants to handover the possession of the same. The appellant however failed to deliver the possession of the booked premises and also failed

to give any satisfactory reply and as such the respondent was constrained to file a complaint before the District Forum for the redressal of her grievances. As per impugned order, the appellant was duly served by registered post and since the notice was not received back undelivered, service was presumed and the appellant was proceeded ex-parte vide order/proceedings dated 22.12.1998.

Accordingly, the learned District Forum vide impugned order allowed the complaint with the directions to the OP to deliver the possession of the space/shop No. G 50-B raised on Plot No. 6, Janak Puri District Centre, New Delhi and in case the possession of the premises was handed over to the respondent, the respondent was to make the payment of the full cost of the premises minus the cost already paid. In the alternative, in case the appellant failed to deliver the possession of the premises in question, he would be liable to refund the amount of Rs. 26,640/- to the respondent together with interest @ 15% w.e.f. 13.11.1988 alongwith compensation amounting to Rs. 1,00,000/- as well as Rs. 1,000/- as cost of litigation.

3. AGGRIEVED by the aforesaid order, the appellant has preferred the present appeal before this Commission. We have carefully perused the documents/material placed on record, as well as, concerned records summoned from the District Forum. We have also heard arguments advanced on behalf of both the parties at length. At the very outset, it has been contended on behalf of the appellants that the appellants were never served before the District Forum and as such had been wrongly proceeded ex-parte by the learned District Forum. In so far as the said aspect of the matter is concerned, on a perusal of the record of the concerned District Forum pertaining to this case (which was summoned from the concerned District Forum for our perusal) it is observed that the proceedings dated 7.10.1998 and 22.12.1998 do not disclose the mode of service on the appellants. A copy of the notice on record sent on 7.10.1998 for service on the appellant (marked as Flag A) reveals that the said notice was sent by UPC whereas in the impugned order, it is recorded by the learned District Forum that the appellants were served by registered post. Furthermore, the said summon is addressed to the appellant No. 1 M/s. Aar Pee Apartments Pvt. Ltd. only and the appellant No. 2 Shri Rakesh, Director of appellant No. 1 company was not served at all. Therefore, in the circumstances it cannot be said that the appellants were duly served and as such it would be in the fitness of things and in the interest of justice if the appellants are afforded an opportunity of being heard. Furthermore, on merits, it is observed that since the matter was ex-parte against the appellants, the learned District Forum had directed the respondent vide order/proceedings dated 2.7.1999 to place on record the brochure and other relevant documents. However, it appears that no such documents were brought on record before the District Forum, whereby the terms and conditions of booking could be proved. Therefore, in the circumstances of the case, we deem it fit and proper that the matter be remanded back to the concerned District Forum with the directions to decide the same afresh after affording opportunity to both the parties to adduce their evidence and place on record the relevant documents.

Ordered accordingly. The learned District Forum is however directed to decide the matter as expeditiously as possible.

4. BEFORE concluding we would like to clarify that nothing contained in this order shall be construed as observations on the merits of the case which has to be decided afresh on the basis of evidence/material on record before the District Forum. The present appeal, filed by the appellants stands disposed of in above terms. Appeal disposed of.