

(1999) 05 NCDRC CK 0100

In the National Consumer Disputes Redressal Commission

AJIT CHANDRA

APPELLANT

Vs

Ghaziabad Development Authority

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Citation : 1999 3 CPJ 46

Hon'ble Judges : A.N.Divecha , R.K.Anand J.

Final Decision : Application dismissed

Judgement

1. THE applicant/complainant has approached this Commission under Section 10(a) and Section 36B of the Monopolies and Restrictive Trade Practices Act, 1969 (the MRTP Act for brief) charging the respondents with adoption of and indulgence in restrictive and unfair trade practices within their respective meanings contained in Section 2(o) and Section 36A thereof. He has also taken out an application under Section 12A thereof for an interim relief of stay of the impugned Demand Notice of 4th September, 1998.

2. IT would be quite proper to look at certain facts giving rise to the present proceeding. The applicant/complainant appears to have inter alia booked one garage admeasuring about 15.45 sq. mtrs. approximately costing Rs. 88,000/- as an allottee of Kaushambi Apartments, the project undertaken by and on behalf of the respondents. IT appears that the applicant/complainant tendered one affidavit to the respondents on 15th April, 1997 that he would pay according to the valuation done by the respondents. IT appears that thereafter possession of the garage was given to him on 25th June, 1997. IT appears that the booking was done sometime in 1993 and the applicant/complainant paid Rs. 88,000/- by means of a Demand Draft on 10th November, 1993. IT appears that the respondents sent one Demand Notice on 4th September, 1998 claiming Rs. 27,115/- towards the difference in the final costing for the garage. He was offered possession of the garage on deposit of the demanded amount by 15th October, 1998. According to the applicant, for a similar garage an additional sum of Rs. 18,857/- was demanded from the allottee of such garage. The applicant/

complainant has therefore approached this Commission charging the respondents with adoption of and indulgence in restrictive and/or unfair trade practices qua the final costing of the garage in question. He has also taken out an interim relief application under Section 12A of the MRTP Act for stay of the demand notice of 4th September, 1998. The respondents have filed their reply both to the complaint and the interim relief application and have resisted them on several grounds. They have contended that the demand made from the applicant/complainant on the final costing of the garage in question is quite legal and valid.

As pointed out hereinabove, the applicant/complainant has questioned the legality and validity of the demand of additional sum of Rs. 27,115/-. By his interim application, he has prayed for stay of that demand. It may be noted that, in their reply, the respondents have specifically contended that the applicant/complainant tendered affidavit on 15th April, 1997 declaring that he would pay according to the valuation of the garage done by the respondents. No rejoinder thereto has been filed. It appears from the material on record that, at the time of allotment, the value of the garage was tentatively fixed subject to final costing. In that context, the applicant/complainant was given possession of the garage sometime on 25th June, 1997. It would not now be open to the applicant/complainant to claim any stay of the Demand Notice with respect to the final value of the garage. Whether or not such value is proper and justifiable will have to be decided on the basis of the material on record.

3. THE applicant/complainant's another ground of challenge is that from another allottee of such garage, the additional demand is to the tune of Rs. 18,857/- towards the final costing whereas he is required to pay Rs. 27,115/- on the final costing of his garage. We do not think that we should enter into this aspect of the case at this stage. It is possible that some more amount is claimed from the applicant/complainant qua his garage compared to the garage of some other allottee keeping in mind the final costing. As pointed out hereinabove, whether or not such final costing is proper or justifiable will have to be decided on the basis of the material on record. THE applicant/complainant has not been able to show how the final valuation is improper and unjustifiable. In that view of the matter, we are prima facie of the view that the applicant/complainant has not been able to establish his prima facie case for the purpose of this interim relief application. In view of our aforesaid conclusion against the applicant/complainant, it is not necessary to consider the question of the balance of convenience between the parties. It may however be noted at this stage that the respondents fairly offered possession of the garage in question on depositing the demand amount of Rs. 27,115/- in terms of the Demand Notice of 4th September, 1998 and, at our suggestion, agreed to treat that amount as deposit to be appropriated towards the final costing with respect to the garage in question in case the applicant/complainant ultimately loses on logical conclusion of the enquiry proceeding and to refund the balance or the entire amount, as the case may be, with interest at the rate of 12% per annum in case the applicant/complainant ultimately succeeds at the end of the enquiry proceeding. Learned

Advocate Mr. Maheshwari for the applicant/complainant, on instructions was however not agreeable to this suggestion. In case we have to answer the balance of convenience between the parties, in view of the aforesaid circumstances, we will have to answer the same against the applicant/complainant.

4. IN view of our aforesaid discussion, we are of the opinion that no interim relief deserves to be granted in favour of the applicant/ complainant in this case. IN the result, the interim relief application fails. It is hereby rejected however with no order as to costs on the facts and in the circumstances of the case. Application dismissed.