
(1999) 07 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

AMITA KAUSHISH

APPELLANT

Vs

MARUDHAR WATCH And WARD COMPANY

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Citation : 2001 2 CPJ 27

Hon'ble Judges : S.K.Parthasarathy J.

Final Decision : C.A. disposed of

Judgement

1. THIS order disposes of the compensation application filed by Mrs. Amita Kaushish under Section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (for brief the Act). In the compensation application the applicant has levelled allegations that the respondent Marudhar Watch & Ward Company, New Delhi, indulged in unfair trade practices.

2. THE facts of the case as contained in the compensation application briefly can be summarized as below : THE applicant paid a sum of Rs. 10,000/- in July, 1990 to the respondent for purchase of a plot of land in Sidha Park, Ballabgarh in response to the advertisement issued by the latter. THE respondent confirmed that the land would be registered in the name of the applicant and would be free from all encumbrances. THE applicant was to pay the balance amount of Rs. 80,000/- before registration of the plot and after satisfaction of documents relating to the land. THE applicant on enquiries came to know that the plot of land offered was involved in litigation. THERE was no response from the respondent to the letters issued by the applicant in March, 1991 and April, 1994. THE registered reminder dated 22.1.1996 from the applicant was received back as unclaimed. The respondent Company filed a reply to the compensation application. The respondent has taken the stand that the applicant did not book / purchase any plot under any scheme of the Company. The applicant had only paid an advance of Rs. 10,000/- and wanted to purchase a plot. The respondent had informed the applicant by means of a letter dated 20.10.1990 that the balance payment should be deposited by 30th November, 1990. Since the

applicant failed to deposit the balance upto 4th April, 1991, the respondent cancelled the transactions vide its letter dated 4th April, 1991.

In her rejoinder the applicant denied having received the letters of the respondent dated 20th October, 1990 and 4th April, 1991.

3. AFTER the pleadings were completed, the following issues were framed : (1) Whether the respondent has indulged in the unfair trade practices as alleged in the compensation application ? (2) Whether the said unfair trade practices are prejudicial to the consumer or consumers generally ? (3) Whether the applicant has suffered any loss due to the above ? (4) Compensation as claimed.

The applicant filed an affidavit of evidence in support of her case. The respondent did not avail of the opportunity to cross-examine the witness of the complainant by remaining absent on two days when hearings were fixed for the purpose. The proceedings against the respondent was, therefore, set ex-parte on 15.5.1998.

4. ON an application by the respondent to set aside the order of setting it ex-parte the respondent was given the liberty to file the counter affidavit of evidence. The respondent filed the counter affidavit of evidence to which certain documents were annexed. A direction was given by the Commission for carrying out admission/ denial of documents annexed to the counter affidavit of the respondent. The respondent was not present on the dates fixed for admission/ denial of documents and also did not participate in the final arguments. Since the respondent was absent, I gave a hearing to the Advocate for the applicant. I have also carefully gone through the records of the case and evaluated the evidences adduced. The respondent in its counter affidavit of evidence has admitted that an amount of Rs. 10,000/- was received from the applicant and has also admitted the issue of its letter dated 11th August, 1990 to the applicant. The receipt bearing No. 1623 issued by the respondent to the applicant clearly stated that the amount was towards the "part payment of land bearing Code No. o-II located at Sidha Park". The letter dated 11th August, 1990 also confirms this and states that the land would be registered in the name of the applicant after the respondent cleared the same from all encumbrances and claims. It is not disputed that the registration was to be actually done after payment of the balance amount of Rs. 80,000/-. In view of this, the contention of the respondent that the applicant had not booked and purchased any plot of land from the respondent under any scheme and the applicant had only approached the Company for the purchase of land does not carry any credence. As against this, the respondent has not established that it had intimated the applicant to pay the balance amount on or before 30th November, 1990 or the fact that the transaction with the applicant was cancelled and the advance forfeited. The receipt of the respondent's letter dated 20th October, 1990 and 4th April, 1991 has been denied by the applicant on affidavit and the respondent did not produce these documents for admission/denial though opportunities were granted to it. The respondent also did not participate when the final arguments were heard. Under the circumstances, the applicant's contention that after receiving part

payment for the sale of land the respondent had not honoured its commitment is to be relied upon. This action on the part of the respondent would amount to indulgence in unfair trade practice as defined under the Act. Since the applicant who had hoped to procure land was not given possession of the land for a number of years when escalation in price of real estate has been going up and he has been deprived of the use of money which remained deposited with the respondent, the applicant also suffered loss and damage due to indulgence in unfair trade practice on the part of the respondent. He is, therefore, entitled for compensation.

5. HAVING regard to the facts and circumstance of the case as discussed above, I hold that the respondent has indulged in unfair trade practice and direct that the respondent shall refund to the applicant a sum of Rs. 10,000/- (Rupees ten thousand only) deposited by her within a period of eight weeks from the date of this order alongwith 18% interest on that amount from the date of deposit till the date of refund. I do not consider it necessary to award any further amount as damage. The respondent is also directed to file an affidavit of compliance within four weeks thereafter. C.A. disposed of.