

(2015) 12 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

Case No : 3408 of 2014

C.CHENCHAPPA NAIDU & ANR

APPELLANT

Vs

KAKARLA NARASIMHA RAO

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 2 \(1\) \(d\)](#) - Definitions

Citation : 2016 1 CPR 156

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : K. Maruthi Rao, A. Subhashini

Judgement

1. This revision is directed against the order of the State Commission Andhra Pradesh dated 10.03.2014 vide which the State Commission allowed the appeal preferred by the respondent complainant against the order of the District Forum and directed the petitioner opposite parties to provide alternative suitable parking space in the basement of M N Residency and also awarded compensation of Rs.25,000/- to the respondent complainant besides cost of Rs.5000/-.

2. Briefly put facts relevant for the disposal of the revision petition are that complainant filed a consumer complaint in the District Forum alleging that he purchased flat No. 106 located at first floor of the building M N Residency vide a registered sale deed dated 08.02.2010. As per the sale deed, the petitioner opposite parties had agreed to allot car parking area to the complainant in the basement of the said building for which a separate deed was registered on the same day. According to the complainant, the parking space, however, was not demarcated in the registered deed. After the execution of sale deed, the opposite party had constructed additional floors on the building and had allotted well located parking slots to the purchasers of the newly constructed flats on the 4 th floor and allotted a very inconvenient parking slot to the complainant. It is contended that this has been done without any basis and without following any procedure of draw of lot. It is the case of the complainant that opposite parties having failed to give him convenient parking space in the basement of the

building to the respondent complainant has committed deficiency in service.

3. The petitioner opposite parties resisted the complaint by filing a written statement. According to them, pursuant to the contract, a proper parking lot has been allotted to the complainant and there is no deficiency in service on the part of the opposite parties.

4. The District Forum on consideration of pleadings and evidence came to the conclusion that complainant had accepted the allotted car parking space vide Ex. A1. Therefore, he could not have claimed the relief for allotment of better located parking space. The complaint was, therefore, dismissed.

5. Being aggrieved of the order of the District Forum, the respondent preferred an appeal and the State commission vide impugned order allowed the appeal, set aside the order of the District Forum and directed the respondent opposite party as noted above. This had led to the filing of the revision petition.

6. Learned counsel for the petitioner has contended that impugned order of the State Commission is not sustainable for the reason that State Commission has failed to appreciate that pursuant to the agreement between the parties, the petitioner opposite party had allotted promised parking space to the complainant. Therefore, it cannot be said that opposite party has committed any deficiency in service. Learned counsel has further contended that perusal of the order of the District Forum would show that District Forum has rightly appreciated the facts and dismissed the complaint.

7. Learned counsel for the respondent complainant on the contrary has argued in support of the impugned order. He has contended that initially opposite party had constructed 1 + 3 floors out of which flat no. 106 was allotted to the complainant with an agreement to provide him exclusive parking space. It is contended that thereafter opposite party constructed another floor on the building and instead of allotting and giving possession of convenient parking space to the complainant, the petitioner has allotted convenient spaces to the purchasers of the flats on the 4th floor without following an equitable mode of allotment of parking space like draw of lots.

8. We have considered the rival contentions and perused the record. On careful reading of the pleadings, it is apparent that this is a case of sale of a constructed flat by the petitioner opposite parties to the respondent complainant. On going through the copy of sale deed as also the annexure to the sale deed which relates to allotment of parking space, we find that in these documents no promise of providing any service to the complainant was made by the opposite parties. That being the case, the complainant does not fall within the definition of "consumer" as envisaged under section 2 (1) (d) of the Consumer Protection Act, 1986 because there is no element of hiring or availing of service. Thus complainant could not have maintained the consumer complaint. Both the foras below have ignored this aspect of the matter and they have proceeded to decide the complaint as well as appeal on the premise that complaint relates to

deficiency of service promised by the opposite parties.

9. Even on merits, the arguments of the petitioner have force. On perusal of sale deed as also the annexure to the sale deed, it is clear that opposite parties have sold flat No.106 alongwith exclusive parking space to the complainant. Admittedly, parking space has been allotted to the complainant. The dispute raised by the complainant is that parking space is inconvenient as compared to other parking lots. It is not the case of the complainant that any other specific parking space was promised to him. Therefore, it cannot be said that by allotting the given parking space which is not as per preference of the complainant, the petitioner opposite parties have committed any deficiency in service. The impugned order of the State Commission is based upon incorrect reading of terms and conditions of the agreement between the parties and cannot be sustained.

10. In view of the discussion above, the impugned order suffers from material irregularity and it has been passed without jurisdiction. Revision petition is, therefore, allowed, impugned order is set aside and complaint is dismissed.