(2017) 08 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

Case No : 2139 of 2017

C.R. YADAV & SONS, HUF THROUGH ITS KARTA, MR. C.R. YADAV — APPELLANT

Vs

MANCHANDA & MANCHANDA BUILDERS PVT. LTD. & ANR. — RESPONDENT

Date of Decision : 18-08-2017

Acts Referred:

Consumer Protection Act, 1986, Section 2(1)(d) - Definitions

Citation : (2017) 08 NCDRC CK 0030

Hon'ble Judges : V.K. Jain

Advocate : Puran Mal Saini

Judgement

1. The petitioner / complainant submitted three separate applications to the respondent for the provisional registration of one Apartment each in a project namely Eden Gardens, which the respondent was to develop in Sector-26, Rewari. A sum of Rs.3.00 lacs was paid along with each application with a request that the same be treated as payment / part payment towards 15% of the sale price which was to be paid along with the application. It would thus be seen that 15% of the price of the flat was to constitute as the application money / booking amount. 15% of the sale price of the flat came to Rs.7,02,000/- in each application as is evident from the letter dated 26.7.2008 sent by the respondent to the petitioner / complainant. The petitioner / complainant did not make any further payment despite reminders from the respondent. Vide letter Annexure P-5, the respondent, referring to the application submitted by the petitioner / complainant, demanded the balance application money of Rs.4,02,000/- within fifteen days from the issue of the said letter. The petitioner / complainant did not pay the aforesaid amount. The respondent then sent a letter dated 26.7.2008, demanding the total balance amount of Rs.8,07,000/-. The aforesaid amount was arrived at after deducting the amount of Rs.3,00,000/- paid by the petitioner / complainant from 25% of the basic sale price of the flat. Since no payment was forthcoming from the

petitioner / complainant, the respondent vide letter dated 29.12.2012, informed the complainant that its application for registration had been rejected due to non-payment of the required application money, but, as a gesture of goodwill, the company had decided to refund the amount paid by it, after deduction of administrative charges. The petition then wrote to the respondent, demanding refund of the amount of Rs.3.00 lacs. Such letters were written in respect of the each application, which the petitioner / complainant had submitted to the respondent. Interest on that amount was also demanded from the respondent. The respondent refunded the principal amount of Rs.3.00 lacs in respect of each application to the petitioner / complainant but did not pay any interest on that amount. Being aggrieved, the petitioner / complainant approached the concerned District Forum by way of three separate complaints.

2. The complaints were resisted by the respondent, inter-alia on the ground that even the balance application money having not been paid by the petitioner / complainant, the application for booking of the flat was rejected and the principal amount paid by the petitioner / complainant was refunded, without any interest since the terms and conditions on which the booking was made clearly stipulated that no interest would, in such circumstances, be paid. The respondent also took a plea that the complainant was never its consumer, it having failed to pay even the booking amount.

3. The District Forum having dismissed the complaints, the petitioner approached the concerned State Commission by way of three separate appeals. The said appeals also having been dismissed, the petitioner / complainant is before this Commission.

4. The first question which arises for consideration is as to whether the petitioner / complainant can be said to be a consumer of the respondent, within the meaning of Section 2(1)(d) of the Consumer Protection Act, as no allotment of any flat was made by the respondent to the complainant. The application submitted by the petitioner / complainant clearly shows that 15% of the sale price was to constitute as the booking amount. The said amount came to Rs.7,02,000/- in each case. That amount having not been paid, the complainant having paid only Rs.3,00,000/- in each case, the complainant cannot be said even to be a confirmed registrant with the respondent, awaiting allotment of the residential flat, from the respondent. A person who does not pay even the whole of the booking amount, to the builder, and no allotment is made to whom, cannot be said to be a consumer as defined in Section 2(1)(d) of the Consumer Protection Act, since the services of the builder cannot be said to have been hired or availed by such a person. This issue came up for consideration of this Commission in Revision Petition No. 3649 of 2014 Delhi Development Authority Vs. Parveen Kumar & Anr. decided on 29.01.2015, and the following view was taken:

"8. The first question which arises for our consideration is as to whether the complainant in these cases can be said to be consumer within the meaning of

Section 2(1)(d) of the Consumer Protection Act. The aforesaid provision, to the extent it is relevant provides that consumer means any person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised. The expression ''service'' has been defined in Section 2(1)(o) of the Act to mean service of any description which is made available to potential users and includes though not limited to the provision of facilities in connection with housing construction. Therefore, the next question which arises for our consideration is as to whether the aforesaid complainants had hired or availed the services of the opposite parties in connection with housing construction.

9. The question of providing services in connection with housing construction, in our view would arise either on allotment of a residential plot or a residential flat which is yet to be constructed, to the applicant or if he is registered and placed in a waiting list, for such an allotment. There would be no question of a person availing or hiring a service in connection with housing construction till either such an allotment is made to him or he is registered for such an allotment. The development of the plots or the construction of houses will be undertaken only for those persons to whom a residential plot or house is allotted, or who is registered for and awaiting allotment of a yet to be developed plot or yet to be constructed house. Also there would be no occasion to undertake the construction of houses for the allottees in a case where a ready built up house or a fully developed plot is allotted to him, unless, one or more facilities/amenities in relation to the said house/plot are yet to be provided by the concerned Development Authority.

In Morgan Stanley Mutual Fund Vs. Kartick Das, (1994) 4 SCC 225 , dealing with a person, who had applied for allotment, but to whom no allotment had been made, the Hon''ble Supreme Court, inter-alia held as under:

"Therefore, it is after allotment, rights may arise as per the contract (Article of Association of Company). But certainly not before allotment. At that stage, he is only a prospective investor (sic in) future goods. The issue was yet to open on 27.04.1993. There is not purchase of goods for a consideration, nor again could he be called the hirer of the services of the company for a consideration. In order to satisfy the requirement of above definition of consumer, it is clear that there must be a transaction of buying goods for consideration under Clause 2(1)(d)(i) of the said Act. The definition contemplates the pre-existence of a completed transaction of a sale and purchase. If regard is had to the definition of complaint under the Act, it will be clear that no prospective investor could fall under the Act".

11. The legal proposition which emerges from the above rendered decisions of the Hon''ble Supreme Court is that a person, who is allotted a flat or a plot to be developed by a statutory authority such as Delhi Development Authority or Avas Vikas Parishad as well as a person, who is registered with such an Authority for the purpose of allotment of such a flat/plot and is awaiting allotment would be a

''consumer'' within the meaning of Section2 (1) (d) of the Consumer Protection Act, 1986.

13. As far as a person who applies for allotment of a plot/flat is concerned, he will not be a ''consumer'' within the meaning of Section 2(1) (d) of the Act, if neither any allotment is made to him nor he is registered for and awaiting such an allotment. Such a person cannot be said to have hired or availed the services of the concerned development authority in connection with housing. Mere submission of an application for allotment, which does not result either in allotment or registration and consequent inclusion in the awaiting list for such an allotment, does not confer upon him the status of a ''consumer'' as defined under Section 2(1) (d) of the said Act".

5. On merits also, in the applications submitted by the petitioner / complainant for provisional registration, it was clearly stipulated that in case the petitioner failed to pay the booking amount within thirty days from the date of demand notice his provisional registration shall be treated as cancelled and he shall be left with no right, lien or interest except to claim refund of the actual amount paid by him. It is therefore, evident that on its failure to pay the balance booking amount, the petitioner / complainant was entitled only to refund of the principal amount paid by it and it was not entitled to any interest on that amount, it having defaulted in making payment of the balance application money. The principal amount having already been paid to the petitioner / complainant even before filing of the consumer complaints it had no cause of action to file the consumer complaints. The view taken by the fora below does not call for any interference by this Commission in exercise of its revisional jurisdiction. The revision petitions being devoid of any merits are hereby dismissed with no order as to costs.