

(2016) 11 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

Case No : 441 of 2015

DALJIT SINGH & ANR.

APPELLANT

Vs

M/S. UNIVERSAL BUILDWELL PVT. LTD., & ANR.

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Citation : (2016) 11 NCDRC CK 0054

Hon'ble Judges : K.S. Chaudhari

Advocate : Dhruv Kapur, Siddharth Bhatia, Nikhil Bahri, Ajit Rathee

Final Decision : Appeal Allowed

Judgement

1. This appeal has been filed by the appellant against the order dated 17.03.2015 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, "the State Commission") in Complaint Case No. C-74/2011 - Daljit Singh & Anr. Vs. M/s. Universal Buildwell Pvt. Ltd. by which, complaint was dismissed.

2. Brief facts of the case are that complainant / appellant booked a shop with the OP Universal Buildwell/respondent measuring 350 sq. ft. on the ground floor of their project located at Golf Course Road Extension Sector 59 Gurgaon. The complainant paid in all an amount of Rs. 6 Lac to the OP on May 2010. Shop bearing No G-63, was provisionally allotted to the complainants on 01.06.2010. Buyers' agreement dt. 25.07.2010 was executed between the parties. Grievance of the complainants is that they did not receive the "buyers' agreement" till July 2010. They however, received a letter of demand from the OPs demanding an amount of Rs. 2,70,975/- (Approx.). Despite several visits to the office of the OP, the complainants were not given any satisfactory reply. OPs state they cancelled the booking of the complainants. The complainants sent a legal notice dt. 31.01.2011 calling upon the OPs to withdraw their letter of cancellation and accept the outstanding dues. Alleging deficiency on the part of OP, complainants filed complaint before State Commission. OP resisted complaint, denied any deficiency and submitted that complainant has concealed

material facts and complaint is liable to be dismissed for non-rejoinder of parties and further submitted that Civil Court should decide the matter or matter should be referred to Arbitration. It was further submitted that complainant failed to make payment inspite of reminders and prayed for dismissal of complaint. Learned State Commission after hearing parties, dismissed complaint against which, this appeal has been filed.

3. Heard learned Counsel for the parties finally at admission stage and perused record.

4. Learned Counsel for the appellant submitted that inspite of no plea regarding purchase of property for commercial purpose, learned State Commission has committed error in dismissing complaint on this ground without recording finding on other aspects; hence, appeal be allowed and impugned order be set aside and matter may be remanded back to learned State Commission to decide complaint on merits. Learned Counsel for the respondent also agreed and submitted that matter may be remanded back to learned State Commission for deciding complaint on all counts.

5. Learned State Commission in para 2 of the order has observed that OP has raised preliminary objection that complainants are not consumer, but I do not find any such objection in the written statement. OP has taken many objections in the written statement and learned State Commission has not considered those objections which were taken in the written statement. Question of purchase of property for commercial purpose is mixed question of law and fact and without objection in the written statement, learned State Commission has committed error in dismissing complaint on this ground and impugned order is liable to set aside and matter is to be remanded back to learned State Commission, as agreed by both the parties.

6. Consequently, appeal filed by appellants is allowed and impugned order dated 17.3.2015 passed by learned State Commission in Complaint No. C-74/2011 - Daljit Singh & Anr. Vs. M/s. Universal Buildwell Pvt. Ltd. is set aside and matter is remanded back to learned State Commission to decide complaint on merits considering all the objections raised by OP and after giving an opportunity of being heard to the parties.

7. Parties are directed to appear before State Commission on 9.1.2017.