**(2010) 09 NCDRC CK 0034**

**In the National Consumer Disputes Redressal Commission**

HARYANA URBAN DEVELOPMENT AUTHORITY — APPELLANT

Vs

Jagdish Chander Verma S/o Late Shri Muni Lal Verma — RESPONDENT

**Date of Decision :** 01-09-2010

**Acts Referred:**

**Citation :** 2010 0 NCDRC 151 : 2010 4 CPJ 39

**Hon'ble Judges :** Anupam Dasgupta , Vineeta Rai J.

**Final Decision :** Appeal allowed

## Judgement

1. THIS revision petition challenges the order dated 16.10.2008 passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, the State Commission). By this order, the State Commission dismissed the appeal filed by the petitioner against the order dated 29.07.2008 passed by the District Consumer Disputes Redressal Forum, Panchkula (in short, the District Forum), by which the District Forum had partly allowed the complaint of the complainant and directed the petitioner to refund the earnest money deposited by the complainant with interest @9% p.a. from the date of deposit till actual payment and also pay cost of Rs.2,000/-. It appears that after the State Commission passed the impugned order, the petitioner sought review of the said order. The State Commission rightly dismissed this application for review on the ground that the Consumer Protection Act, 1986 (in short, the Act) does not provide for review of its order by a State Commission.

2. THE brief facts are that the complainant applied to the petitioner for allotment of a plot of land on 03.02.2007 alongwith earnest money deposit of Rs.2.22 lakh. THE complainant was, however, not successful in the draw of lots and hence he was entitled to refund of the earnest money. To this effect, he wrote a letter dated 11.09.2007 to the petitioner and also followed it up with subsequent reminders but to no avail. Hence he filed the complaint in question. THE defence stand of the petitioner before the District Forum was that it had actually dispatched a cheque for the said amount of Rs.2.22 lakh to the respondent / complainant at his home address (House No. 10, Street No. 9, Malhotra Colony,

Ropar). On the other hand, the complainant vehemently denied having received the cheque. THE petitioner produced a copy of letter dated 24.04.2009 from the State Bank of Hyderabad, Sector 34 A, Chandigarh to the effect that petitioners cheque no. 31503 dated 22.07.2007 issued in favour of one Jagdish Chander Verma was presented in clearing by the Banks Panchkula Branch (Sector 4). A photocopy of cheque No. 031503 dated 30.07.2007 was, however, produced by the petitioner before the District Forum. THE petitioner also produced copy of a letter dated 19.03.2009 from the Manager (Operations), AXIS Bank Limited, Panchkula stating that payment of cheque no. 3105 favouring Mr. Jagdish Chander Verma, application no. 40718 amounting to Rs.2.22 lakh was presented for clearance by the State Bank of Hyderabad, Chandigarh Branch and passed on 22.09.2007 by the Chandigarh Branch of the AXIS Bank. From these documents, the petitioner sought to show that the respondent / complainant had actually received the full refund of the money deposit way back in September 2007. We have heard Mr. R.S. Badhran, learned counsel for the petitioner and Mr. Manbir Singh Rathi, learned counsel for the respondent / complainant and gone through the evidence and documents on record.

The main stand of Mr. Badhran is that the respondent / complainant could not claim the status of a consumer of the services rendered by the petitioner once his application for allotment of land was not successful in the draw of lots by the petitioner. In support of this, Mr. Badhran seeks to rely on the ratio of the judgement dated 23.11.2009 of this Commission in the case of Punjab Urban Planning and Development Authority and another versus Krishan Pal Chander, [Revision Petition No. 1583 of 2005] and states that the principle enunciated in the said judgement would squarely cover the case in question and the respondent could not at all be held a consumer in the meaning of the term under section 2(1)(d) of the Act. (i) On the other hand, Mr. Rathi emphasise the fact that the person Jagdish Chander Verma, son of Muni Lal Verma in whose favour the cheque for Rs.2.22 lakh is stated to have been dispatched is not the same person (though bearing the same name and also fathers name) as the respondent / complainant in this case. This, Mr. Rathi points out, is based on the recorded fact that the person to whom the aforesaid cheque dated 30.07.2007 of the UTI / AXIS Bank was dispatched by post had an altogether different address, viz., Jagdish Chander Verma, S/o Muni Lal Verma, House No. 30, Village Baltana, Zirakpur, District Mohali (Punjab). This was completely different from the address of the respondent / complainant, namely, Jagdish Chander Verma, S/o Muni Lal Verma, House No. 10, Street No. 9, Malhotra Colony, Ropar. Thus, the respondent / complainant never received the refund of the earnest money deposited by him with the petitioner.

(ii) It may be also noticed that after filing this revision petition, the Estate Officer, Haryana Urban Development Authority, Panchkula filed a written complaint against Jagdish Chander Verma, S/o Muni Lal Verma, R/o House No. 30, Village Baltana, Zirakpur, District Mohali, with the Superintendent of Police, alleging that fraud has been committed in this case by the said Jagdish Chander

 

Verma.

3. AMONG the grounds in the memorandum of this revision petition, the principle of law enunciated in this Commissions judgement in the case of Punjab Urban Planning and Development Authority and another versus Krishan Pal Chander (supra) was not specifically urged though it was generally stated that in this case, the respondent / complainant was not a consumer and the controversy was not a consumer dispute under the relevant provisions of section 2(1)(d) of the Act. (i) This is clearly a case of a person who was unsuccessful in the draw of lots conducted by the petitioner for allotment of a plot of land for which he had applied alongwith necessary earnest money deposit. In the above-mentioned case of Punjab Urban Planning and Development Authority and another versus Krishan Pal Chander this Commission held as under: - Fora below have erred in not appreciating that mere application for allotment did not give the respondent, any right to the allotment of the plot. It is well settled that filing of application for allotment at the highest, grants the proposed allottee, only a right to be considered and no higher right than that accrues to him. This question has been examined by Honble Supreme Court in Morgan Stanley Mutual Fund v. Kartick Das reported in (1994) 4 SCC 225 in which it was held as under: -

"31. 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 27-4-1993. 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."

"32. What is that he could complain of under the Act? This takes us to the definition of complaint under section 2(1)(c) which reads as follows: 2(1)(c) "complaint" means any allegation in writing made by a complainant that - (i) as a result of any unfair trade practice adopted by any trader, the complainant has suffered loss or damage; (ii) the goods mentioned in the complaint suffer from one or more defects; (iii) the services mentioned in the complaint suffer from deficiency in any respect; (iv) a trade has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods, with a view to obtaining any relief provided by or under this Act."

33. Certainly, Clauses (iii) & (iv) of section 2(1)(c) the Act do not arise in this case. Therefore, what requires to be examined is, whether any unfair trade practice has been adopted. The expression trade practice as per rules shall have the same meaning as defined under section 36-A of Monopolies and Restrictive

Trade Practices Act of, 1969. That again cannot apply because the company is not trading in shares. The share means a share in the capital. The object of issuing the same is for building up capital. To raise capital, means making arrangements for carrying on the trade. It is not a practice relating to the carrying of any trade. Creation of share capital without allotment of shares does not bring shares into existence. Therefore, our answer is that a prospective investor like the respondent or the association is not a consumer under the Act."

(Emphasis supplied) In view of the aforesaid observations of Honble Supreme Court, it has to be held that the respondent was not a consumer within the meaning of the Act as no allotment had yet been made in favour of the respondent. It was contended that housing construction or building activity carried on by a private or statutory body was a service within the meaning of section 2(o) of the Act. There is no quarrel about this proposition. In both these cases, the plots had been allotted but without providing basic facilities. What has been held in these two Judgments is that the deficiency in service in either construction of the building or any other defect would fall within the meaning of Clause (o) of Section 2 of the Act. The facts of these two cases were not similar to the present case in which no allotment had been made. In the present case, the respondent had only applied for allotment of the plot and he was a prospective investor only. Till the allotment of the flat, the respondent had not become a consumer [Emphasis added by us].

4. OBVIOUSLY, therefore, an applicant for allotment of a plot of land by the petitioner who remained unsuccessful in the draw of lots for this purpose cannot be termed a consumer under section 2(1)(d) of the Act. It would follow that a complaint filed by the respondent / complainant before the District Forum was not maintainable ab initio. (i) This would leave the question of refund of the earnest money deposit by the petitioner to the respondent / complainant unresolved. Moreover, both the petitioner (in its grounds for the revision petition) as well as the respondent / complainant (in the course of the submissions by the learned counsel) have alleged that a fraud was committed in respect of remitting the refund amount by cheque issued by the petitioner on the AXIS Bank. Unfortunately, the latter point has not been discussed at all in the order of the District Forum or in the impugned order of the State Commission. In fact, from a reading of the order of the District Forum it would appear as if no such controversy existed at all. Therefore, the finding and the order of the District Forum (which have been supported by the State Commission in the impugned order) cannot be legally upheld.

In conclusion, the revision petition is allowed, the orders of both the Fora below are to be set aside and the complaint filed by the respondent / complainant is dismissed on the ground that in view of this Commissions judgment cited above, the latter could not be a consumer in accordance with the meaning of the term under section 2(1)(d) of the Act. However, the respondent / complainant in this petition would be within his rights to seek his remedy before any appropriate court and also rely on the ratio of the judgement of the Supreme Court in the case of Laxmi Engineering Works versus P.S.G. Industrial Institute [1995 3 SCC 583] in respect of limitation. Parties are left to bear their own costs.

 