**(1996) 08 NCDRC CK 0005**

**In the National Consumer Disputes Redressal Commission**

K. PRABHAKAR APPELLANT

Vs

MAN JOG SECURITY PLANS RESPONDENT

**Date of Decision :** 22-08-1996

**Acts Referred:**

**Citation :** 1996 3 CPJ 580

**Hon'ble Judges :** D.R.Vithal Rao , Kumar Gowda J.

**Final Decision :** Complaint dismissed

# Judgement

1. IN this complaint under Section 17 read with Section 12 of the Consumer Protection Act, 1986, the complainant has sought compensation in a sum of Rs. 2,78,600/- with interest thereon from the opposite party.

2. THE opposite party floated a scheme known as ''Man-Jog Special Welfare Plan'', inviting deposits from the public. THE complainant under the said scheme deposited a total sum of Rs. 1,50,000/- under five accounts. THE opposite party agreed to pay to the complainant under those five accounts the various sums of money every month and after the period of 10 years double the amount deposited. The opposite party paid the monthly amounts under the above deposits for a few months in a sum of Rs. 7,600/- but thereafter failed to make payment as per the terms and conditions of those agreements. Thus the complainant filed the complaint seeking payment of a sum of Rs. 2,78,600/- with interest thereon from the opposite party.

The opposite party filed its version and averred that the claim of the complainant was based purely on contract and so the complaint was untenable under the Consumer Protection Act. The opposite party further averred that on verification of the records it was found that the complainant''s claim was exaggerated. The opposite party on the basis of these averments sought the complaint to be dismissed.

3. DURING enquiry the complainant filed his affidavit and got Exs. P1 to P16 marked in evidence. The General Power of Attorney Holder of the opposite party

 

filed his affidavit in evidence. We heard the learned Counsel for the parties and perused the material on record.

4. THIS complaint came to be filed on 4.12.91. The opposite party filed its version on 23.6.92. During inquiry the complainant filed the documents Exs. P1 to P16 on 18.6.96 and he filed the affidavit on the same day i.e., 18.6.96. The opposite party filed the counter-affidavit on 29.6.96. The complainant in its affidavit at Para 12 has averred thus : "12. Subsequently, the opposite party proposed to settle the dispute and offered to give me eight sites in lieu of the amount due to me. Though I was not interested in the sites, I reluctantly agreed to accept the offer. An agreement dated 12.5.93 was entered into between the opposite party and me. On 12.5.93, I paid as advance and as demanded by the opposite party, Rs. 1,000/- towards stamp duty and registration charges. Although I was ready and willing to take the sites and demanded execution of the sale deed, the opposite party went on putting off the same for one reason or another and ultimately told me that the said sites were otherwise disposed of. By the conduct of the opposite party, it is manifest that the opposite party is not intending to settle the claim of me."

5. THESE averments would go to show that the earlier contract between the parties under those five deposits was substituted by a new contract i.e., dated 12.5.93. The complainant has also produced the said deed of agreement dated 12.5.93 as per Ex. P 15.

6. THE opposite party in its counter-affidavit with regard to the said substituted contract dated 12.5.1993 has at para 2 of the affidavit averred thus : "THE complainant has filed this complaint on the basis of the payments made earlier to the agreement of sale entered into between the complainant and the opposite party on 12.5.93. THE earlier payments or deposits which are converted into consideration for the sale agreement cannot be made basis for the claim. THE execution of agreement of sale between the complainant and the opposite party which is dated 12.5.93, a copy of which is also produced by the complainant for an admitted document. At Para 3 of the affidavit, he has further averred thus : "Under the 2nd terms of agreement of sale the complainant has agreed to purchase these sites at the rate of Rs. 20,000/- per site for a total sale consideration of Rs. 1,60,000/-. As per the settled law laid down by the National Forum, the question of pricing of sites is beyond the scope of provisions of Consumer Protection Act and cannot be gone into. The complainant has admitted the execution of the agreement of sale and the same is acted upon and under the said agreement a token advance of Rs. 1,000/- towards the stamp duty and registration charges was paid by the complainant by Cheque No. 41644 dated 12.5.93 drawn on Canara Bank, Chamarajpet, Bangalore. Under the terms of agreement of sale the complainant had to pay Rs. 24,000/ to complete the sale transaction which was not complied with by the complainant. After the novation of the contract fructified into an agreement of sale the earlier payments made under different contracts became converted into the payments made towards

 

part of the sale consideration. The terms of the contract which are no longer in force after the agreement of sale has been entered into between the parties cannot be enforced. The cause of action if any can only be based on the agreement of sale dated 12.5.93 and for its enforcement. The remedy of the complainant is only to sue for specific performance of the agreement which is provided under Clause 14 of the agreement of sale. The complainant has not chosen to enforce this agreement as the complainant himself is liable for breach of contract."

These circumstances would go to show that the complaint is in respect of failure on the part of the opposite party to carry out its obligations under a contract. The opposite party averred that it is the complainant who had committed breach of contract.

7. HAVING regard to the admitted facts of the case, the earlier contract between the parties under the five deposits has been substituted by a new contract between the parties as per Ex. P 15 dated 12.5.93. As far as this contract between the parties dated 12.5.93 is concerned, it is the case of the opposite party that it was the complainant who had committed breach of contract by not making payment of the balance amount of Rs. 23,000/- to get the sale deed registered in his name. These facts clearly go to show that the matter between the parties was purely in the realm of ''breach of contract'' and it did not constitute a consumer dispute as envisaged by the provisions of the Consumer Protection Act.

8. THE National Commission in Suraj Steel Hazaribagh v. R.P. Sharma, reported in II (1991) CPJ 427 (NC) and held as under : "We have come to the conclusion that this appeal must succeed on two grounds. Firstly, the compensation claimed being only less than rupees one lakh, the State Commission had no jurisdiction under Section 17 of the Consumer Protection Act to entertain and adjudicate upon the complaint. THE proceedings before the State Commission were, therefore, wholly without jurisdiction. Secondly, the matter was purely in realm of ''breach of contract'' and it did not constitute a ''consumer dispute'' as envisaged by the provisions of the Consumer Protection Act. THE complainant should have been referred by the State Commission to pursue his ordinary remedy by way of initiating civil suit and no relief should have been granted to him under the Act."

Having regard to these facts and in the circumstances of the case, we are constrained to hold that the dispute raised by the complainant cannot be classified as a consumer dispute. It is only in the realm of breach of contract and so in our opinion, the complainant has to pursue his remedy by way of instituting a civil suit. In the result, therefore, this complaint fails and it is dismissed.

9. THE complainant is at liberty to institute a civil suit, if he were to be so advised.

10. THE parties are directed to pay and bear their own costs in this proceeding.

Complaint dismissed.

 