
(2016) 02 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

Case No : 202 of 2010

M/S. CITY VIEW ENTERPRISES

APPELLANT

Vs

HUDA & ORS.

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

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

Citation : 2016 2 CPR 110

Hon'ble Judges : V.K. Jain, Dr. B.C. Gupta

Advocate : Madhurendra Kumar, Anubha Agrawal

Judgement

1. One Shri D.P. Sharma purchased a shop-cum-office bearing No.5, Sector -12A, Gurgaon in an open auction held on 08.02.1990 and an allotment letter of that date was issued to him by the opposite party-Haryana Urban Development Authority (HUDA). On 01.04.1992, the aforesaid site was re-allotted in the name of one Shri Ranbir Singh Dahiya, who deposited the sale consideration. Since the opposite parties allegedly failed to deliver physical possession of the said site, the re-allottee Shri Ranbir Singh Dahiya filed a consumer complaint seeking allotment of

alternative site in lieu of Site No.5, Sector 12A, Gurgaon. The District Forum vide its order dated 04.05.2001 directed the OPs to allot Site No.61, Sector 29, Gurgaon in lieu of Site No.5, Sector 12A, Gurgaon. Since the aforesaid order despite having been maintained by superior forums was not complied, execution proceedings were initiated by the said complainant in that matter. The execution proceedings reached this Commission by way of a revision petition and by way of an interim order, this Commission directed the OPs to deliver possession of plot in question to the then complainant Shri Ranbir Singh Dahiya on deposit of Rs.80 Lakhs. On 21.11.2006, the subsequent re-allottee applied for issuance of Conveyance Deed. However the Conveyance Deed was not executed in his favour. The said complainant also applied for issuance of building plan but the said plan came to be sanctioned only on 25.05.2007. In the meanwhile,

possession to the re-allottee was delivered on 25.01.2007. This Commission vide order dated 02.02.2007, directed the payment of additional amount by the said complainant which came to be deposited on 09.02.2007. The Conveyance Deed in favour of the complainant was executed through the GPA holder Shri Krishan Lal on 01.03.2007.

2. On 07.08.2007, Shri Krishan Lal GPA holder of re-allottee Shri Ranbir Singh Dahiya applied for transfer of the aforesaid plot to the complainant firm. Pursuant thereto a re-allotment letter dated 12.12.2007 was issued in favour of the present complainant- City View Enterprises. On 01.04.2008, a new partnership deed was executed inducting a new partner in the firm. This was followed by execution of a retirement deed dated 04.06.2008 whereby one of the partners namely Satish Kumar retired from the firm and then a fresh partnership deed between remaining partners namely Gopal Dass and Smt. Lakshmi Bai was executed.

3. On 03.09.2008, the present complainant applied for issuance of the completion certificate with regard to construction over the site purchased by it. The grievance of the complainant is that the completion certificate of the building constructed by them on Site No.61, Sector 29, Gurgaon has not been issued to them, resulting in loss of business besides mental tensions and agony. This is also the grievance of the complainant firm that they had raised construction on the site solely for the purpose of earning livelihood, investing crores of rupees. The complainant is therefore before this commission seeking the following reliefs:-

"(i) hold that the Respondents are guilty of the deficiency of service and unfair trade practice and have thereby violated the statutory provisions of the Consumer Protection Act, 1986;

(ii) pass an order thereby directing the respondents to issue the occupation certificate / completion certificate of the building constructed on SCO No.61, Sector-29, Gurgaon, Haryana in favour of the complainant;

(iii) pass an order thereby directing the respondents to pay a sum of Rs.5,18,40,000/- (Rupees five crores eighteen lacs forty thousand only) on account of the loss of the business income suffered by the Complainant during the period from 03.09.2008 till the date of adjudication of the present complaint. The complainant further claims for loss suffered on account of depreciation in the cost of the building during the relevant period as mentioned above;

(iv) pass an order thereby directing the respondents to pay a sum of Rs.50,00,000/- (Rupees fifty lacs only) on account of mental agony and harassment to the complainant cause due to non issuance of the completion certificate of the

building to the complainant due to arbitrary and malafide action on the part of the respondents;

(v) pass an order thereby directing the respondents to pay a sum of Rs.50,00,000/- (Rupees fifty lacs only) to the complainant on account of deficiency in services rendered to the complainant;

(vi) pass an order thereby directing the respondents to pay a sum of Rs.5,00,000/- (Rupees five lacs only) to the complainant towards cost of the present proceedings and litigation expenses;

(vii) pass an order thereby directing the respondents to pay to the complainant the pre-suit, pendent lite and future interest @ 18% per annum on the reliefs claimed in the above mentioned prayers from the date of preferring of the application for issuance of the completion certificate i.e. 03.09.2008 before the Respondents till the date of actual payment; and

(viii) pass an order thereby directing the respondents to pay the service tax as per the Government Policy which would be payable on the building after the issuance of the completion certificate of the building;"

4. The complaint has been resisted by the OPs on several grounds including that this Commission does not have jurisdiction in respect of the subject matter in dispute. On merits, it is stated that the occupancy certificate was rejected after giving new notice to the complainant. The OPs have taken a specific plea that a consumer complaint in respect of a property purchased in open auction is not maintainable under the provisions of the Consumer Protection Act. According to the OPs, the complainant had failed to remove the zoning violations in the elevation despite having repeatedly been asked to do so and therefore the occupancy certificate was refused to them.

5. The first question which arises for our consideration as to whether a complaint in terms of the Consumer Protection Act is maintainable in respect of a plot purchased in an open auction or not. This issue came up for consideration before the Hon'ble Supreme Court in U.T. Chandigarh Administration and Ors. Vs. Amarjeet Singh & Ors. 2009 CTJ 486 (SC) (CP) and the following view taken by the Hon'ble Supreme Court is relevant for the purpose of this Complaint:- "The decisions in Lucknow Development Authority and Ghaziabad Development Authority make it clear that where a public development authority having invited applications for allotment of sites in a layout to be formed or for houses to be constructed and delivered, fails to deliver possession by forming the layout of sites or by constructing the houses within the stipulated period the delay may amount to a deficiency in service by treating the development authority as a service provider and the allottee as the consumer. But where existing sites are put up for sale or lease by public auction by the owner, and the sale/lease is confirmed in favour of the highest bidder, the resultant contract relates to sale or lease of immovable property. There is no hiring or availing of service by the person bidding at the auction. Nor is the seller or lessor, a trader who sells or distributes "goods". The sale price or lease premium paid by the successful bidder of a site is the consideration for the sale or lease, and

not consideration for any service or for provision of any amenity or for sale of any goods.

In a scheme for development and allotment, the allottee has no choice of the site allotted. He has no choice in regard to the price to be paid. The development authority decides which site should be allotted to him. The development authority fixes the uniform price with reference to the size of plots. In most development schemes, the applications are invited and allotments are made long before the actual development of the layout or formation of sites. Further the development scheme casts an obligation on the development authority to provide specified amenities. Alternatively the developer represents that he would provide certain amenities, in the Brochure or advertisement. In a public auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on "as is where is basis". With such knowledge, he participates in the auction and offers particular bid. There is no compulsion that he should offer a particular price. When the sites auctioned are existing sites, without any assurance/representation relating to amenities, there is no question of deficiency of service or denial of service. Where the bidder has a choice and option in regard to the site and price and when there is no assurance of any facility or amenity, the question of the owner of the site becoming a service provider, does not arise even by applying the tests laid down in Lucknow Development Authority vs. Balbir Singh."

6. In the present case the plot was purchased in an open auction held on 08.02.1990. There is no allegation in the complaint that some development related services in relation to the aforesaid plot was yet to be carried out when the said plot was purchased in an open auction and such development related services have not been provided or the said services are defective or deficient. The predecessor in interest of the complainant therefore did not hire or avail the services of the OPs in connection with housing construction. Though the housing construction is included in the definition of service given in Section 2 (1) (o) of the Act w.e.f. 18.06.1993, the grievance of the complainant is on account of the rejection of their application for issuance of occupancy certificate and not due to some defect or deficiency in the development related services provided by a Urban Development Authority such as HUDA. Therefore it cannot be said that the predecessor in interest of the complainant had hired or availed the service as defined in Section 2 (1) (o) of the Consumer Protection Act while purchasing the aforesaid commercial plot in a public auction. The complainant did not hire or avail any service, as defined in Section 2 (1) (o) of the Consumer Protection Act while applying for the completion certificate in respect of a commercial plot purchased in a public auction. Therefore, the complainant firm cannot be said to be a consumer of the OPs as far as the grievance relates to a commercial plot purchased in a public auction..

7. Admittedly plot in question is a commercial plot which the complainant purchased from its re-allottee Shri Ranbir Singh Dahiya through his attorney on 12.12.2007.

8. Section 2(1)(d) of the Consumer Protection Act, to the extent it is relevant, provides that consumer does not include a person who obtains goods or hires services for any commercial purpose. The explanation attached below the aforesaid provision excludes from the ambit of the term "commercial purpose", use by a person of the goods bought and used by him and the services

availed by him exclusively for the purpose of earning his livelihood by means of self-employment.

9. The intent and scope of the explanation was considered by this Commission in *Ashok Thapar vs. Supreme Indo Saigan Associates & Anr.*, C.C. No.31/2008, decided on 19.01.2015 and the following view was taken: "In the context of the services of housing construction, the explanation comes into play if the following conditions are fulfilled:

(i) The complainant buys the property exclusively for the purpose of earning his livelihood and (ii) He employs himself i.e. he is personally engaged in the activity which is carried on in the aforesaid property.

Unless both these requirements stand fulfilled, the explanation does not come into play and the complainant cannot be said to be a consumer as defined in the Consumer Protection Act, 1986. In our opinion, if a person is already having income through an activity other than the activity which he proposes to undertake in the property purchased by him, he would not be a consumer since in such a case, it cannot be said that the property was purchased by him for the purpose of earning his livelihood, he already having income from other activities. If a person already owns a commercial property, such a person will not be a consumer as defined in the Act since in such a case, it cannot be said that the property is purchased by him for the purpose of earning his livelihood, he being already in possession of a premises which he is using or can use for earning his livelihood. If a person is not personally engaged in the activity which is carried in the said property, he will not be a consumer as defined in the Act because that will not be a case of self-employment which is a necessary requirement for attracting applicability of the explanation attached to Section 2(1)(d) of the Consumer Protection Act. For instance, if a person is already engaged in business in a premises owned by him and he purchases yet another property for carrying a different or even the same business, he will not be a consumer as defined in the Act. If a professional such as a Doctor, a Chartered Accountant or an Advocate already owns a premises where he is undertaking his professional activity, he will not be a consumer as defined in the Act, if he purchases yet another property for undertaking the same or a different professional activity. On the other hand, if a person carrying a business or engaged in a profession does not own any commercial premises and buys a commercial premises for carrying

the same activity, he would be a consumer as defined in the Act provided he is personally engaged in the business or profession which is carried in the said premises, and that business or profession is the only source of his livelihood. A Doctor, Architect, Advocate or a Chartered Accountant who does not own any commercial space, would therefore, be a consumer if he purchases such a space and personally undertakes the same professional activity therein. If however, he already owns an office space and buys another office space, he will not be a consumer as defined in the Act.

To take yet another example, if a person employed in a service, purchases a commercial property for the purpose of earning his livelihood after his retirement by starting his own business or profession in the said commercial property, he would be a consumer as defined in the Act since the activity which he would be carrying in the said commercial property would be the only source of his livelihood after his retirement from service.

If a person does not own a commercial space but is otherwise earning and he purchases a commercial space for carrying an activity different from the activity which is the source of his existing income, he will not be a consumer as defined in the Act since in such a case, it cannot be said that the proposed commercial property will be exclusively for the purpose of earning his livelihood, his sustenance not being dependent upon the new activity which he seeks to carry in the premises in question. That would be the position even if such a person is to get personally engaged in the activity which he is planning to start in the subject premises ."

10. The complainant is before us as a partnership firm which consisted of three persons at the time plot in question was purchased from its re-allottee Shri Ranbir Singh Dahiya through his attorney. After purchase of the plot by the aforesaid firm, a new partner Smt. Kailash Bai was inducted and exiting partner Shri Satish Kumar retired from the firm. Though it is vaguely claimed that the construction on the plot was raised by the complainant for earning his livelihood, there is no such averments with respect to purchase of plot from the re-allottee Shri Ranbir Singh Dahiya through his attorney. The complaint does not explain how the complainant firm or for that matter its partners were to earn their livelihood by raising construction on the plot purchased by them from Shri Ranbir Singh Dahiya. There is no allegation in the complaint that the partners of the complainant firm were unemployed and were not engaged any business profession or vocations at the time the plot was purchased and/or construction was raised on it. In the absence of such pleadings and elucidation, it would be difficult for us to hold on the basis of bald averment made in the complaint that the plot in question was purchased and/or construction on it was raised by the partners of the complainant firm for the purpose of earning their livelihood. The plot in question was purchased and constructed spending crores of rupees. Moreover, in order to bring his case within the purview of the explanation below section 2 (1) (d) of the Consumer Protection Act, the complainant has also to

claim and prove that he was seeking to earn his livelihood by means of self-employment, in availing the services of the OPs. The complaint does not explain how the complainants were seeking to earn their livelihood from the building which they constructed on the plot purchased by them from the re-allottee Shri Ranbir Singh Dahiya through his attorney. A perusal of the photograph of the building constructed by the complainant on the plot in question clearly shows that the said building is a huge commercial building and not a small office where one may possibly carry on a business or profession for the purpose of earning his livelihood. In fact even "housing construction" was included in the definition of service given in Section 2 (1) (o) of the Act only w.e.f. 18.06.1993 whereas the auction had taken place much earlier, on 08.02.1990. We are therefore satisfied that the complainant is not a consumer as defined in Section 2 (1) (d) of the Consumer Protection Act.

11. After the judgment was reserved, the learned counsel for the complainant submitted copies of the following judgments:-

- (i) Faqir Chand Gulati vs. Uppal Agencies Pvt. Ltd. & Anr., III (2008) CPJ 48 (SC);
- (ii) Mopar Builders and Developers Pvt. Ltd. vs. Unity Co-Op Housing Society Ltd., I (2011) CPJ 71 (NC);
- (iii) Mathur Rahaman & Ors. vs. Jahanara Begum & Anr., III (2008) CPJ 164 (NC);
- (iv) Preet Mohinder Pal Singh vs. HUDA, R.P. Nos.3597 & 3634 of 2011, decided on 06.07.2015 by NCDRC.
- (v) Ghaison Expotech Ludhiana vs. Punjab Small Industries and Export Corpn. Ltd., III (2010) CPJ 248 (NC);
- (vi) Madan Kumar Singh (Dead) through LR. vs. District Magistrate, Sultanpur and others, (2009) 9 SCC 79;
- (vii) HUDA vs. Girdhari Lal, R.P. No.1046 of 2009, decided on 10.12.2009 by NCDRC;
- (viii) Lucknow Development Authority vs. M. K. Gupta, (1994) 1 SCC 243;
- (ix) Ghaziabad Development Authority vs. Balbir Singh, (2004) 5 SCC 65;
- (x) Laxmi Engineering Works vs. P.S.G. Industrial Institute, (1995) 5 SCC 583; and
- (xi) CCI Chambers Co-Op. HSG. Society Ltd. vs. Dev Credit Bank Ltd., III (2003) CPJ 9 (SC).

We have perused the aforesaid decisions. None of the aforesaid matters related to purchase of a commercial plot in a public auction and rejection of occupancy certificate in respect of a commercial building constructed on such a plot. Therefore, none of the judgments is of any help to the complainant.

12. For the reasons stated hereinabove, the complaint is hereby dismissed. It is however made clear that dismissal of the complaint will not come in the way of the complainant availing such other remedy if any as may be available to it in law.