(2016) 11 NCDRC CK 0068

In the National Consumer Disputes Redressal Commission

Case No : 1820 of 2016

M/S. PULSAR HOSPITALITY SERVICES PRIVATE?LIMITED Vs EMAAR MGF LAND LIMITED

Date of Decision : 21-11-2016

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

Citation : 2017 1 CPR 2

Hon'ble Judges : Ajit Bharihoke, S.M. Kantikar

Advocate : Shilpa Chohan, Jitender Chaudhary

Judgement

1. Instant complaint has been filed by the complainant M/s Pulsar Hospitality Services Pvt. Ltd. alleging deficiency in service on the part of the opposite party pertaining to a commercial space booked by the complainant.

2. The complaint per-se is not maintainable because the complainant does not fall within the definition of consumer as provided in Section 2 (1) (d) of the Consumer Protection Act, 1986. The definition reads as follows: - (d) "consumer" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who ''hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes ;

Explanation .- For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

3. On reading of the above it is clear that the complainant is a person who buys goods or hires or avails of services for consideration. The definition, however, has an inbuilt exception providing that if the goods are purchased for commercial purpose or the services are hired or availed for commercial purpose then said person would not be a consumer.

4. On reading of the complaint it appears that the complainant is trying to seek benefit of explanation to the above definition which gives a restricted meaning to the commercial purpose. It is pleaded that complainant is a consumer since the commercial space was booked for self-employment and end use. On reading of the explanation it is clear that in order to avail of benefit of the explanation the complainant is required to establish that the services of the opposite party were availed exclusively for the purpose of earning livelihood by the complainant by means of self-employment.

5. The use of the word "livelihood" makes it clear that the explanation is applicable only to a natural person and not to a juristic person like a company. Therefore, in our considered view, as the complainant company had booked a commercial space, the services of the opposite party were allegedly availed for commercial purpose, the complainant is not a consumer as defined under Section 2 (1) (d) of the Act. Accordingly, complainant has no locus standi to maintain a consumer complaint. Complaint is accordingly rejected. It is made clear that this order will not come in the way of the complainant to avail of his legal remedy by filing the consumer complaint before the appropriate forum.