
(1990) 01 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

RAJ SUDHA TOWERS (P.) LTD.

APPELLANT

Vs

SHRI SUBHASH GARG And SHRI PRADEEP GARG

RESPONDENT

Date of Decision : 23-01-1990

Acts Referred:

Citation : 1991 0 CPC 90 : 1991 1 CPJ 162

Hon'ble Judges : Prithvi Raj , B.L.Anand , Avtar Pennathur J.

Final Decision : Appeal accepted

Judgement

1. THIS appeal has been filed under Section 15 of the Consumers Protection Act, 1986 against the impugned order dated 6.11.89 passed by the District Forum. The brief facts of the case are that the appellants had advertised for the sale of shops in Annuvarta Towers at Plot No. 129, Wazirpur Commercial Complex on 11.12.82. Shri Subhash Garg and Shri Pradeep Garg, the respondents, residents of E-859, Sarswati Vihar, New Delhi had entered into an agreement for the purchase of a shop of 30 sq. ft. at Rs. 1,600/- per sq. ft. The respondents paid the entire amount totalling Rs. 59,645/- as the cost of the shop. They asked for the physical possession of the shop but the opposite party delayed the matter on some pretexts or the other subsequently the respondents were given the physical possession of the shop bearing No. 114-B on ground floor but they were perturbed on seeing the shop having 13.25 sq. ft. of area against the payment of 31 sq. ft. The respondents also alleged that there was no air conditioner in the complex whereas the booking was done for the conditions shop. The respondents had prayed before the District Forum for the following reliefs : (i) To direct the builders to refund the entire amount paid by the complainants. (ii) To direct the builders to pay interest @ 24% on the above amount as the builders charge interest @ 24% on any delayed instalment. (iii) To direct the builders to pay damages to the tune of Rs. 10,000/- for mental agony and physical suffering of the complainants. (iv) Any other relief/reliefs which the Hon"ble Forum deemed fit and proper.

The District Forum after hearing the parties had accepted the plea of the

respondents and directed the present appellants M/s. Raj Sudha Towers (P.) Ltd. to pay Rs. 59,069/- together with interest of 24% per annum with effect from 1.3.87 till the date of payment. The present appeal is against the above orders. The appellants raised the following grounds of appeal : (i) That the respondents No. 1 & 2 were not the consumer as defined in Section 2(d) of the Act. (ii) That the appellant was not a manufacturer or indulging in the sales of goods to fall within the purview of Section 2(c) of the Act. (iii) That the appellant was not hiring any services for consideration as required in Section 2(d)(ii) of the Act. (iv) That the sale of immovable property does not fall within the purview or ambit of service as defined in Section 2(c) of the Act. (v) That the appellant had not rendered any service which suffer from any deficiency as provided in Section 2(c)(iii) of the Act. (vi) That the respondent No. 1 & 2 were not the consumers and a complaint under Section 12 of the Act was not maintainable which only authorize a consumer to file such complaint (vii) That the impugned order/judgement is not in consonance with the mandatory provisions of Section 10 of the Act; so much so the composition of the District Forum comprised of 3 members whereas the respondent No. 3 single handedly dealt with the alleged complaint dated 10.8.89 filed by the respondent No. 1 & 2 before the respondent No. 3. (viii) That the impugned order/judgement dated 6.11.89 is contrary to the mandatory provisions of Section 14(2) of the Act which envisage that every order passed by the District Forum under Section 14(1) of the Act shall be signed by all the members constituting it and under section 10 a District Forum comprised of three members. It is therefore evident that the impugned order dated 6.11.89 passed in case No. 906/89 is without jurisdiction and is a nullity. (ix) That the respondents No. 1 & 2 are not entitled to the amount of Rs. 59,069/- along with the interest @ 24% per annum from 1.3.1987. So much so the respondents No. 1 & 2 had taken the possession of the shop purchased by them from the appellant company as early as on 8.2.1987.

The contention that the Forum has no jurisdiction has to be negated in view of the judgement/orders dated 27.9.89 passed by the National Consumer Disputes Redressal Commission, New Delhi in appeal No, 5 of 1989 in regard to U.P. Awas Evam Vikas Parishad v. Garima Shukla & others.-I (1991) CPJ 1 (NC) Elaborate arguments were addressed on the question of possession having been given to the appellant. The learned counsel for the appellant drew our attention towards the letter dated 3.2.87 placed on record at page 14 of the record of the appeal and agitated that no cognisance of this letter could be taken and that the said letter could not vouchsafe for the possession having been given. We have scanned the entire records to arrive at the just conclusions of the case. We have perused the original complainant dated 10-8-89 filed by Shri Subhash Garg and Pradeep Garg in the District Forum. At para 8 of this complaint it is recorded that "only recently the complainants were given the physical possession of the shop bearing No. 114- B, ground floor, in the Annuvarta Towers as to have been allotted to the complainants." THIS admission of the respondents does lead to the inescapable conclusion that the respondents had obtained the physical

possession of the shop bearing No. 114-B on the ground floor in Annuvarta Towers. In case the respondents were aggrieved on account of the size/area of the shop and non-provision of air-conditioner etc. they should have raised such objections at the time of taking over the physical possession of the said shop. A perusal of the letter dated 3.2.87 which bears the signatures of both respondents does not contain any such protest/objection. THIS plea of the respondents that they were not handed over the physical possession of the shop at the stage of appeal having admitted the fact to the contrary at the time of moving of the original complaint before the District Forum in devoid of merits and appears to be an after thought. In the light of above discussion and documentary evidence on record, the appeal has to be accepted. The result is that the impugned order dated 6.11.89 passed by the District Forum is set aside and quashed. The parties to bear their respective cost. Appeal accepted.