(2013) 09 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

RAJASTHAN STATE INDUSTRIAL DEVELOPMENT AND INVESTMENT CORPORATION LTD , Riico — APPELLANT

Vs

M/S. Nkm Jewels Pvt. Ltd — RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : 2013 0 NCDRC 677 : 2013 4 CPR 244 : 2014 1 CPJ 251

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : NIKHIL JAIN , SANJEEV KUMAR VARMA

Judgement

1. BY this common order, we propose to dispose of the above-mentioned three revision petitions which emanate from three separate consumer complaints bearing Nos. 234 of 2008, 235 of 2008 and 236 of 2008 filed respectively by M/s NKM Jewellers Pvt. Ltd., M/s Punam Jewels & Beeds and M/s Gem Excel, before the District Forum, Jaipur. All these revision petitions are directed against a common impugned order passed on 7.8.2012 by the State Consumer Disputes Redressal Commission, Circuit Bench No.2, Rajasthan while disposing of First Appeals bearing Nos. 131 of 2009, 132 of 2009 and 133 of 2009 filed by the respective complainants against the orders passed by the District Forum on 16.12.2008 in those three consumer complaints. These revision petitions involve similar questions of law and facts and hence this common order. For narrating the facts in this order, the lead case is Revision Petition No. 4038 of 2012.

2. BRIEFLY stated, the facts which are relevant for disposal of these petitions are that on 31.3.2004, M/s N.K.M Jewellers Pvt. Ltd., respondent/complainant, applied for a plot in the Special Economic Zone (SEZ) to the petitioner Corporation for setting up a gems and jewellery unit and they were allotted plot No. H-1126 for which they deposited 25% of the development fees. As per the allotment letter dated 31.3.2004, balance 75% money was to be deposited within a period of 60 days and in case of delay in depositing the amount, interest @ 15% was to be levied. The respondent did not deposit the balance amount within 60 days and wrote a letter to the petitioner for waiver of interest on

balance development charges according to clause 12 (2) which reads as follows:- "The Chairman and Managing Director may allow payment of balance 75% development charges of industrial plot in one year in three equal quarterly instalments, without interest in case the allotment is made before the industrial area is declared as developed. "

The petitioners wrote a letter on 8.5.2006 to the respondent stating that the respondent had deposited the balance 75% of the development charges without interest on 13.5.2005 and as per his request, the matter was put up before the Waiver Committee of the petitioner Corporation which observed that "allotment was made on regular allotment basis and the allottee was well aware to deposit the balance 75% amount of development charges within 60 days " and the Committee had decided to reject the request of the waiver on the balance 75% amount but the Committee had decided to waive the interest for the period during which the matter remained pending for decision of the Waiver Committee. Accordingly, the petitioner Corporation demanded Rs.81,370/- from the respondent as interest for the delayed payment. Alleging this as deficiency in service and unfair trade practice on the part of the petitioner Corporation, the respondent filed a consumer complaint before the District Forum which was resisted by the petitioners/opposite parties.

3. IN their reply, the petitioners took a preliminary objection in regard to maintainability of the complaint on the ground that the complainant is an industrial unit which has got allotted a plot from the petitioners/opposite parties for its industrial/commercial activities and as such there is no relationship of consumer between the respondent/complainant and the petitioners/opposite parties and the complaint cannot be included in the category of a consumer dispute and hence was liable to be rejected prima facie. On merits, it was submitted by the OPs that in their advertisement it had been clarified that 25% of development fee and 1% security deposit will have to be paid along with application and the balance will have to be deposited within 60 days of the issuance of the allotment letter. It had also been mentioned in the application that due to the availability of the amenities in the SEZ, no relaxation shall be granted in respect of rates of development fee. The OPs submitted that since the respondent/complainant did not deposit the balance 75% amount within 60 days as required in terms of the allotment letter, opposite parties referred the matter with regard to waiver of interest to the Waiver Committee which rejected the request and granted waiver of interest only for such period during which the matter was pending before the Waiver Committee. It was, therefore, pleaded by the OPs that by recovering 15% interest for the period of delay on the balance amount of 75% of development fee which was required to be deposited within 60 days, they did not cause any deficiency in service or unfair trade practice and the complaint was liable to be dismissed being devoid of any merit.

4. AFTER hearing the parties and considering the evidence, the District Forum dismissed the complaint vide its order dated 16.12.2008. Aggrieved by order of

the District Forum, the respondent /complainant challenged the same before the State Commission by filing an appeal which was allowed by the State Commission vide its impugned order whereby the State Commission directed the petitioners to make payment of Rs.81,370/- to the respondent along with interest @ 9% from the date of deposit till the date of payment in addition to Rs.2,000/- by way cost of litigation. This order is now under challenge before us. We have heard Shri Nikhil Jain, Advocate for the petitioners and Shri Sanjeev Kumar Varma, Advocate for the respondent. At the outset, learned counsel for the petitioners contended that as per his own admission in the complaint, the respondent had applied for allotment of the plot in question for setting up industry by establishing a gems and jewellery unit in the SEZ. In view of this admitted position, the respondent had availed of the services of the petitioner Corporation in the matter of allotment of the plot for commercial purpose and as such the complainant/respondent cannot be covered by the definition of a consumer within the meaning of the term under section 2 (1) (d) (ii) of the C.P. Act. In view of this, the complaint of the respondent is not maintainable before the consumer fora. He pointed out that in their reply, the petitioners had taken a preliminary objection to this effect but both the Fora below gravely erred in rejecting this objection and proceeding to deal with the complaint. On merits, learned counsel submitted that the State Commission failed to appreciate that Rule 12 (2) does not give a right to the allottee for waiver of interest rather it is a discretionary power to the Chairman for waiver of the interest if the area is not developed. He further submitted that the State Commission also failed to appreciate that the respondent had failed to deposit the balance amount within the time allowed to him as per the allotment letter. In view of this, he had no reason to complain about the levy of interest. The respondent had also given an undertaking that he will abide by the decision of the Waiver Committee and the Committee had already given him whatever relief could be granted in the matter by non-charging of the interest. Therefore, he submitted that the impugned order cannot be sustained in the eye of law and is liable to set aside both on the question of maintainability of the complaint as well as on merits.

5. PER contra, learned counsel for the respondent has supported the impugned order and submitted that the State Commission has rightly reversed the order of the District Forum which had been passed on wrong appreciation of the factual position. On the question of maintainability of the complaint, he argued that the complaint was in respect of payment of development charges and interest thereon and deficiency committed by the petitioners in that regard and not in respect of allotment for commercial/industrial purpose. In any case, learned counsel submitted that the plea of maintainability had not been taken by the petitioners before the Fora below. He also denied that it was a commercial transaction. He, therefore, submitted that the impugned order be upheld and the revision petition dismissed with cost.

6. WE have carefully considered the rival contentions and perused the record. The main question which has arisen before us is whether the respondent/

complainant is covered by the definition of a consumer as envisaged under section 2 (1) (d) (ii) of the Consumer Protection Act, 1986. If the answer to this is yes, then we have to decide as to whether the State Commission was right in reversing the order of the District Forum and accepting the complaint of the respondent in terms of its impugned order. In order to decide the first question, let us consider the provisions of section 2(1) (d) (ii) which is reproduced thus:- " (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; "

It can be seen from the above provisions that a person who hires or avails of any such services for any commercial purpose cannot be included in the definition of a consumer as envisaged under the C.P. Act. An exception, however, is provided in the explanation which specifies that "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. " It is not under dispute that as per his own admission in para 1 of the complaint, the respondent had applied for the plot and was allotted the same by the petitioner for establishing gems and jewellery unit in the SEZ on that plot. This being the admitted position, we have no manner of doubt that the respondent had availed of the services of the petitioner Corporation for commercial purpose. So far as the applicability of the exception provided for in the explanation is concerned, we may note that the petitioner Shri Navneet Kumar Maalpani had submitted three applications on behalf of three different commercial units represented by him. In such a situation, even though it has been stated by the respondent in para 3 of his complaint that the application for the plot was made for establishing a gems and jewellery unit in the SEZ "with an object of earning his livelihood at small-scale, " this contention is unbelievable and is not supported by the facts and circumstances of this case. This submission seems to have been made in the complaint just to take advantage of the exception contained in the explanation reproduced above. A person who applies for allotment of plots for setting up three separate industrial units cannot, by any stretch of imagination, be said to be doing so exclusively for the purposes of earning his livelihood by means of self-employment. In view of this, we are convinced that the respondent cannot be covered by the definition of a consumer and in this view of the matter his complaint before the District Forum was not maintainable since it was hit by the provisions of section 2 (1) (d) (ii) of the Act.

It should, therefore, have been dismissed by the District Forum on this ground alone. The State Commission also gravely erred in rejecting this plea of the petitioner Corporation without appreciating the preliminary objection in the right perspective in the light of given facts and circumstances of this case. Since our finding on the question of the respondent being a consumer is in the negative, we do not consider it necessary to consider the merits and dismiss the complaint as being not maintainable within the provisions of the C.P. Act. With this, the impugned order also cannot be sustained in the eye of law and is hereby set aside.

7. IN view of the above, all the three revision petitions stand allowed and the complaints are dismissed as not maintainable under the Consumer Protection Act 1986, with the parties bearing their own costs.