

(2008) 02 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

RAJU SITARAM LANDGE

APPELLANT

Vs

SADGURU PARK CO-OP. HSG. SOC.

RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Citation : 2008 2 CPJ 114

Hon'ble Judges : B.K.Taimni J.

Final Decision : Revision Petition dismissed

Judgement

1. -PETITIONER was the opposite party No. 4 before the District Forum, where the first respondent Sadguru Park Co-op. Housing Society had filed a complaint alleging deficiency in service on the part of the petitioner as also to the respondent Nos. 2, 3, and 4 before us.

2. BRIEFLY stated the facts of the case are that the petitioner was the land-owner, who entered into an agreement with the respondent Nos. 2, 3, and 4 for development of the area and then they entered into an agreement for sale to individuals. When certain discrepancies were noticed in the premises, and when the matter was not getting sorted out between the parties a complaint was filed before the District Forum, where the respondent Nos. 2, 3 and 4 remained absent. Petitioner/opposite party No. 4 filed written submissions and matter was contested. The District Forum after hearing the parties and perusal of material on record directed all the opposite parties, i.e., the petitioner and respondent Nos. 2, 3 and 4 to complete the constructions as per sanction plan, execute the deed of conveyance and provide facilities in terms of agreement in respect of parking space and over head tank and lift along with cost of Rs. 5,000. Aggrieved by this order, the petitioner filed an appeal before the State Commission, who after hearing the parties dismissed the appeal, hence this revision petition before us. I heard the learned Counsel for the petitioner. He has taken three pleas. Firstly, that the complainant is not a "Consumer" within the meaning of Consumer Protection Act, 1986, secondly, the provisions of Co-operative Societies Act and the Maharashtra Ownership Flats (Regulation of the Promotion of Construction,

Sale, Management and Transfer) Act, 1963 shall govern the case, and thirdly, there was no privity of contract between the complainant and the petitioner.

As far as the first point is concerned, Section 2(b) of the Consumer Protection Act, 1986 defines the complainant wherein it is stated "complainant" means a "consumer". Section 2(i)(d) defines "consumer" which "means any person"

3. AS rightly held by the State Commission, giving cogent reasons that the Co-operative Societies shall fall within the entity of being a "person", hence they were competent to file the complaint before us. In view of the same reasoning noted by the State Commission, I find no merit in this plea and hold the complainant society to be a "consumer" within the meaning as defined under Consumer Protection Act, 1986. As far as second point is concerned, again as rightly held by the State Commission, the remedy under Section 3 of the Consumer Protection Act, is over and above the facilities available under the Co-operative Societies Act or any other Act in force. Our jurisdiction has not specifically been barred, hence in view of the Section 3 of the Consumer Protection Act, 1986, we are in full agreement that the consumer Fora had jurisdiction to deal with the case.

4. AS far as the point relating to privity of contract is concerned, it is belied by the very fact that the parties to the Agreement, were the developer, purchaser and the petitioner being the land owner. If we see, the agreement (appearing at pages 35-36 of the paper-book) M/s. Aradhana Enterprises, the second respondent before us, has been shown a Partnership firm, second opposite party is the purchaser and party of "third part" is the petitioner, who has been referred to as "consenting party". (Emphasis supplied) There is no dispute that he was the owner of the land as also the beneficiary from the sale of the houses. Having gone through the agreement and the responsibilities vesting in the consenting party, I am not at all satisfied that there is any merit in the argument advanced by the petitioner that there was no privity of contract. It is this contract, which the purchasers through their Society (1st respondent) wish to enforce and the petitioner was a "consenting party" to the agreement. In view of the fact that petitioner being the land owner, was a party to the agreement, he cannot now say that he was not privy to the agreement. In the aforementioned circumstances, I find no illegality or jurisdictional error in the order passed by the District Forum and more elaborately discussed and passed by the State Commission. This Revision Petition has no merit, hence dismissed. Revision Petition dismissed.