(1992) 12 NCDRC CK 0074

In the National Consumer Disputes Redressal Commission

RAVIN BHARTI LAND DEVELOPMENT And FINANCE P. LTD. — APPELLANT

Vs

Punjab National Bank — RESPONDENT

Date of Decision : 09-12-1992

Acts Referred:

Citation : 1993 0 CPC 98 : 1993 1 CPR 179 : 1993 2 CPJ 166

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Advocate : Anita Gupta , Ramnik Gupta , Jagdeep Kishore , V.Pandit , S.V.Sharma

Final Decision : Dismissed

Judgement

1. THE complainant in this case, according to his statement is engaged in the sale and purchase of residential/commercial properties in and around certain cities including Shimla on individual or cooperative basis. According to the complainant, the property known as Comber mere Hotel, ''A'' Block, Shimla was agreed to be purchased, on an ''Agreement to Sell'' by Opposite Parties No. 6 & 7 (Shri Shanta Lal Chopra, Proprietor of M/s. Neelam Const., R/o Tunnel View Sanjauli, Shimla, & Shri Shanta Lal Chopra, R/o Tunnel View Sanjauli, Shimla) who in turn had executed an agreement on 28th of August, 1987 with Shri Raghu Nath Singh said to be the owner of property Comber mere Hotel ''A'' Block. On the basis of power of attorney the intending purchaser Opposite Parties No. 6 & 7 were to undertake building construction work at the site where property is located. THE purchase value of the property according to the complainant was fixed at Rs.37.50 lakhs. THE sale of the property was expected to be completed on or before 30th of April, 1988 as per the ''Agreement to Sell''.

2. THE complainant made an agreement with Opposite Parties No. 6 & 7 in November, 1987 to purchase the latter''s project consisting of 57 numbers of shops to be put up by Opposite Parties No.6&7-builders for Rs. 91.25 lakhs. The complainant claims to have made arrangements with the financing company viz. 21st Century Credit Pvt. Ltd. for the purchase of the property. However, the financing company, 21st Century Credit Pvt. Ltd. desired that the Opposite

Parties No. 6 & 7, the builders, to obtain co-acceptance from a nationalised Bank of the bill for Rs. 50.00 lakhs agreed to be advanced.

For obtaining his co-acceptance of the bill to be raised by the financier advancing a sum of Rs. 50.00 lakhs, the complainant submitted certain documents to Opposite Parties No. 1 to 4 Punjab National Bank and its branches and officers. These documents are listed in paragraph 11 of the complaint petition such as bio-data of Directors and Guarantors, copy of bill, balance sheets of companies, Memorandum and Articles of Association of the Company, photo copy of title deeds of properties, valuation certificates, non-encumberance certificates, project report etc.

3. ACCORDING to the complainant Opposite Party No. 1 Punjab National Bank turned down the proposal for co-acceptance of the bill against which they were to receive a loan of Rs. 50.00 lakhs from the financier. According to the complainant he had submitted the originals a long with the photo copies of the title deeds of the properties together with valuation certificates and non-encumbrance certificates but the Bank had failed to return these documents in spite of requests after the Bank declined to co-accept the bill of Rs. 50.00 lakhs.

4. HE has further alleged that the Opposite Parties No. 6 & 7 the builders have sold his project of buying 57 shops to be built on the Combermere Hotel estate either in full or in part to someone else and that he could not restrain the Opposite Parties No, 6 & 7 from doing so in the absence of the documents withheld by Opposite Party No. 1-PunjabNational Bank. In fact the complainant has further alleged that the Opposite Party No. 1 Punjab National Bank has illegally passed over the documents to Opposite Parties No. 6 & 7 the builders. According to the complainant the cause of action arose first time in January 1988 and thereafter on different dates and lastly in August, 1991 when the complainant was summoned by the C.B.I, in certain case. In the meanwhile his project has suffered and therefore he has claimed compensation amounting to Rs. 2.00 crores on account of business loss and loss of reputation and mental torture. He has also prayed that Opposite Parties No. 6 & 7 the builders should be directed to deliver the property known as Combermere Hotel, ''A'' Block to the complainant and that Opposite Party No. 1 to 8 be directed to deliver all the documents illegally delivered to Opposite Parties No. 6 & 7. The Opposite Party No. 1 Punjab National Bank has raised objections both preliminary as well as on merits. It has maintained that the complainant is not a consumer under the Consumer Protection Act and that the loan asked for was meant for commercial purpose for developing an immovable property, that only copies and not the original of any of the documents were submitted by the complainant to Opposite Party No. 1 and that the credit facility sought for by the complainant was prohibited by the Reserve Bank of India as per the circular of December, 1987. In fact it was in the light of the Reserve Bank of India''s circular that the credit facility asked for was refused. In its preliminary objections the Opposite Party No. 1 has further maintained that the complaint raises complicated questions of

fact which can only be properly tried by a Civil Court. The Complainant has also filed a civil suit in the Court of Sub-Judge, Shimla against Opposite Parties No. 6 to 8 on the same transaction between the Complainant and the Opposite Parties No. 6 to 8.

5. THE Opposite Parties No. 6 & 7 have also resisted the petition on the ground that the complaint does not attract the mischief of the Consumer Protection Act and that it is bad in law as it suffers from the vice of multifariousness. Further Opposite Party No. 7 had filed a criminal complaint U/s 406/420 I.P.C. against the complainant which however could not be prosecuted for some reasons.

6. CONSIDERING the number of parties arrayed in this case, the complicated and complex relationship between the builders, Opposite Parties No. 6 & 7, who had made an agreement to purchase the property with the owner of the property, the agreement made by opposite parties No. 6 & 7, the builders, with the complainant for sale of the project consisting of 57 shops to be put up in the said property by the builders, there is no doubt that the transaction is complex, complicated and involves a large number of parties. Obviously the case can be properly tried in a Civil Court only. Further the Opposite Party No. 1 Punjab National Bank had not agreed to provide any services to the complainant. Consequently, there is merit in the contention of the opposite party Bank that the complainant is not a consumer under the Consumer Protection Act. The transaction also deals with the sale/transfer of immovable property. On the face of it, it cannot be the subject matter of a complaint under Consumer Protection Act.

The complainant has also not quantified how he has incurred a business loss of Rs. 2.00crores in this case that, prima facie, is a fantastic claim. The Consumer Forums are also not competent to grant under Section 14 of the Consumer Protection Act the other reliefs sought for by him viz. delivering the property and the documents submitted to the Opposite Party, the Bank.

7. FROM the above facts we are of the view that the complainant has abused the provisions of the Consumer Protection Act in filing this complaint merely because no court fee is payable in such proceedings. We, therefore, dismiss the complaint and direct that he should pay a cost of Rs. 10,000/- to Opposite Party No. 1 for filing this vexatious complaint. Complaint dismissed with costs.