

(1999) 05 NCDRC CK 0098

In the National Consumer Disputes Redressal Commission

RENU DAGA

APPELLANT

Vs

G.D.A.

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Citation : 2000 2 CPJ 66

Hon'ble Judges : A.N.Divecha , R.K.Anand J.

Final Decision : Application rejected

Judgement

1. THE applicant/complainant has approached this Commission under Section 10(a) and Section 36B of the Monopolies and Restrictive Trade Practices Act, 1969 (the MRTP Act for brief) charging the respondents with adoption of and indulgence in restrictive and unfair trade practices within their respective meanings contained in Section 2(o) and Section 36A thereof. He has also taken out an application under Section 12A thereof for an interim relief of stay of the impugned Demand Notice of 28th October, 1998.

2. IT would be quite proper to look at certain facts giving rise to the present proceeding. The applicant/complainant appears inter alia to have booked one servant quarter and a garage admeasuring about 9.5 sq. mtrs. and 20.19 sq. mtrs. respectively approximately costing Rs. 55,000/- and Rs. 1,15,000/- respectively as an allottee of Kaushambi Apartments, the project undertaken by and on behalf of the respondents. IT appears that the booking was done sometime in 1993 and the applicant/complainant paid Rs. 1,70,000/- by means of a Demand Draft on 20th February, 1993. IT appears that the applicant/complainant tendered one affidavit to the respondents on 4th June, 1997 that he would pay according to the valuation done by the respondents. IT appears that thereafter possession of the garage and the servant quarter was given to him on 7th July, 1997. IT appears that the respondents sent one Demand Notice on 28th October, 1998 claiming Rs. 11,719/- and Rs. 18,857/- towards the difference in the final costing for the servant quarter and the garage respectively. The applicant/complainant has, therefore, approached this Commission charging the

respondent with adoption of and indulgence in restrictive and / or unfair trade practice qua the final costing of the servant quarter and the garage in question. He has also taken out an interim relief application under Section 12A of the MRTPA Act for stay of the demand notice of 28th October, 1998. The respondents have filed their reply both to the complaint and the interim relief application and have resisted them on several grounds. They have contended that the demand made from the applicant/complainant on the final costing of the servant quarter and the garage in question is quite legal and valid.

As pointed out hereinabove, the applicant/complainant has questioned the legality and validity of the demand of additional sum of Rs. 30,576/-. By his interim application, he has prayed for stay of that demand. It may be noted that, in their reply, the respondents have specifically contended that the applicant/complainant tendered affidavit on 4th June, 1997 declaring that he would pay according to the valuation of the garage and the servant quarter done by the respondents. No rejoinder thereto has been filed. It appears from the material on record that, at the time of allotment, the value for the servant quarter and the garage was tentatively fixed subject to final costing. In that context, the applicant / complainant appears to have tendered the aforesaid affidavit on 4th June, 1997. Thereupon the applicant / complainant was given possession of both the servant quarter and the garage sometime on 7th July, 1997. It would not now be open to the applicant/complainant to claim stay of the demand notice with respect to the final value of the garage and the servant quarter. Whether or not such value is proper and justifiable will have to be tested on the basis of the material on record. The applicant/complainant has not been able to show how the final valuation is improper and unjustifiable. In that view of the matter, we are prima facie of the view that the applicant/complainant has not been able to establish his prima facie case for the purpose of this interim relief application.

3. IN view of our aforesaid conclusion against the applicant/complainant, it is not necessary to consider the question of the balance of convenience between the parties. It may however be noted at this stage that the respondents fairly offered not to cancel allotment of the servant quarter and the garage in question on depositing the demanded amount of Rs. 30,576/- in terms of the Demand Notice of 28th October, 1998 and, at our suggestion, agreed to treat that amount as deposit to be appropriated towards the final costing with respect to the servant quarter and the garage in question in case the applicant/complainant ultimately loses on logical conclusion of the enquiry proceeding and to refund the balance or the entire amount, as the case maybe, with interest at the rate of 12% per annum in case the applicant/complainant ultimately succeeds at the end of the enquiry proceeding. Learned Advocate Mr. Maheshwari for the applicant/complainant, on instructions, was however not agreeable to this suggestion. IN case we have to answer the balance of convenience between the parties, in view of the aforesaid circumstances, we will have to answer the same against the applicant / complainant. In view of our aforesaid discussion, we are of the opinion that no interim relief deserves to be granted in favour of the applicant/

complainant in this case. In the result, the interim relief application fails. It is hereby rejected however with no order as to costs on the facts and in the circumstances of the case. Application rejected.