

(2001) 08 NCDRC CK 0102

In the National Consumer Disputes Redressal Commission

Case No : 572 to 618 of 1997

Rupchand S. Jain

APPELLANT

Vs

Nusli Maneksha Randelia And Ors.

RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Citation : 2002 1 CPC 379 : 2002 2 AWC 141

Hon'ble Judges : D.P. Wadhwa, C.L. Chaudhary, J.K. Mehra, Rajyalakshmi Rao, B.K. Taimni

Judgement

1. These 47 revision petitions have been filed by the petitioner-Roop Chand Jain, a developer and builder of Bombay and working as proprietor of Devendra Builders. The respondent in each case is the complainant whom the petitioner promised to build a flat for him and received various payments. When the complainant felt cheated, alleging deficiency in service, in service, they filed complaints against the petitioner in the District Forum. They also impleaded Nusli Maneksha Randelia who claimed to be the owner of plot of land on which flats were to be built by the petitioner. In the present petition this Nusli Maneksha Randelia is the first respondent. However, Nusli Randelia was discharged by the District Forum and direction was issued to the petitioner in each of the complaint to refund the amounts paid by the complaints with interest @ 12% per annum from 31.3.1993 and until the date of realisation. Order of the District Forum is dated 3.2.1996. Petitioner went in appeal to the Maharashtra State Consumer Disputes Redressal Commission which dismissed the same by order dated 15.4.1996.

2. Aggrieved, petitioner has come to this Commission. The questions that were raised at the time of admission by the petitioner were: if the State Commission had failed to exercise jurisdiction vested in it by law and whether the impugned order of the State Commission suffers from any material irregularity? These are in fact hardly the questions of law as on these grounds National Commission exercises its jurisdiction under clause (b) of Section 21 of the Consumer

Protection Act, 1986. As to what actually question of law arose from the impugned judgement of the State Commission, it is nowhere mentioned in the grounds of revision and in fact as we consider the matter, none arises.

3. Complainants who were employees of the Central Government or of the Statutory Corporations, are living in Bombay and desired to have a flat for their residence in the city. They proposed to form a co-operative society in the name of Vasudha Co-operative Housing Society Ltd. According to the petitioner, he came to know from Mr. Doshi, a broker that a land at Malad was available for development which land was owned by Nusli Maneksha Randelia. Petitioner then showed the said land to the representatives of the complainants who were acting on behalf of them. Site was approved. The title of the land was investigated from M/s. Ambubhai and Divanji, Advocates (Solicitors and Notaries) who certified that the land was free from all encumbrances. It is contended by the petitioner that the solicitors were engaged by the complainants, but it is on record that their fee of Rs. 20,000/- was paid by the petitioner, though he says it was on behalf of the complainants. A tripartite agreement was thereafter entered into between the complainants, the petitioner and Nusli Maneksha Randelia, the owner of the land. As per this agreement which is dated 28.8.1991, petitioner was to construct the flats and was to deliver the possession of the flats to their respective allottees-complainants on or before 31.3.1993. In terms of the agreement, complainants paid various amounts to the petitioner totalling Rs. 54,75,000/-. Construction, however, could not even be commenced and it was found that the land was in the possession of Court Receiver appointed by the Bombay High Court in a suit filed by M/s. Unic Construction who claimed to have entered into agreement with Mr. Randelia. Municipal Corporation of Bombay refused to sanction building plan. Since the petitioner did not return the amounts, complainants filed complaints in the District Forum.

4. Contention of the petitioner was that he was not responsible if the title of the land was found defective inasmuch as title had been got verified by the complainants themselves. He said he himself was cheated by Nusli Maneksha Randelia whom he had made payments amounting to Rs. 68.00 lakhs. He also said that he paid Rs. 50,000/- to an architect and also a further sum of Rs. 3.20 lakhs to M/s. Ambubhai & Divanji, Solicitors for some other deals in respect of the flats to be built on the land in question. It may be noticed that the complainants filed a complainant against Mr. Visnwanth v. Desai, Advocate, partner of M/s. Ambubhai and Divanji (now known as M/s. Desai and Divanji) for professional misconduct inasmuch as they had compromised their position by acting both for the complainants as well as for the builder. They also alleged that he certified that the land was free from encumbrances and that his report was a dishonest and wrongful act which jeopardised the interest of the complainants. It appears that the Bar Council, however, let him off holding that there was no professional misconduct as alleged against the advocate. Then the case of the petitioner is that he filed a criminal complaint against Nusli Maneksha Randelia for cheating, for which Randelia was arrested and that complaint is stated to be

still pending. Before the District Forum, Nusli Maneksha Randelia denied all the claims made by the complainants as well as the petitioner. He denied that he was party to any tripartite agreement and said that his signatures were got forged by the petitioner. He said that he had entered into an memorandum of understanding with the petitioner on 31.12.1990 and under that understanding, petitioner was to clear all the claims of the claimants in respect of encumbrances on the land to get a clear title and the petitioner had agreed to pay a sum of Rs. 300/- per sq. ft. of F.S.I. amounting to Rs. 1,28,10,000/-. A time schedule was also fixed for payment of these amounts. Randelia then said that the petitioner paid him only Rs. 9.00 lakhs and then failed to pay the balance amount. He, therefore cancelled the agreement. He said that there was no privity of contract between him and the complainants and the question of any deficiency of service on his part did not arise. Randelia said that when he came to know of the alleged tripartite agreement and other alleged documents shown to him by the petitioner, he filed a criminal case against him. He said, he got examined his signatures by hand-writing expert who opined that the signatures were not his. District Forum, it would appear, accepted the plea of Randelia and discharged him from any claim against him by the complainants and it was only the petitioner who was directed to make the payments.

5. State Commission held that without going into the question of the liability of Randelia as owner of the land, the tripartite agreement clearly provided that it was the responsibility of the petitioner to build the flat and in case of his failure to do so, to refund the amount to the complainants. State Commission analysed the agreement and referred to various clauses thereof to hold that the petitioner could not take a stand that the title of Nusli Maneksha Randelia to the land was found to be defective and that he was liable to refund the amounts. State Commission noticed that under para 10 of the agreement it was the petitioner who had agreed that if he failed to hand over physical possession of the flats to the complainants on or before 31.3.93, complainants shall be at liberty to cancel the agreement and the petitioner would be under obligation to refund all the money with interest. State Commission then also examined the plea of the petitioner that he had paid various amounts totalling Rs. 68.00 lakhs to Randelia. This was examined in the background of memorandum of understanding alleged by Randelia. State Commission observed that Randelia had admitted receipt of Rs. 9.00 lakhs only and denied receipt of Rs. 68.00 lakhs as claimed by the petitioner. No receipt of any nature was produced by the petitioner showing payment of Rs. 59.00 lakhs out of Rs. 68.00 lakhs to Randelia. State Commission was of the view that the stand of Nusli Maneksha Randelia appeared to be correct. It would, therefore, appear that the petitioner duped the complainants and took them for a ride. State Commission also said that in the background of the case it was difficult to support the story of the petitioner that he had paid sizable amounts to Randelia and held that case of Randelia appeared to be correct.

6. District Forum has also considered in detail the circumstances of the case and

came to the conclusion that there was no deficiency in service on the part of Randelia. Findings of the District Forum have been affirmed by the State Commission. This could not be challenged in these proceedings before us. In fact, Mr. K.T.S. Tulsi, learned Senior Advocate, was fair enough not to challenge the findings. We asked him as to what was the question of law involved in the case on which it could be said that State Commission failed to exercise its jurisdiction so vested in it by law or the order of the State Commission suffers from any material irregularity. His answer was that when the adjudication of dispute involves fraud, cheating in respect of which proceedings are pending in a criminal court, consumer forum is not the proper remedy. We do not think any such question arises in the facts and circumstances of the cases. Proceedings under the Consumer Protection Act has reached the stage of revision before the National Commission. It is too late in the day for Mr. Tulsi to contend that the complaints were not entertain able. Moreover, it is not the petitioner who is an accused and facing criminal trial. According to his own saying, he is the complainant when he filed a criminal complaint against Nusli Maneksha Randelia.

7. We do not find it is a fit case for us to exercise our jurisdiction under clause (b) of Section 21 of the Act. These revision petitions are dismissed with costs amounting to Rs. 2000/- in each complaint.