

(2014) 10 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

Subhash Infra Engineers Pvt. Ltd.

APPELLANT

Vs

HARYANA URBAN DEVELOPMENT AUTHORITY

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Citation : 2015 1 CPJ 41

Hon'ble Judges : J.M.MALIK J.

Judgement

1. THE complainant vide his complaint dated 20.8.2013 made the following averments. M/s. Subhash Infra Engineers P. Ltd. was earlier a partnership concern having its office at 129 -P, Sector 15, Part -I, Gurgaon, Haryana. However, in the year 2009, the partners of the said partnership concern formed a private limited company duly registered with the Registrar of Companies, Delhi and Haryana under the name and style of M/s. Subhash Infra Engineers P. Ltd. with all the five partners as its Directors and having its registered office at SCO No. 4, 1st Floor, C.S.C., Pocket C, Sarita Vihar, New Delhi. The complainant company took over the business of the erstwhile partnership concern with all assets and liabilities. The present petition was filed through Shri Jasbir Singh Saini, the erstwhile partner and one of the directors of the complainant company. Haryana Urban Development Authority (hereinafter referred as "HUDA") held public auction for sale of the sites for shops situated in shopping centre, Sector 31, Gurgaon on 26.6.2008. The complainant company, which was a partnership concern decided to purchase site/plot No. 101, measuring 78.787 sq. metres for its partner Sh. Jasbir Singh Saini from his share of profit, who wanted to run his personal business for his self -employment after constructing a double storeyed shop with basement. The complainant gave the highest bid of Rs. 28,85,09,000 and paid 10% of it on the same day. The allotment letter was issued in favour of the complainant on 29.7.2008. The complainant paid Rs. 43,27,500 on 27.8.2008. The opposite party handed over the possession of the site to the complainant on 3.11.2008. The completion certificate dated 18.6.2009 was issued by the opposite party. The complainant paid a sum of Rs. 3,10,15,051 through instalments.

2. THE grievance of the complainant is that after completion of construction of the shop, the complainant as well as other occupants of the area found it extremely difficult to use the shops as neither the opposite parties developed the parking area in front of their shop as per promise and lay out plan nor did the OP connect the 10 metre wide road to the west of the shop with the main road to the North of the shop at point "T" given in the site plan and as promised. The complainant sent a letter dated 9.7.2009 to the opposite party requesting them to provide direct approach road from the main road on the north and to improve the condition of the road in front of its shop and to develop the parking area. Many reminders were sent to the opposite party but those did not ring the bell. The complainant and the shop owners developed the parking area at their own costs in the month of October, 2012 after spending a sum of Rs. 11,55,000 only. The complainant was put to the financial loss, which the opposite party is liable to pay to the complainant. Again, the complainant is also entitled to interest @ 18% per annum upon this amount. It was prayed that opposite party be directed to pay the said amount with interest stated above. We have heard the learned Counsel for the petitioner at the time of admission of this case.

3. IT may be mentioned here that the case was filed before this Commission as back as on 5.9.2013. Learned Counsel for the complainant wanted to file an affidavit and the case was adjourned to 22.11.2013. On 22.11.2013, it was stated that the learned Counsel for the complainant was not well, therefore, the case was adjourned to 25.4.2014. On 25.4.2014, learned Proxy Counsel was present and a letter was circulated that the complainant's Counsel could not attend the Commission due to personal difficulty. The case was adjourned to 2.5.2014. On 2.5.2014, learned Counsel for the complainant was not ready. He prayed that the case be put up in the month of August, 2014. Therefore, last opportunity was granted for 22.8.2014. On 22.8.2014, learned Counsel for the complainant still wanted a date after four weeks. Adjournment was granted subject to payment of Rs. 5,000 as costs. The costs were deposited and the final arguments were heard on 7.10.2014.

4. LEARNED Counsel for the petitioner invited our attention towards the fact that he has filed an additional affidavit on 26.9.2014 wherein it was stated that a Resolution dated 25.6.2009 was passed. The said resolution runs as follows: "Subhash Chander And Co. Pvt. Ltd. U74140DL1999PTC098669 SCO No. 4, First Floor, CSC, Pocket -C, Sarita Vihar, New Delhi, Delhi India 110066

"Certified True Copy of the Resolution passed in the Board Meeting of Directors of the Company Subhash Chander and Co. Pvt. Ltd. held at its Registered Office at Gurgaon on 25.6.2009 at 300.00 p.m.

"Resolved that we have participated on behalf of Subhash Chander & Co. Pvt. Ltd. in the Auction of Departmental Store and Commercial Sites in Gurgaon held on 26.6.2008 at 11.00 a.m. in HUDA Gymkhana Club, Sector 29, Gurgaon. And our bid for site No. 101 (Corner) Double Storey Shop with Basement in Sector 31 at Gurgaon has been accepted by HUDA as per the terms and condition subject

to the provision of the Haryana Urban Development Authority Act 1977 and the rules/regulation applicable thereunder and the said Plot has been allotted to Subhash Chander & Co. Pvt. Ltd. at a Earnest money deposit of Rs. 28,85,000.

Resolved further that due to some reason company is not interested to take this plot and therefore decided to get E/M forfeited. During meeting, one of the Directors of the Co. Mr. Jasbir Saini has shown his interest towards his personal account to pay further sum to Haryana Urban Development Authority, Gurgaon for property mentioned above to take this plot for his self use. Hence balance cost of the plot including construction cost will be the liability of Mr. Jasbir Saini and company will not bear any expenditure inward.

By order of the Board of Directors Sd/ - Dilbagh Singh Saini Director 00814965 129P, Sector 15, Part -I, Gurgaon, Haryana"

Learned Counsel for the complainant contended that the case of the complainant is covered within the four corners of the consumer as defined in Section 2(1)(d) (ii) and the explanation appended to it, of the Consumer Protection Act, 1986.

5. ALL these arguments are bereft of merits. The abovesaid resolution dated 25.6.2009 was in the knowledge of the complainant at the time of filing of this complaint but there is no such averment in the complaint.

6. IN *Monstera Estate Private Limited v. Ardee Infra. Pvt. Limited*, IV (2010) CPJ 299 (NC), there was delay in possession. The complainant was a private limited company. The complainant was nominated for allotment of showroom. Possession was not given. Sale deed was not executed. The complainant alleged deficiency of service. It was held by this Commission that even if the private limited company was treated as person, purchase of shop could not be for earning its livelihood. Purchase of shop was not of commercial purpose. Now, we turn to the resolution detailed above. Skimble scramble pleas raised in the resolution are difficult to fathom. This appears to be an after thought. It was not explained as to why the company was not interested to take this plot. There is no evidence that earnest money was got forfeited. It is difficult to fathom how a Director can purchase shop in the name of company, particularly when the money is being paid from the joint account of the partnership firm. This causes a firm of doubt upon the bona fides of the complainant. In order to save the Court fees, the complainant has deployed a new method detrimental to the interest of the State.

7. IN *Shika Birla v. DLF Retailers Developers Ltd.*, I (2013) CPJ 665 (NC), Consumer Complaint No. 183 of 2012, the Hon"ble Apex Court, in Civil Appeal No. 5458 of 2013, dated 8.7.2013, upheld the order of this Commission, while observing that the complainant does not fall within the definition of "consumer", under Section 2(1)(d).

8. IN *Satish Kumar Gajanand Gupta v. Mis. Srushti Sangam Enterprises (India) Ltd., & Anr.*, III (2012) CPJ 264 (NC) : Consumer Complaint No. 296 of 2011,

decided by this Commission, on 3.7.2012, the Hon"ble Apex Court, in Civil Appeal No. 6229 of 2012, decided on 14.9.2012, upheld the order of this Commission that the petitioner was not a "consumer" when he intended to purchase some permanent accommodation at Mumbai, for his stay during his business visits, from Delhi, to save on the expenditure incurred for hotels. For that purpose he had booked two flats. In M/s. Purusharth Associates Pvt. Ltd. v. Mis. Uppal Housing Ltd. Plaza & Anr., this Commission in Consumer Complaint No. 112 of 2012, on 5.7.2012, observed in paras 11 and 12 of its judgment, as under: "11. Learned Counsel for the complainant argued that these flats will be used for the officers of the Company. Learned Counsel for the complainant could not deny that those officers would transact the commercial activity. A bare -look on this Resolution clearly goes to show that these flats would be meant for commercial purposes.

12. The complaint being not maintainable, is therefore, dismissed. Nothing will debar the complainant to seek remedy before the appropriate Forum, as per law."

9. THE above -mentioned case (M/s. Purusharth Associates Pvt. Ltd.) was dismissed in limine. Aggrieved by that order the complainant approached the Apex Court. The Hon"ble Supreme Court in Civil Appeal Nos. 8990 -91/2012, vide its order dated 7.1.2013, dismissed the same.

10. IN Subhash Motilal Shah (HUF) & Ors. v. Malegaon Merchants Co -op. Bank Ltd., I (2013) CPJ 34A (NC) (CN), the petitioner, "HUF", had opened a current account to be used for commercial purpose. It was held that it was not a "consumer", by this Commission vide its order dated 12.2.2013 and the SLP filed against the said order, was dismissed by the Hon"ble Apex Court in Civil Appeal No. 39200/2013, dated 13.1.2014. This must be borne in mind that this land was purchased by auction. Our intention was not invited towards any covenant that something was yet to be done by the opposite party. It is well settled that in the public auction, the complainant cannot qualify the criteria of being a consumer.

11. IT must be borne in mind that the property was purchased in a public auction. For that reason too, the complainant is not a consumer. Similar view was taken by this Commission in Pritam Pass v. HUDA and Anr., Revision Petition No. 1996 of 2011 decided on 9.5.2012. Against that order, Special Leave to Appeal (Civil) No. 28866 of 2013 was filed before the Apex Court and the same was dismissed as withdrawn on 2.9.2013. In view of the above, the complaint is dismissed.