

(2010) 03 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 712 and 3013 of 2009

V. Kamala and Others

APPELLANT

Vs

A.P. State Consumer Disputes Redressal Commissioner and
Others

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 17, 2(1), 3
Penal Code, 1860 (IPC) — Section 52
Specific Relief Act, 1963 — Section 19
Transfer of Property Act, 1882 — Section 3

Citation : AIR 2010 AP 146 : (2010) 3 ALT 483

Hon'ble Judges : Noushad Ali, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : M.V. Durga Prasad and M. Naga Raghu, in W.P. No. 3013 of 2009, for the Appellant; E. Manohar for P. Kamalakar and M. Naga Raghu, in W.P. No. 712 of 2009, for the Respondent

Final Decision : Allowed

Judgement

A. Gopal Reddy, J.—In these petitions filed under Article 226 of the Constitution, the petitioners obtained a Rule from this Court calling upon the respondents to show cause why a writ in the nature of Certiorari should not be issued after calling the records relating to the order of the A.P. State Consumer Disputes Redressal Commission-1st respondent dated 05-12-2008 made in CD. No. 32 of 2006 and to quash the same.

2. A short resume of facts necessary for disposal of the writ petitions is as under:

3. The writ petitioners and respondents 4 and 5 in W.P. No. 712 of 2009 (hereinafter called "landowners") have entered into a Development Agreement with M/s. Kamala Builders-3rd respondent, who is the petitioner in W.P. No. 3013 of 2009 on 05-07-1997 (hereinafter called "developer") to develop the house property bearing No. 1-4/1 (New)(Old No. 1-33/1) admeasuring 790 square

yards or 663.30 square metres in Sy. No. 166 situated at Hyder Nagar Village, Balanagar Mandal, Kukatpally Municipality, Rangareddy District.

4. Under the Development Agreement, the developer has to undertake the construction of the proposed residential/commercial complex in the schedule property after obtaining necessary permission from the Municipal authorities with its own expenses, for which the landowners shall not have any objection for construction of the same. If the construction of the complex is delayed due to defect in title of the landowners, they shall reimburse all the losses suffered by the developer; whereas the landowners undertake not to sell or alienate the suit schedule property. The developer shall undertake total responsibility of the construction of the said complex and discharge of the loans and charges; whereas the landowners shall not in any way be made responsible or liable for defects of the developer in constructing the complex. In case, the landowners suffer any loss as a result of the defective construction undertaken by the developer, the latter i.e. developer was held liable to the extent of loss so suffered. After completion of residential/commercial complex the developer has to deliver 40% of the super built up area inclusive of all common areas, balance areas and circulation areas to the land owners and the developer is entitled to remaining 60% and has a right to alienate the same to the prospective purchasers. The specifications to be provided and share of flats, which the landowners are entitled to, are enclosed as per Annexure-I to the deed. The landowners authorised the developer to procure the customers for flats/shops and garages and also to enter into agreement of sale with such customer, collect advances and issue valid receipts to such purchasers of flats. Extra floors, if any, constructed over and above the agreed area are agreed to be shared at the ratio of 40:60 between the landowners and developer. It was specifically agreed that the landowners shall not be held responsible for any defects in construction and the developer shall alone be responsible for such defects and shall be answerable to the third parties and also the landowners. For the said purpose, land owners agreed to execute a General Power of Attorney (GPA) and get it registered in favour of developer or its nominee to enable it to make application and obtain permissions and sanction from MCH, Electricity Department, Water Supply Departments and any other department to enable the developer to enter into agreement of sale or execute registered sale deed in respect of un-divided share of land and flats proposed to be constructed on the schedule property excluding portion reserved to the landowners together with the corresponding land. The developer was permitted to enter into separate contracts in his own name with building contractors, architects and others for carrying out the construction at his risk and cost.

5. In view of Development Agreement, the developer entered into an agreement of sale with the complainant i.e. 2nd respondent in W.P. No. 712 of 2009 on 13-03-2004, agreeing to sell his 60% of the built up area i.e. 4800 square feet; 2400 square feet in the ground floor and 2400 square feet in the first floor for a sale consideration of Rs. 45 lakhs along with his rights in the undivided share of

the property and received an advance of Rs. 15 lakhs and the complainant agreed to pay the balance sale consideration of Rs. 30 lakhs by the end of October, 2005. The developer promised to get the schedule property registered in favour of the complainant on receipt of balance sale consideration of Rs. 30 lakhs. Further, on 12-10-2005 under Ex.A4 the developer acknowledged receipt of balance sale consideration and delivery of possession to the complainant through his GPA holder together with attornment of tenancy. After obtaining acknowledgment of possession, the complainant moved A.P. State Consumer Redressal Commission - 1st respondent by filing C.D. No. 32 of 2006 u/s 17 of the Consumer Protection Act, 1986 (for short "the Act") for issuing a direction to the opposite parties, namely, writ petitioners in both the writ petitions and respondents 3 to 5 in W.P. No. 712 of 2009 to execute a sale deed in favour of the complainant in respect of plaint schedule property and for damages at the rate of 18% per annum contending that the opposite parties 2 to 7 are bound by the Development Agreement dated 05-07-1997. As per Clause 8(2) of the Development Agreement, the landowners authorised the developer to sell 60% of super built up area by the developer. As per Clause 10 of the agreement, the landowners authorised the developer to collect advances from third parties against the areas falling to its share. Opposite parties 2 to 7 have undertaken to execute GPA in favour of the developer. Believing the recitals made in the Development Agreement dated 05-07-1997, the complainant entered into an agreement of sale dated 13-03-2004 with the developer and paid total consideration, therefore, the land owners are liable to execute the sale deed in favour of the complainant and complainant is not concerned with the internal differences between the developer land owners.

6. The writ petitioners in W.P. No. 712 of 2009, who are opposite parties 3,4, 6 and 7, filed a counter opposing the complaint contending that the complainant is not a consumer for the purpose of the Act. As such complaint is not maintainable and Commission has no jurisdiction to entertain the dispute. The relief sought in the complaint, which is in the nature of seeking specific performance of agreement of sale dated 13-03-2004, cannot be entertained by the Commission against the landowners. As per the averments made in the complaint, the developer entered the alleged agreement of sale with the complainant on 13-03-2004 and the present complaint was filed more than two and half years after the alleged agreement of sale and prays for dismissal of the complaint.

7. The State Consumer Redressal Commission-1st respondent after reproducing the averments made in the complaint and counter, the evidence affidavit filed by opposite party No. 7, after perusing the documents marked as Exs. A1 to A7 and also after reproducing paras-29 and 22 of the judgment of the Supreme Court in Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd. and Another, was of the view that the said judgment applies to the facts of the present case and accordingly held complainant is a "consumer" and entitled to maintain the complaint. The Commission observed that when the opposite parties 2 to 7 have undertaken to execute GPA and as per Clause 11 of the Development Agreement the developer

is authorized to enter into agreements and collect advances from third parties against areas falling to his share, not executing the sale deed by opposite parties 2 to 7 is an act of deficiency in service. It was further observed that because of non-cooperative attitude of opposite parties 2 to 7, registration could not be done and they knew fully well that the developer and the complainant entered into an agreement where they have to join for execution of sale deed and that undoubtedly there is a delay on the part of the landowners in not executing the sale deed and this amounts to deficiency and necessarily they have to pay compensation for the laches committed by them. Considering the delay on behalf of opposite parties 2 to 7, the Commission was of the view that an amount of Rs. 1 lakh has to be awarded towards compensation which is reasonable together with costs of Rs. 5,000/-. Holding so allowed the CD directing the opposite parties i.e. writ petitioners in both the writ petitions and respondents 3 to 5 in W.P. No. 712 of 2009 to execute the sale deed as per the agreement of sale together with compensation of Rs. 1 lakh to be paid by the opposite parties 2 to 7 only i.e. petitioners and respondents 3 to 5 in W.P. No. 712 of 2009 (land owners) and costs of Rs. 5,000/-.

8. Questioning the correctness of the same, the landowners have filed W.P. No. 712 of 2009 and the developer filed W.P. No. 3013 of 2009.

9. Sri M.V. Durga Prasad, learned Counsel appearing for the petitioners in W.P. No. 712 of 2009 contends that petitioners and respondents 3 to 5 in W.P. No. 712 of 2009 are landowners and they entered into an unregistered Development Agreement with the developer, who in turn entered into an agreement of sale with the complainant, wherein the complainant agreed to purchase developer's share and also claims that the possession was delivered to him on 12-10-2005; the complainant is not a consumer and landowners are not parties to the agreement of sale dated 13-03-2004; the State Commission misread and misunderstood the ratio laid down in Faqir Chand Gulati's case (1 supra) particularly, paras-11 and 12 of the said judgment. Under Clause 15 of the Development Agreement, the landowners authorised the developer to enter into an agreement of sale subject to fulfilling conditions of first limb. In the absence of any GPA executed by the landowners in favour of the developer, the latter (developer) cannot enter into an agreement of sale with the complainant. Under Clause 19 of the Development Agreement-Ex.A-1 till the project is completed and respective flats are sold, both the parties are in joint possession; so, alleged possession delivered by the developer pursuant to agreement of sale does not arise. Agreement of Sale-Ex.A-5 entered by the developer in favour of complainant is in his individual capacity, whereas the complainant not purchased any particular portion of the property identified under Ex.A-5 but entire interest of the developer. So, the complainant claiming his right under agreement of sale and developer handing over the possession does not arise. The rights, if any, the complainant had against the developer is only by way of decree of specific performance. Further, grant of specific performance decree is an equitable relief; even if the developer seeks specific performance from the landowners, the Court

may not exercise the discretion for the laches committed by him. Further, when the developer himself cannot be entitled to specific performance in view of law of limitation and also in the absence of his readiness and willingness to perform his part of contract, the complainant, who is claiming right under him, is not entitled to the relief claimed. In the absence of any complaint of deficiency against the developer, the complainant cannot complain deficiency against the landowners for their non-cooperation to fulfil terms and conditions of Development Agreement. Therefore, the Commission will not have any jurisdiction to entertain the CD and impugned order is liable to be set aside.

10. Sri E. Manohar, learned senior counsel appearing for the complainant fairly conceded that the complainant is a consumer of the developer and can invoke the jurisdiction of the Commission to enforce the agreement entered by him with the developer and only opposite parties 3, 4, 6 and 7 chose to file counter and this writ petition. He fairly conceded that the complainant is not the consumer of the landowners but contended that once there is no dispute of Development Agreement where the landowners agree 60% of share to the developer, which comes to 4800 square feet, which was sold to the complainant for a sum of Rs. 45 lakhs.

11. The entire dispute of the writ petitioners is that there is no privity of contract between the landowners and the complainant. The remedy as explained in Section 3 of the Act "in addition to" and not in derogation of comes into aid to grant the relief. Both the writ petitioners and the developer colluded to deprive the complainant. When the Commission will have jurisdiction to entertain the complaint against the developer with whom the-complainant entered into agreement, petitioners, if aggrieved, have to approach the National Commission. To buttress his submission he placed reliance on the following judgments.

1. Lucknow Development Authority Vs. M.K. Gupta,
2. Mr. France B. Martins and Another Vs. Mrs. Mafalda Maria Teresa Rodrigues,
3. The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others,
4. State of Goa v. Colfax Laboratories Limited AIR 2005 Calcutta 108.

12. In view of the above rival submissions, the points that arise for consideration in these writ petitions are:

1. Whether the complainant is a "consumer" of the landowners to maintain the complaint for the reliefs claimed against them?
2. Whether the State Consumer Redressal Commission will have jurisdiction to entertain the complaint to enforce the agreement of sale entered by the developer with the complainant on the opposite parties 2 to 7 and award compensation?

Point No. 1

13. To appreciate the arguments, it is necessary to refer the definition of the word "consumer" as defined u/s 2(1)(d) of the Act, which reads thus:

(d) "Consumer" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;

Explanation: For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment.

14. The Commission has not given any reasons whether the complainant falls within the definition of "consumer" of opposite parties 2 to 7 except reproducing two paragraphs of the Supreme Court judgment and in a perfunctory (manner) concluded that the complainant is a "consumer".

15. We are of the view that the Commission was remiss. The manner in which the Commission concluded that the complainant is a "consumer" is total non-application of mind. Except referring to the judgment of the Supreme Court without understanding the context in which it decided the case and defined the "consumer", without any discussion as to how the factual situation of the dispute on hand fits into the factual situation of the decision on which reliance is placed, in a perfunctory manner granted the relief. The manner in which the Commission dealt with the matter does not commend appreciation.

16. The issue before the Supreme Court was whether a landowner, who enters into an agreement with a builder, for construction of apartment and for sharing of the constructed area, is a "consumer" entitled to maintain a complaint against the builder as a service provider under the Act. It is not the case of the third parties, who entered into agreement of sale with the developer, moved the Commission for the reliefs. Therefore, we fail to understand how the judgment applies to the facts on hand, as observed by the Commission.

17. In Faqir Chand Gulati's case (1 supra) the Apex Court in paras-22 to 24 of its

Judgment extracted the definition "joint venture" occurring in American Jurisprudence, Corpus Juris Secundum and also in Black's Law Dictionary, which has been reproduced by the Commission in its order. In para-26 after noticing the terms of agreement between the land owner and the developer it was held in the absence of any community of interest or common/joint control in the management nor sharing of profits and losses; as the landowner has no control or participation in the management of the joint venture, the requirement of each joint venturer being the principal as well as agent of the other party is also significantly absent, such an agreement is not joint venture, as understood in law. In para-27 the Supreme Court gave an example: when the land owner asks the builder to construct a house and give it to him and agrees to transfer an undivided share in the land corresponding to the additional floor/s which falls to the share of the builder, he becomes a co-owner of the land with a one-third share in the land and absolute owner of the ground floor of the newly constructed building and builder will become the owner of the upper floors with corresponding two-third share in the land. Once the basic underlying purpose of the agreement is the construction of a house or an apartment in accordance with the specifications, by the builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two floors. Such agreement whether called as a "collaboration agreement" or a "joint-venture agreement", is not, however, a "joint-venture". But the important aspect is the availment of services of the builder by the landowner for a house construction (construction of owner's share of the building) for a consideration. To that extent, the landowner is a consumer, the builder is a service-provider and if there is deficiency in service in regard to construction, the dispute raised by the landowner will be a consumer dispute.

18. In para-29 of the judgment it was observed as under:

It is however true that where the contract is a true joint venture the scope of which has been pointed out in paras-21 to 25 above, the position will be different. In a true joint venture agreement between the land-owner and another (whether a recognized builder or fund provider), the landowner is a true partner or co-adventurer in the venture where the land owner has a say or control in the construction and participates in the business and management of the joint venture, and has a share in the profit/loss of the venture. In such a case, the landowner is not a consumer nor is the other co-adventurer in the joint venture, a service provider. The landowner himself is responsible for the construction as a co-adventurer in the venture. But such true joint ventures are comparatively rare. What is more prevalent are agreements of the nature found in this case, which are a hybrid agreement for construction for consideration and sale and are pseudo joint-ventures. Normally a professional builder who develops properties of others is not interested in sharing the control and management of the business or the control over the construction with the landowners. Except assuring the land owner a certain constructed area and/or certain cash

consideration, the builder ensures absolute control in himself, only assuring the quality of construction and compliance with the requirements of local and municipal laws, and undertaking to deliver the owners' constructed area of the building with all certificates, clearances and approvals to the land owner.

19. Considering the terms and conditions of the agreement the Supreme Court held that the State Commission and the National Commission have proceeded on an assumption, which appears to be clearly baseless, that wherever there is an agreement for development of a property between the property owner and builder under which the constructed area is to be divided, it would automatically amount to a joint venture and there is no question of the landholder availing the service of the builder for consideration and set aside the orders of the National Commission, State Commission and the District Forum holding that complaint of the landowner is maintainable with a direction to the District Forum to consider the matter on merits.

20. The above said judgment is totally misplaced and cannot be made applicable to the facts of the present case.

21. It is fairly admitted by Sri E. Manohar, learned senior counsel appearing for the complainant that the complainant is not a consumer of the landowners, but he is a consumer of the developer. Hence, he can invoke the jurisdiction of the Commission against the developer.

22. Clause (d) of Section 2(1) defines the term "consumer" with reference to buyer of goods and hirer of services separately in Sub-clauses (i) and (ii). Admittedly, the case on hand does not fall under Sub-clause (i) of Clause (d) of Section 2(1). To attract Sub-clause (ii) of Section 2(1)(d) "consumer" means any person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system or deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include for commercial purpose. By substitution of new Explanation by Act 62/2002 the distinction maintained between the buyer of goods for commercial purpose, who was excluded from the purview of the Act, and hirer of services for commercial purpose who was covered by the definition of "consumer" under the Act has given a go-by. After the amendment there is no difference between the purchaser of goods and hirer of service for commercial purpose inasmuch as both of them, subject to the exception provided in the Explanation, are excluded from the definition of the "consumer" and consequently from the purview of the Act. In dealing with buyer of goods the Supreme Court in *Laxmi Engineering Works v. PSG Industrial Institute* AIR 1995 SC 148 held the Explanation reduces the question what is "commercial purpose" is a question of fact to be decided on the facts of each case.... The several words employed in the explanation viz., "uses them by himself", exclusively for the

purpose of earning his livelihood" and "by means of self-employment" make the intention of the Parliament abundantly clear that the goods bought must be used by the buyer himself by employing himself for earning his livelihood.

23. The developer, admittedly, has not hired any service of the landowners for a consideration, but whereas he offered to hire his services to the landowners by developing the property. Even assuming that the developer hired any service of the landowners, the complainant has not availed of the said service from developer with the approval of the landowners. In the absence of the same, the complainant cannot seek redressal against the landowners u/s 17 of the Act. Further, the terms and conditions of the agreement of sale entered by the complainant with the developer sufficiently establish that he is not a bona fide purchaser of the property which is explained elaborately on point No. 2.

24. It is fairly well settled when a legal fiction is limited to the purpose for which a clause in enactment was created, it should not be extended beyond that legal fiction.

25. Undisputedly there is no privity of contract between the landowners and the complainant. The developer wants to enforce the Development Agreement through the complainant cannot be ruled out, as contended by the learned Counsel for the petitioners. Therefore, it can be safely concluded that the complainant is not a bona fide purchaser of the property for value and he is not "consumer" of the landowner. In view of the same, we answer Point No. 1 against the complainant and in favour of the landowners.

Point No. 2

26. As seen from the agreement of sale entered by the complainant with the developer, which is sought to be enforced against the landowners, it is nowhere mentioned that necessary permission for construction of the residential/commercial complex has been obtained from the Municipal authorities and construction was carried on in accordance with the approved plan. Further, it is not stated that the landowners executed GPA, got it registered in favour of the developer or its nominee to enable the developer to make application and obtain sanction of the building permission from the Municipal authorities and other permissions required for enabling him to commence the construction and authorizes the developer to enter into an agreement of sale or registered sale deed in respect of undivided share of land and flats proposed to be constructed on the schedule, property excluding portion reserved to the owners together with the corresponding land, as per Clause-15 of the Development Agreement. In the absence of the same, how the complainant satisfied the right of the developer to enter into an agreement of sale has not been explained.

27. The Supreme Court in R. K. Mohammed Ubaidullah and Others Vs. Hajee C. Abdul Wahab (D) By Lrs. and Others, after referring to Section 19(a) and 19(b) of the Specific Relief Act, 1963 held as under:

Specific performance of agreement can be enforced against (a) either party thereto; (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. Section 19(b) protects the bona fide purchaser in good faith for value without notice of the original contract. This protection is in the nature of exception to the general rule. Hence the onus of proof of good faith is on the purchaser who takes the plea that he is an innocent purchaser. Good faith is a question of fact to be considered and decided on the facts of each case. Section 52 of the Penal Code emphasizes due care and attention in relation to the good faith. In the General Clauses Act emphasis is laid on honesty.

While explaining the word "notice" as defined u/s 3 of the Transfer of Property Act, held thus:

Notice may be actual where the party has actual knowledge of the fact or constructive. "A person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation II of said Section 3 reads:

Explanation II - Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof. Section 3 was amended by the Amendment Act of 1929 in relation to the definition of "notice". The definition has been amended and supplemented by three explanations, which settle the law in several matters of great importance. For the immediate purpose Explanation-II is relevant. It states that actual possession is notice of the title of the person in possession. Prior to the amendment there had been some uncertainty because of divergent views expressed by various High Courts in relation to the actual possession as notice of title. A person may enter the property in one capacity and having a kind of interest. But subsequently while continuing in possession of the property his capacity or interest may change. A person entering the property as tenant later may become usufructuary mortgagee or may be agreement holder to purchase the same property or may be some other interest is created in his favour subsequently. Hence with reference to subsequent purchaser it is essential that he should make an inquiry as to title or interest of the person in actual possession as on the date when sale transaction was made in his favour. The actual possession of a person itself is deemed or constructive notice of the title if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make inquiry as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of the property.

28. Therefore, the plea of the complainant that believing the representations made by the opposite party No. 1-developer and further plea that believing the recital-made by the opposite parties 2 to 7 under the Development Agreement

dated 05-07-1997 he entered into an agreement of sale dated 13-03-2004 and paid total consideration against the schedule property; therefore, the landowners are liable to execute the sale deed is a fallacy.

29. It is nowhere stated that the developer obtained necessary consent of the landowners, obtained GPA and got the plan sanctioned for proceeding with the construction. The developer never demanded for specific performance of Development Agreement from the landowners. Even if the developer instituted any suit for specific performance of Development Agreement, whether he is entitled to specific performance or not in the absence of his readiness and willingness to perform his part of contract throughout is a matter, which will be considered by the competent civil court exercising equity jurisdiction in granting such specific performance. The conduct of the parties and his approaching the Court with clean hands to enforce specific performance are all factors, which will weigh with the Court in granting a decree for specific performance. Therefore, the Commission cannot decide the issue in a summary manner directing the landowners, who admittedly not parties to sale agreement, to execute the sale deed, which virtually amounts to granting a decree for specific performance to which the Commission lacks jurisdiction. When the complainant failed to establish any contract of service offered by the landowners for consideration he couldn't be a "consumer" of the landowners to invoke the jurisdiction of the Commission.

30. From copious discussion and conclusions reached by us, we are of the view that the Commission committed jurisdictional error in entertaining the dispute and granting the relief, as referred to above. The right of the complainant, if any, is only against the developer for compensation for any deficiency of service by the developer under the agreement of sale entered between them.

31. In the entire complaint there is no allegation of deficiency of service by the developer except stating that believing the representation of the developer and believing recitals made by the landowners in the Development Agreement the complainant entered into an agreement of sale and paid total sale consideration that he needs a regular sale deed for the purpose of raising loans to establish his title over the property covered under agreement of sale and he is entitled to get damages by way of interest at the rate of 18% per annum on the amounts spent by him and further damages to a tune of Rs. 25,000/- towards mental agony. The Commission has not awarded any compensation against opposite party No. 1-developer except issuing direction to the opposite parties 2 to 7-landowners to execute the sale deed as per the agreement of sale.

32. As we have already concluded that the complainant will not come under "consumer" of opposite parties 2 to 7-landowners, the Commission will not acquire jurisdiction to entertain the dispute, decide the same and grant the relief as aforementioned against the opposite parties 2 to 7-landowners and the same has to be corrected in exercise of Certiorari jurisdiction of this Court. Point No. 2 is accordingly answered.

33. We accordingly set aside the impugned order passed by the State Consumer Disputes Redressal Commission-1st respondent dated 05-12-2008. Consequently C.D. No. 32 of 2006 shall stand dismissed against the petitioners.

34. In the result, both the writ petitions are allowed. No order as to costs.