

(2017) 11 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Case No : 1229 of 2017

YASHWANT RAMA JADHAV, & ORS.

APPELLANT

Vs

SHAUKAT HUSSAIN SHAIKH, & ANR.

RESPONDENT

Date of Decision : 10-11-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 3](#)
- Act not in derogation of any other law

Citation : (2017) 11 NCDRC CK 0010

Hon'ble Judges : V.K. Jain, S.M. Kantikar

Advocate : Baliram V. Kamble, S. B. Prabhavalkar

Judgement

1. These appeals are directed against the order of the State Commission dated 05.05.2017, whereby the complaints filed by the appellants were dismissed.
2. The appellants/complainants had entered into agreements with the respondents for purchase of residential flats, which the respondents were to construct.
3. The grievance of the complainants is that despite them having paid substantial amount to the respondents, the construction of the flats had not been completed. The complainants, therefore, approached the concerned State Commission, seeking possession of their respective flats alongwith compensation etc.
4. The complaints were resisted by the respondents, which inter-alia, pleaded that they had already filed civil suits for cancellation of the agreements executed with the complainants and therefore, the consumer complaints on the basis of the said agreements were not maintainable.
5. The State Commission having ruled in favour of the respondents, the complainants/appellants are before this Commission by way of these separate appeals.

6. Section "3" of the Consumer Protection Act, to the extent it is relevant provides that the provisions of the Act shall be in addition and not in derogation of the provisions of any other law for the time being in force. Thus the remedy available under the Consumer Protection Act is an additional remedy, which Parliament has made available to a consumer. Even if two remedies, one before the Civil Court and the other before the Consumer Forum are available, it is for him to decide as to which remedy he wants to avail. Admittedly, the respondents had entered into agreements with the complainants/appellants, agreeing to construct flats for them and give possession of the said flats. Therefore, a relationship of consumer and service provider came to be created between the parties as soon as the aforesaid transaction was entered into. In fact, the agreements were later got registered also. The relationship of consumer and service provider does not come to end on account of one of the parties cancelling the said agreement. If deficiency on the part of the respondents in rendering services to them is proved, the complainants/appellants would be entitled to appropriate relief in terms of the provisions of the Consumer Protection Act. In fact, this is not even a case where a person having already approached a Civil Court, at a later date decided to approach a consumer forum. Here the remedy before the Civil Court was initiated by the respondents and not by the complainants/appellants. The jurisdiction of the consumer forum is not ousted on account of a Civil suits having been instituted by the respondents, even if the subject matter of the said suits is the same agreement which is the foundation of the consumer complaint.

7. For the reasons stated hereinabove, the impugned orders are set aside and the matters are remitted back to the State Commission to decide the matter on merit. The parties shall appear before the State Commission on 15.03.2018. The State Commission shall decide the complaints within a period of six weeks of the parties appearing before it.