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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : May-08-2010

Judge : M.L. Sahni, Presiding Member & the Honourable Ms. Justice Salma Noor, Member

Appeal No. : Complaint No. C-10 of 54

Appellant : Rakesh Kumar and Another.

Respondent : Parsavnath Developers Ltd. and Another

Judgement :

M.L. Sahni, Presiding Member:

1. Complainant No. 1 is a practicing Advocate and complainant No. 2, is his wife. They booked two shops with the OP in Parsavnath Kaushambhi Mall in Ghaziabad (UP) at a total cost of Rs. 15,03,500 for shop No. FA-7 and Rs. 15,09,514 for shop No. 46 F-8 and paid a total consideration of Rs. 28,62,363 for both the shops, after raising loan from ICICI Bank Ltd.,

2. On receiving communication dated 8.7.2009 from the OP that the shops were ready for possession, it was revealed that the construction was not on time, as per the agreement, for which the OP were liable to pay a compensation @ 10 per sq. ft. every month to the complainants.

3. The complainants have also alleged that the OP are guilty of deficiency in service and unfair trade practice for number of reasons detailed in the complaint.
4. We have heard the complainant No. 1 in person at the admission stage for himself and on behalf of his wife the complainant No. 2. When asked to satisfy us as to how their complaint is a consumer complaint, he could simply state that he and his wife have purchased the shops by paying the consideration to the OP, therefore, they are the consumers as defined under the Consumer Protection Act.
5. We have, therefore, perused the definition of the Consumer as provided by Clause (d)(i) and (ii) of Sub-section (1) Section 2 of the Act, and pointed out to the complainant that term consumer does not include a person who buys goods for resale or for any commercial purpose; or who avails services of any description for any commercial purpose but no satisfactory explanation was offered . However, the order on admission was reserved to examine the complaint thoroughly, so as to find, if the case of the complainants is covered by the Explanation to Clause (d) of the Act, which reads as follows:

Explanation For the purpose 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 purpose of earning his livelihood by means of self-employment.
6. Later, the complainants filed an application stating that they had booked two shops/office space for his (not their) own livelihood. This plea has been taken as an after-thought, because, there is not even a whisper in the entire complaint that the shops in question were booked for earning their livelihood. This plea now after the order on admission was reserved is taken just to bring complaint within the ambit of explanation to Clause (d) of Section 2(1) of the Act, which requires that goods obtained or services availed for commercial purposes are for earning of complainants livelihood by means of self-employment.
7. Complainant No. 1 is practicing Advocate and complainant No. 2 is a house wife, therefore, booking of shops/commercial space in the Mall in Ghaziabad by no stretch of imagination can be believed to be for purpose of earning their own livelihood by self-employment.

8. We, therefore, find that complainants are not the consumers to maintain the present complaint. Hence, it is rejected under Section 12(3) of the Act at the admission stage itself.

Complaint dismissed.

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