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**Ms. Saavi Gupta and Another Vs. M/S Omaxe Azorim Developers Pvt. Ltd. (Formerly, M/S Fluorescence Properties Pvt. Ltd.) and Others**

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**SooperKanoon Citation : [sooperkanoon.com/1146730](http://sooperkanoon.com/1146730)**

**Court : National Consumer Disputes Redressal Commission NCDRC**

**Decided On : Oct-01-2012**

**Judge : J.M. Malik, Presiding Member & the Honourable Mr. Vinay Kumar, Member**

**Appeal No. : CONSUMER COMPLAINT NO. 208 OF 2012**

**Appellant : Ms. Saavi Gupta and Another**

**Respondent : M/S Omaxe Azorim Developers Pvt. Ltd. (Formerly, M/S Fluorescence Properties Pvt. Ltd.) and Others**

**Judgement :**

J.M. MALIK, PRESIDING MEMBER

1. The whole controversy centres around the question, whether the complainants are the consumers??

2. Ms. Saavi Gupta, complainant No. 1, is the original purchaser of the apartment in question as she had invested in the apartment on behalf of the whole family. Dr. Sanjeev Gupta, her father, contributed the amount for the same and he has been dealing on her behalf with M/s Omaxe Azorim Developers Pvt. Ltd.-opposite party No. 1, Dr. Rohtas Goel, CMD-opposite party No. 2, Mr. Sunil Goel, Jt. MD-opposite party No. 3 and the Vice President of M/s Omaxe Azorim Developers Pvt.

Ltd.-opposite party No. 4.

3. Till March 2010 the complainants paid huge amount in installments to the opposite parties towards the cost of the pant house in question to add up to the payment of more than 50% of the total cost of the apartment in question, by paying a sum of approximately Rs.2,17,74,395/- to the opposite parties. It is explained, that, as a matter of fact, the complainants booked **four properties** with the opposite parties including pant house, apartment No. PH-1701, Lucerne Tower, Forest SPA, Suraj Kund Road, Faridabad.

4. It is admitted that complainants have been paying installments of the properties in question and also of the other properties though not on the dates stipulated by the opposite parties as there was some slight delay on the part of the complainants in making the payments of these installments.

5. The installments were paid till 25.11.2010. It is alleged that the opposite parties started showing their dishonest and unfair intentions by addressing a communication dated, 29.12.2010, wherein all of a sudden without intimating the basis or justification, thereof, to the complainants, the price of the apartment in question was jacked up unilaterlly by the opposite parties from Rs.4.04. crores, originally agreed amount to a higher price of Rs.4.35 crores. Protest was raised but the same did not ring the bell. In between, some of the payments were also made vide notice dated 30.8.2011. The complainants were asked to clear the payments on the same very day. Time was extended and thereafter cancelled their booking. Consequently, the present complaint has been filed. It was prayed that the pant house be provided on the original price. The same be reallocated in favour of the complainant; Rs. 5 crore be given as compensation; Interest @24% be imposed on the amount already deposited by the complainants besides the other prayer which are detailed in the complaint itself.

6. The complainant No. 2 has filed an affidavit wherein it is stated that apartment No. PH-1701 is booked for the purpose and needs of his daughter, complainant No. 1. The same was purchased for her future and her marriage prospects. Apartment No. 1601 was booked for the complainant No. 2, his wife and his parents and his parents and apartment No. 1602 was purchased for his minor son.

7. It is contended on behalf of the complainants that the complainant No. 1 is the consumer.

8. Instead of touching the heart of the problem, the learned counsel for the complainants just skirted it. The complaint itself mentioned that complainant No. 1 is the investor. There is no evidence on record which may go to show that apartments were separately taken in the separate names of all the family members. The complainant No. 1 has been shown as the owner of all the four houses. It is also not stated for whom the part house is being purchased i.e the fourth property. The crux of the matter before the court is that it has to find out, whether the purpose is commercial to earn profits or for self employment or self use.

9. In **Bihar School Examination Board Vs. Suresh Prasad Sinha, IV (2009) CPJ 34 at 36(SC) : AIR 2010 SC 93 : (2009) 8 SCC 483** the Apex Court has held, as under :-

**œConsumer “ Definition of:- According to the definition of consumer in Section 2(d) of the Act, a person who hires or avails of any services for a consideration, is a consumer. The following category of service-availors will not be consumers : (i) persons who avail any service for any commercial purpose; (ii) persons who avail any free service; (iii) persons who avail any service under any contract of service. A consumer is entitled to file a complaint under the Act if there is any deficiency in service provided or rendered by the service provider?.**

10. This Commission in **Monstera Estate Pvt. Ltd. Vs. Ardee Infrastructure Pvt. Ltd. “ IV (2010) CPJ 299 (NC)** has held that:-

**œHousing “ Purchase of space for commercial purpose “ There was delay in possession. Complainant was a private limited company. Complainant was nominated for allotment of showroom. Possession not given. Sale deed was not executed. Deficiency in service was alleged. Even if private limited company was treated as person purchase of space could not be for earning its livelihood. Purchase of space was for commercial purpose?.**

11. Again, this Commission in **M/s. Harsolia Motors Vs. National Insurance Co. Ltd.**, in First Appeal Nos. 159, 160 and 161 OF 2004, decided on **03.12.2004**, has held as under:-

œIn support of his submission, learned counsel Sh.Sharma, referred to the judicial dictionary meaning of the words commercial purpose which is as under:-

œThe word œcommercial? according to the Oxford Dictionary means viewed as a matter of profit and loss. The word œpurpose? means œobject which is in view or for which is made? : œaim? œamend?. The word œcommercial purposes? would, therefore, cover an undertaking the object of which is to make a profit out of the undertakings. (**Municipal Board, Unnao Vs. The State of U.P. 1957 All. L.J. 479 at 498**)?.

œAccording to Oxford dictionary, it means œViewed as a matter of profit or loss?.

œThe word œcommercial? is defined in the Concise Oxford Dictionary, New Edition of the 1990, at page 227, the word œcommercial? is defined as having profit as a primary aim rather than artistic etc. value (**Vide Dena Bank, Ahmednagar Vs. Prakash Birbhan Katariya, AIR 1994 Bom 343 at 345**)?.

12. It was further held in **Laxmi Engineering Works Vs. PSG Industrial Institute, (1995) 3 SCC 583**, by the Honble Apex Court as under :

œThe National Commission appears to have been taking a consistent view that where a person purchases goods œwith a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit?, he will not be a consumer, within the meaning of Section 2 (d) (i) of the Act. Broadly affirming the said view and more particularly, with a view to obviate any confusion “ the expression œlarge scale? is not a very precise expression “ Parliament stepped in and added the explanation to Section 2(d)(i) by Ordinance/ Amendment Act, 1993. The explanation excludes certain purposes from the purview of the expression œcommercial purpose?

**“ a case of exception to an exception. Let us elaborate : a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others work, for consideration or for plying the car as a taxi, can be said to be using the typewriter/car for a commercial purpose. The explanation however clarifies that in certain situations, purchase of goods for a commercial purpose? would not yet take the purchaser out of the definition of expression of expression consumer. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods is yet a consumer. In the illustration given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, he does not cease to be a consumer. In other words, if the buyer of goods uses them himself, i.e. by self-employment, for earning his livelihood, it would not be treated as a commercial purpose? and he does not cease to be a consumer for the purposes of the Act. The explanation reduces the question, what is a commercial purpose?, to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. 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 Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood. A few more illustrations would serve to emphasise what we say. A person who purchases an auto-rickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, if such buyer takes the assistance of one or two persons to assist/help him in operating the vehicle or machinery, he does not cease to be a consumer). As against this, a person who purchases an auto-rickshaw, a car or a lathe machine or other machine to be plied or operated exclusively by another person, would not be a consumer?.**

13. Also, see **Rajasthan State Industrial Development and Investment Corporation Vs. Diksha Enterprises, III (2010) CPJ 333 (NC)** and **this Commissions judgment in RP 1129 OF 2012, Shri Harnam Singh Vs. Shalimar Estate Pvt. Ltd. and Ors., decided on 29th May, 2012.**

14. In the light of this discussion, we find that the present complaint is not maintainable. The complainants can seek redressal of their grievance in another forum.

15. We dismiss the complaint but liberty is given to seek redressal of their grievance before any other forum/civil court except the consumer forum.

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