

**In Re: Jaina Properties Pvt. Ltd.**

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**Court :** Monopolies and Restrictive Trade Practices Commission MRTPC

**Decided On :** Oct-30-1991

**Reported in :** (1992)73CompCas184NULL

**Judge :** R Jahagirdar, H Gupta

**Appellant :** In Re: Jaina Properties Pvt. Ltd.

**Advocate for Def. :** Mr. M. L. Sachdev

**Judgement :**

1. This order shall dispose of an enquiry instituted under Section 10(a)(iv) and Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969. A complaint was received in the office of the Commission from one Shri Harmesh Singh Bedi against the respondent.

According to the complaint, the complaine company issued an advertisement that shops of an area of 16 sq. feet were available for Rs. 32,800 on plot No. 2, Netaji Subhas Marg, Darya Ganj, New Delhi.

Later, the complaine company informed the complainant that it would construct a shop of 23 sq. feet area instead of 16 sq. feet and the complainant was required to pay Rs. 15,000 more for the extra space.

The allegation of the complainant is that though he had paid the total amount of Rs. 32,800 plus Rs. 15,000, the complaine company allotted a space measuring 12 sq. feet only instead of 23 sq. feet. The complaint was sent to the Director-

General of Investigation and Registration for investigation who, after investigation, reached the conclusion that, under the guise of the "super area" concept, the complainee-company allotted a shop of 12 sq. feet covered with wooden cabin contrary to the promise and agreement to allot a shop of 23 sq. feet. According to the Director-General, the aforesaid trade practice constitutes a restrictive trade practice under Section 2(o)(ii) of the Monopolies and Restrictive Trade Practices Act as the complainee has manipulated the conditions of delivery of services in such a manner as to impose on the consumer unjustified costs or restrictions.

2. Finding a prima facie case, a notice of enquiry was sent to the respondent. The relevant portion of the notice of enquiry reads as under : "One Shri Harmesh Singh Bedi of 1190/Chand Mohalla, Gandhi Nagar, Delhi, had booked a space of 23 sq. feet area in Jaina's air-conditioned market for electronics and spare parts at main Netaji Subhash Marg, Daryaganj, New Delhi, by paying a sum of Rs. 32,800 in November, 1982. Later, he paid a further sum of Rs. 15,000 to the respondent. The respondent actually allotted him a shop measuring 12 sq. feet covered with wooden cabin. It was an ordinary shop without being provided with facility of air-conditioning. As per the terms of booking those making immediate payment of the price were liable to be given rebate of 10 per cent. The complainant was, however, not allowed any rebate though he had made immediate payment of the price. Moreover, the respondent had constructed only a general market and not a special market for electronics and spare parts."

3. In reply to the notice of enquiry, the respondent raised preliminary objections that the provisions of the Monopolies and Restrictive Trade Practices Act do not extend to matters involving immovable property as he does not render any service within the meaning of the Monopolies and Restrictive Trade Practices Act, that the complainant has already taken possession of the space in question as far back as on February 11, 1985, and that the issue of the notice of enquiry based on a belated and motivated complaint is, therefore, without jurisdiction. On merits, it has been stated by the respondent that the complainant had taken possession of the space in question on December 11, 1985, and had signed the possession letter after fully satisfying himself about the measurement of the space, etc., as stated therein. On the pleadings of the parties, the following issues were framed :

1. Whether the application is not maintainable for the reasons mentioned in the reply to the notice of enquiry

2. Whether the respondent is or has been indulging in restrictive trade practices as alleged and made out in the notice of enquiry

3. If the answer to issue No. 2 is in the affirmative, whether such practices are prejudicial to the public interest, interest of the consumer or consumers generally.

4. The case was fixed for the evidence of the Director-General on September 18, 1991. On this date, the Director-General examined one witness, namely, AW-I and his evidence was recorded and concluded. The Director-General also served a notice upon the respondent to admit five documents mentioned in the notice. All the five documents were admitted by learned counsel for the respondent and they are marked as exhibits A-1 to A-5 and with this the Director-General closed his evidence. Mr.

M. L. Sachdev, learned counsel for the respondent, made a statement at the Bar that his client does not want to lead any evidence and the case was fixed for arguments. Arguments were heard and concluded on October 11, 1991.

5. Issue No. 1 : No arguments were advanced on this issue by either party for the simple reason that, on September 27, 1991, the President of India had promulgated an Ordinance (No. 8 of 1991), inter alia, adding the following Explanation in Section 2(r) of the Monopolies and Restrictive Trade Practices Act.

"Explanation.--For the removal of doubts, it is hereby declared that any dealings in real estate shall be included and shall be deemed always to have been included within the definition of 'service'." 6. Issue No. 1 is, therefore, decided in favour of the Director-General and against the respondent. Issue No. 2 : On behalf of the Director-General, it was contended by Shri S. Gupta, Joint Director-General, that allotment of an area of 12 sq. feet as against the promised area of 23 sq. feet is a restrictive trade practice within the meaning of Section 2(o)(ii) of the Monopolies and Restrictive Trade Practices Act and the respondent is indulging in manipulating the conditions of delivery of service in such a manner as to impose

on the consumers unjustified costs or restrictions. As against this, learned counsel for the respondent has contended as follows : Firstly, the complainant has taken possession of the shop No. 162 on the first floor on February 11, 1985, and he has been allotted an area of 23 sq. feet. Learned counsel has invited our attention to annexure I which is duly signed by the complainant in token of his being satisfied with the allotment ; secondly, learned counsel has contended that a civil suit is pending between the same parties in a civil court awaiting the final judgment. In view of this, the present enquiry is not maintainable. Thirdly, learned counsel has contended that as per the agreement between the complainant and the respondent, the complainant was to be given a super area of 23 sq.

feet and not the actual area and as per annexure I and the complainant has been given the actual area of 17.37 sq. feet and a proportionate area for common services, i.e., staircase, toilet, passage super area 5.63 sq. feet. Learned counsel has also drawn our attention to the agreement between the parties which has been marked as AW-I/6 to argue that, as per the agreement, the complainant was to be allotted the super area and not the actual area and he has been allotted a super area measuring 25 sq. feet.

7. We have heard learned counsel for the respondent at great length ; we have gone through the agreement, annexures A-1 and 2, along with the reply to the notice of enquiry, documents exhibits A-1 to A-5 as tendered by the Director-General. We have also perused the statement on oath of the complainant. In his statement on oath, the complainant has stated that he sent a complaint to the chairman of the Commission and that the contents of the same are correct. This complaint was marked as exhibit AW-1/1 along with the annexures. In paragraph 8 of the complaint, an allegation has been made by the complainant that the company had made a promise to provide 23 sq. feet, of area of shop to him and as against this, it has been provided only a wooden cabin of 12 sq. feet. It is seen that the complainant appeared as his own witness ; he proved the contents of the complaint. No question was put to the complainant as to how much actual area he has been given, his statement on oath that he has been given only 12 sq. feet of the area instead of 23 sq. feet stands un rebutted. The respondent has not made a statement on oath in rebuttal of the statement on oath made by the complainant.

8. The complainant has clearly stated in his statement on oath that he signed the document, exhibit AW-1/4, without inspection of the premises and signed the document without understanding the contents of the same.

In the absence of any rebuttal from the side of the respondent, we have no material on evidence to disbelieve the statement on oath by the complainant that he has been given only 12 sq. feet of the area as against the agreed space of 23 sq. feet under the guise of "super area".

9. The question for our determination is whether the aforesaid trade practice is a restrictive trade practice within the meaning of Section 2(o)(ii) of the Monopolies and Restrictive Trade Practices Act. Section 2(o)(ii) of the Monopolies and Restrictive Trade Practices Act reads as under : "which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions." 10. The Monopolies and Restrictive Trade Practices Act does not define the term "manipulation of prices" and, in the absence of that, one has to fall back upon the dictionary meaning of the term "manipulation".

The Concise Oxford Dictionary defines the word "manipulation", inter alia, as "manage by dexterous (esp. unfair) use of influence, etc." In the instant case, though the agreement is for 23 sq. feet of the area to be allotted to the complainant, the actual area allotted is only 12 sq. feet. This has been done under the guise of super area, Whereas super area has been defined in the agreement entered into between the parties as area under periphery waifs, balconies, vearandahs and proportionate area of passage, columns, the agreement nowhere provides as to the extent of the actual area which the allottee would get as against the super area. Under the guise of super area, colonisers/builders are left with a very wide discretion to reduce the actual area which shall be allotted to the allottee to any extent as it has been done in the instant case. What percentage of area shall be allotted to common services is also not provided for in the agreement.

The practice, therefore, of allotting an actual area equal to the one half of the agreed super area would, to our mind, squarely become manipulation of prices as

to impose on the consumers unjustified costs, inasmuch as he is being charged at a particular rate per sq. feet of super area and what has finally come to him is almost half of the agreed area. It is a clear case of manipulation of prices and Section 2(o)(ii) of the Monopolies and Restrictive Trade Practices Act is attracted. We, therefore, hold that the respondent has been indulging in the restrictive trade practice of manipulation of prices so as to impose on the consumer unjustified costs within the meaning of Section 2(o)(ii) of the Act. Having held so, we also hold that the aforesaid restrictive trade practice is prejudicial to public interest as no gateways have been pleaded by the respondent in his reply to the notice of enquiry. We hereby pass a cease and desist order under Section 37(1) of the Monopolies and Restrictive Trade Practices Act and direct the respondent that the restrictive trade practice as stated in the notice of enquiry shall be discontinued and shall not be repeated. We issue the following directions to the respondent, namely : "In every agreement which is entered into by him with any allottee, both the super area and the actual carpet area shall be specifically and clearly stated ; The percentage of total super area as against the actual carpet area shall also be stated clearly in the agreement." 11. The impugned agreement, exhibit AW-1/6, shall be amended/modified accordingly. The respondent is also burdened with the costs of the proceedings which are awarded in the sum of Rs. 5,000 to the Director-General. The respondent shall file an affidavit of compliance within six weeks from today. The respondent shall also pay the costs within the same period.