IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 27.10.2021
Date of Hearing: 20.09.2024
Date of Decision: 18.11.2024

COMPLAINT CASE NO.- 222/2021

IN THE MATTER OF

MRS. ANITA RAHEJA,

W/O MR. DINESH RAHEJA,

R/O H. NO. 238, SECTOR-15,

PART-I, GURUGRAM, HARYANA.

(Through: Mr. Manish Dhir, Advocate)

…Complainant

VERSUS

PARSVNATH DEVELOPERS LTD.,

PARSVNATH TOWER,

NEAR SHAHDARA METRO STATION,

SHAHDARA, DELHI-110032.

ALSO AT:

CORPORATE OFFICE:

6TH FLOOR, ARUNACHAL BUILDING,

19, BARAKHAMBA ROAD, NEW DELHI-110001.

(Through: KNM & Partners, Law Offices)

…Opposite Party

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: None for the Complainant.
Counsel for the OP.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)

JUDGMENT

1. The present complaint has been filed by the Complainant before this Commission alleging deficiency of service and unfair trade practice by the Opposite Party and has prayed the following reliefs:

> *"A. To Hold and declare the Opposite Party guilty of deficiency of service and unfair trade practices as per the provisions of the Consumer Protection Act, 1986; and*
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> *B. To direct the Opposite Party to pay/ refund to the full amount as paid to it by the Complainant towards the consideration towards the Flat, amounting to Rs. 28,70,141.19/- (Rupees Twenty Eight Lakh Seventy Thousand One hundred forty one and Nineteen Paise only); and*
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> *C. To direct the Opposite party to pay interest Rs. 24% on the above stated amount received by its w.e.f. August 2, 2011 i.e. the date of proposed delivery of possession till September 20, 2021 amounting to Rs. 70,01,570.8/-(Rupees Seventy Lakh One Thousand Five Hundred Seventy and Eight paise only); and*
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> *D. To direct the Opposite party to pay the entire outstanding due and payable by its towards unpaid Loan EMI's amounting to Rs. 12,46,650/- (Rupees Twelve Lakh Forty Six Thousand Six hundred fifty only) along with interest @ 24% per annum w.e.f. August 2017 till September 2021; and*
> *To direct the Opposite Party to pay all the Loan EMI's as payable by it to the Complainant for the future months; and*

F. To direct the Opposite party to pay the pendente lite and future interest @ 24% on all of the amounts as claimed in prayer clauses A,B,C and D; and

G. Direct the Opposite Party to pay a sum of Rs. 10,00,000/- towards mental agony and harassment due to deficiency and negligence in discharge of agreed terms and misusing of dominant authority as compensation for deficiency in service as stated in the present complaint; and

H. Direct the Opposite Party to pay the cost of present proceedings to the Complainant; and in that behalf

I. Pass such further order(s) as deemed fit and proper in the facts of the present case and in the interest of justice."

2. Brief facts for the adjudication of the present complaint are that the Complainant booked a flat, in Project of Opposite Party namely "Parsvnath Preston" situated at Sonepat, Haryana. The Complainant was allotted flat no. 106 in Tower No. T-6 for a total consideration of Rs. 30,21,201/-. Thereafter, a Flat Buyer Agreement was executed between the Opposite Party and Complainant on 02.08.2008 and the Complainant paid a sum of Rs.4,53,180/-. As per the Flat Buyer's Agreement, the possession of the flat should be handed over to the Complainant within a period of 36 months along with a grace period of 6 months from the date of agreement. Further, a Tripartite Agreement was executed between the Opposite Party, Axis Bank and the Complainant on 02.08.2008, where a loan of Rs. 24,16,961/- was sanctioned in favor of the Complainant and the same was directly disbursed in the account of Opposite Party. The Complainant then started giving monthly installments to Opposite Party. However, till date the construction of the said flat has not been completed by the Opposite Party and the possession has not been handed over to the Complainant.

3. The Complainant over the time had paid a total sum of Rs.28,70,141/- (including an amount of Rs.24,16,961/- which was disbursed by the Axis

Bank to the Opposite Party). Despite the payment of the above mentioned substantial amount and made numerous attempts to communicate with the Opposite Party regarding the construction and possession of the said flat, the Opposite Party failed to handover the possession of the said flat. Aggrieved by this, the Complainant got issued a legal notice dated 27.09.2019 against the Opposite Party to refund the amount along with interest but no satisfactory reply was received by the Complainant. Thus, left with no other option, alleging deficiency of service and unfair trade practice on the part of the Opposite Party, the Complainant approached this Commission.

4. The Opposite Party has contested the present case and raised preliminary objections as to the maintainability of the complaint case. The counsel for the Opposite Party contended that the present complaint is liable to be dismissed as the present complaint does not fall within the pecuniary jurisdiction of this Commission. The counsel for the Opposite Party further contended that the Complainant does not fall within the definition of 'consumer' as defined under Consumer Protection Act, 2019 as the aforesaid flat was purchased by the Complainant for investment purpose in order to earn profits.

5. The Opposite Party further submitted that the present complaint involves complicated question of facts and law, which require detail evidence, examination and cross examination of witnesses and the same cannot be adjudicated in a summary procedure before this Commission. Lastly, the Opposite Party contended that the delay, if any, occurred on account of global recession. Pressing the aforesaid objections, the counsel appearing on behalf of the Opposite Party prayed that the complaint should be dismissed.

6. The Complainant has filed Rejoinder rebutting the written statement filed by the Opposite Party. The Evidence by way of Affidavit and Written Arguments have been filed by the Complainant, however, despite multiple opportunities, the Opposite Party has failed to file the Evidence by way of

Affidavit and Written Arguments, therefore, vide order dated 03.06.2024, the right of the Opposite Party to file Evidence by way of Affidavit and Written Arguments was closed.

7. We have perused the material available on record and heard the counsel who appeared on behalf of the parties.

8. Before delving into the merits of the present case, it is noted that an ***application bearing no. 821/2023*** is pending for disposal which has been filed on behalf of the Opposite Party seeking rejection of the complaint in the light of Order dated ***07.10.2016*** passed by the Hon'ble National Commission in the matter titled as *"**Ambrish Kumar Shukla Vs. Ferrous Infrastructure Pvt. Ltd."*** *in* ***CC No. 97 of 2016.*** The counsel for the Opposite Party further submitted that the some of the allottees of the abovementioned project had approached the Hon'ble National Commission and filed a complaint bearing ***Consumer Complaint No. 1542 of 2015*** titled as ***"Rohit Jain & Ors. Vs. Parsvnath Developers Ltd."*** and vide order dated 13.04.2016, the Hon'ble National Commission granted permission to treat the complaint bearing no. 1542 of 2015 as filed under section 12(1)(c) of the Consumer Protection Act, 1986. Pressing the aforesaid, the counsel for the Opposite Party prayed for rejecting the present complaint.

9. Reply to the present Application has been filed by the Complainant submitting that the present Application is filed with malafide intention to delay the proceedings of the present complaint and the Opposite Party has failed to raise any such submission at the time of filing the written statement before this Commission.

10. On perusal of record, we find that ***vide order dated 13.04.2016***, the Hon'ble National Consumer Disputes Redressal Commission in ***Consumer Complaint No. 1542 of 2015*** titled ***"Rohit Jain & Ors. Vs. Parsvnath Developers Ltd."*** has allowed the consumer complaint as filed under Section 12(1)(c), Section 13(6) r/w Order I Rule 8 of the Code of Civil Procedure,

1908. The relevant portion of the order dated 13.04.2016 is reproduced below for the ready reference herein:

"This complaint has been filed u/s. 12(1)(c) of the Consumer Protection Act, for the benefit of all the allottees of the flats in a project namely Parsvnath Prestone, which the opposite party is seeking to develop in Sonepat. The complainants are permitted to file this complaint under the aforesaid provision of the Consumer Protection Act read with section 13(6) thereof and Order (I) Rule (8) of the Code of Civil Procedure. Since the names and addresses of all the allottees in the said project are not known to the complainants, it is imperative to publish a notice of filing of this complaint in the newspapers. Accordingly, it is directed that notice of this complaint be published in the newspaper namely Punjab Kesari (Hindi) and Times of India (NCR Edition, English).

The complainants shall take dasti notice, and deposit the expenses directly with the concerned newspaper, obtain the newspapers containing the publication and file the same with the Registry."

11. Further, we deem it appropriate to refer to the dicta relied upon by the Opposite Party. The Hon'ble National Commission while answering the reference dated 11.08.2016 had answer the Issue No.(vii) in ***CC No. 97/2016*** titled ***Ambrish Kumar Shukla v. Ferrous Infrastructure Pvt. Ltd.*** decided on ***07.10.2016,*** by observing as under:

"Issue No. (vii)

More than one complaints under Section 12(1)(c) of the Consumer Protection Act are not maintainable on behalf of or for the benefit of consumers having the same interest i.e. a common grievance and seeking the same / identical against the same person. In case more than one such complaints have been *instituted, it is only the complaint instituted first under Section 12(1)(c) of the Consumer Protection Act, with the requisite permission of the Consumer Forum, which can continue and the remaining complaints filed under Section 12(1)(c) of the Consumer Protection Act are liable to be dismissed with liberty to join in the complaint instituted first with the requisite permission of the Consumer Forum. The individual complaints instituted before grant of the requisite permission under Section 12(1)(c) of the Consumer Protection Act can continue despite grant of the said permission but it would be open to such complainants to withdraw their individual complaints and join as parties to the complaint instituted in a representative character. However, once the requisite permission under Section 12(1)(c) of the Consumer Protection Act is granted, an individual complaint, expressing the same grievance will not be maintainable and the only remedy open to a consumer having the same grievance is to join as a party to the complaint instituted in a representative character.*

16. Before parting with the references, we would like to emphasise that considering the binding effect of a decision rendered in a complaint under Section 12(1)(c) of the Consumer Protection Act, on all the consumers, on whose behalf or for whose benefit such a complaint is filed, even if they chose not to join as a party to the complaint, it is necessary to exercise due care and caution while considering such a complaint even at the initial stage and to grant the requisite permission, only where the complaint fulfils all the requisite conditions in terms of Section 12(1)(c) of the Consumer Protection Act read with Order I Rule 8 of the Code of Civil Procedure; as interpreted in this *reference. It would also be necessary for the Bench to either give individual notices or an adequate public notice of the institution of the complaint to all the persons on whose behalf or for whose benefit the complaint is instituted. Such a notice should disclose inter-alia (i) the subject matter of the complaint including the particulars of the project if the complaint relates to a housing project / scheme, (ii) the class of persons on whose behalf or for whose benefit the complaint is filed, (iii) the common grievance sought to get redressed through the class action, (iv) the alleged deficiency in the services and (v) the reliefs claimed in the complaint."*

12. From the aforesaid settled position, it clear that once the requisite permission under Section 12(1)(c) of the Consumer Protection Act is granted, an individual complaint, expressing the same grievance will not be maintainable and the only remedy open to a consumer having the same grievance is to join as a party to the complaint instituted in a representative character.

13. In the instant case, present complaint is filed on 27.10.2021 and the Hon'ble National Commission vide its ***order dated 13.04.2016*** in ***Consumer Complaint No. 1542 of 2015*** titled ***"Rohit Jain & Ors. Vs. Parsvnath Developers Ltd."*** had also granted the requisite permission under ***Section 12(1)(c)*** of the Consumer Protection Act, 1986.

14. ***Therefore, in view of the aforesaid discussion, we do not find any reason to continue with the present complaint. Consequently, the application bearing IA No. 821/2023 stands allowed.***

15. ***Accordingly, the present complaint is returned with no order as to costs.***

16. The Complainant shall be at liberty to join the ***Consumer Complaint No. 1542/2015*** titled as ***"Rohit Jain & Ors. Vs. Parsvnath Developers Ltd."*** pending before the Hon'ble National Commission. The Complainant shall

also be entitled to claim benefit of the period spent during the proceedings before this Commission for the purpose of limitation.

17. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
18. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
19. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:

18.11.2024

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