

**SUPREME COURT OF INDIA**

Sujit Kumar Banerjee

Vs.

M/s. Rameshwaran

C.A.No.7577 of 2005

(R.V.Raveendran and Lokeshwar Singh Panta JJ.)

10.07.2008

**JUDGMENT**

**R.V.Raveendran, J**

1. This appeal by special leave by the land-owner challenges the rejection of his complaint under the *Consumer Protection Act, 1986* (‘the Act’ for short) against the builder, as not maintainable.

2. Complaint No.21/2002 filed by the appellant before the State Consumer Disputes Redressal Commission, Jharkhand on 2.8.2002 was allowed by the State Commission by order dated 15.11.2002 with a direction to the respondents (builder) to pay Rs.11,03,787/- to the appellant with costs. The appeal filed by the respondents before the National Consumer Disputes Redressal Commission, New Delhi, was allowed on 4.7.2005. The National Commission, following its decision in *Faqir Chand Gulati v. M/s. Uppal Agencies Pvt. Ltd.*, (Revision Petition No.1878 of 2000 dated 3.2.2004) held that the appellant is not a consumer and therefore the complaint was not maintainable. The complainant has challenged the said order in this appeal.

3. The appeal against the decision of the National Commission in *Faqir Chand Gulati* (supra) and this appeal were heard together. We have rendered a separate decision today in *Faqir Chand Gulati v. M/s. Uppal Agencies Pvt. Ltd.* - (C.A. No.3302 of 2005), allowing the appeal and holding the complaint maintainable.

4. Applying the tests laid down by us in *Faqir Chand Gulati* (supra), we find that the agreement between the parties in this case is not a joint venture agreement but an agreement for construction of a residential building and delivery of an agreed percentage of the constructed area to the landowners. In fact, the agreement [Article IX(1)] clearly states that it is not a joint venture. Consequently, the appellant is a consumer and respondents are ‘service providers’ and the complaint of the appellant is maintainable.

5. As the National Commission has not dealt with the matter on merits but has disposed of the matter on a preliminary point, we allow this appeal, set aside the order of the National Commission and remit the matter to the National Commission for fresh disposal on merits, in accordance with law.