

Virender Jain

v.

Alaknanda Coop. Group Hng. Sty. Ltd. & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE RANJANA PRAKASH DESAI  
HON'BLE MR. JUSTICE ARVIND BOBDE

Civil Appeal No. 64 Of 2010 With Civil Appeal No. 65-68 Of 2010 | 23-04-2013

The appellants were enrolled as members of respondent No.1-Alaknanda Cooperative Group Housing Society Limited. They applied for 'A' type flats, which were being constructed by respondent No. 1. They are said to have deposited the installments of price between 10.12.1995 and 15.12.2003. The details of the amounts deposited by the appellants are as under:

1. Virender Jain Rs.1,96,000/-

2. Sudesh Kumar Jain Rs.1,96,100/-

3. Pankaj Jain Rs.2,96,110/-

4. Nitin Jain Rs.1,96,100/-

5. Sudershan Kumar Jain Rs.2,96,100/-

By letters dated 9.2.2004, respondent No. 1 returned the amount deposited b the appellants and indirectly terminated their membership on the ground that they had failed to deposit the instalments of first and second stage of construction as also the instalment of the cost of land allotted by HUDA. For the sake of reference, the letter sent by respondent No.1 to appellant - Virender Jain is reproduced below:

"THE ALAKNANDA COOP. GROUP HOUSEING SOCIETY GURGAON

PLOT NO. GH-45, SECTOR-56,

GURGAON-122002

Ref no.7115

Date: 9.02.04Mr. Virender Jain

Sub : Refund of payment due to persistent default

The following payments had been demanded by the Society from time to time

- (a) 1st construction inst. due on 15.07.03 Rs.1,00,000/-
- (b) 2nd construction inst due on 15.07.03 Rs.1,00,000/-
- (c) Inst. of HUDA land cost due on 15.10.03 Rs.42,000/-

But, the above mentioned payments have not yet been received from you by the society inspite of reminders issued from time to time as indicated in our last office Letter no. 6878 -97 dt. 28.12.2003. Further, no communication/representation has been received from you.

The matter was brought to the notice of the managing Committee. The managing Committee, in its meeting held on 11.01.04 has taken a very serious view of your non-compliance and non-response and resumed that you are not interested in the housing project of the Society.

In view of the above, your contribution alongwith share money, as per details given below is sent herewith vide Ch.331971 dated 01.02.04 for Rs.1,82,350/-

(a) Share money 1,00/-

(b) Contribution 1,95,900/-

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1,96,000/-

Less installment on dues of Rs.84,000 of HUDA Land cost installment @ 15 % p.a. from January' 03 to January' 04 (3months0

(-) 13,650.00

1,82,350/-"

The appellants challenged the aforesaid action of respondent No.1 by filing complaints under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act') and prayed that respondent No. 1 may be directed to restore their membership and issue necessary share certificates after receiving the balance cost. They further prayed for award of damages to the tune of Rs.50,000/- in each case.

On notice, respondent No.1 filed applications under Section 13 of the Act and challenged the jurisdiction of District Consumer Dispute Redressal Forum, Gurgaon (for short, 'the District Forum') to entertain the complaints. Respondent No. 1 claimed that the complaints were not maintainable because the appellants do not fall within the definition of 'consumer'. Respondent No.1 also pleaded that the Haryana Cooperative Societies Act, 1984 (hereinafter referred to as, 'the Cooperative Societies Act') is a special statute vis-a-vis the Act and the only remedy available to the appellants in the matter of termination of their membership and/or refund of the entire amount deposited by them was to file a petition under the Cooperative Societies Act.

By separate orders dated 16.6.2006, the District Forum overruled the objections raised by respondent No.1. The relevant portion of the order passed in the case of Virender Jain is extracted below:

"The remedy provided under the act is an additional remedy it is not in derogation to remedy provided under the other Acts. It is the choice of the complainant either to avail the remedy under the Consumer Protection Act or nay other applicable. In coming to our above conclusion we are guided by the AIR 2004 Supreme Court 448 "Secretary, Thirumurugan Co-operative Agricultural Credit Society Versus M. Lalitha (deed) through L.Rs. and others" wherein it is held so. The respondent has also relied upon the case law stated to have been reported in 2004 (2) CLT 304(NC)" B.K. Prabha Versus Secretary Kendriya Upadyarasanga" wherein it is held that merely becoming a member of the Society does not amount to hiring of services of the respondent by the complainant and the dispute does not fall within the definition of the consumer. The above citation has been referred from the subject index only, detailed judgment has not been supplied by the respondent. Besides this the citation relied upon by the complainant is of the Apex Court, the same, therefore, is of binding nature on all other Court Judicial as well as quasi Judicial."

However, the District Forum did not find merit in the grievance made by the appellants and dismissed the complaints vide orders dated 17.11.2006 by observing that there was no deficiency in service on the part of respondent No.1.

The appeals and the revisions filed by the appellants under Sections 17 and 21 of the Act were dismissed by the State Commission and the National Commission respectively solely on the ground that the appellants cannot be treated as consumer within the meaning of Section 2 (1) (d) of the Act.

Shri S.B. Sanyal, Senior Advocate appearing for the appellants relied upon the judgment of this Court in Lucknow Development Authority v. M.K. Gupta (1994) 1 SCC 243 and argued that the impugned order as also the orders passed by the State Commission are liable to be set aside because the view expressed by the two consumer forums on the issue of maintainability of the complaints is ex-facie erroneous and is contrary to the law laid down by this Court. Shri Neeraj Kumar Jain, Senior Advocate appearing for respondent No.1 supported the impugned order and argued that the appellants cannot be treated as consumer because respondent No.1 was not providing any service to them.

We have considered the respective arguments.? Sections 2(1) (d) of the Act, which defines the term 'consumer' reads as under :

" 'consumer' means any person who-

i. buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such persons, but does not include a person who obtains such goods for resale or for any commercial purpose; or

ii. hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised or partly paid and partly promised or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services? for commercial purpose.

Explanation-For the purposes 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 purposes or earning his livelihood by means of self employment."

The above quoted definition was interpreted by this Court in M.K. Gupta's case. After analyzing the definition of 'consumer', this Court observed :

"The provisions in the Acts, namely, Lucknow Development Act, Delhi Development Act or Bangalore Development Act clearly provide for preparing plan, development of land, and framing of scheme etc.? Therefore, if such authority undertakes to construct building or allot houses or building sites to citizens of the State either as amenity or as benefit then it amounts to rendering of service and

will be covered in the expression 'service made available to potential users'.? A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service of any description'. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge of under a constraint of personal service is included in it. Since housing activity is service it was covered in the clause as it stood before 1993."

?(emphasis supplied)

The ratio of the aforementioned judgment was reiterated in Chandigarh Housing Board v. Avtar Singh (2010) 10 SCC 194. The questions considered in that case were whether members of the Cooperative House Building Societies, who would have been benefited by allotment of land under the scheme framed by the Chandigarh Administration could be treated as 'consumer' within the meaning of Section 2 (1) (d) and whether the District Forum had the jurisdiction to entertain the complaints filed by them for refund of 10% earnest money forfeited by the Chandigarh Housing Board. After noticing the relevant passages from the judgment in M.K. Gupta's case, this Court observed :

"From what we have noted above, it is crystal clear that even though the 1991 Scheme was ostensibly framed for allotment of land to the Societies for construction of multistoreyed structures (dwelling units/flats) for their members, but the provisions contained therein not only regulated the relationship of the Societies with their members, but also made them jointly and severally responsible for payment of the earnest money, etc. The Finance Secretary and the Board issued directions from time to time for payment of the earnest money and interest by the members of the Societies. If the Scheme had nothing to do with the members of the Societies, then it would not have contained provisions to regulate their eligibility and entitlement to get dwelling units to be constructed on the land allotted by the Board and made them jointly and severally responsible for payment of the premium, etc. and the Finance Secretary would not have issued directions vide Memos dated 9-6-1993? and 9-3-2000 in the matter of refund of earnest money and interest. The Board too would not have entertained the request made by the members of the Societies for refund of the earnest money and remitted the amount to the Societies after deducting 10%.

Thus, even though no formal contract had been entered into between the Chandigarh Administration and the Board on the one hand and the members of the Societies on the other hand, the former exercised sufficient degree of control over the latter. By making applications for allotment of land, the Societies will be deemed to have hired or availed the services of the Chandigarh Administration and the Board in relation to housing construction as elucidated and explained in M.K. Gupta case and Balbir Singh case. If the Scheme had been faithfully implemented and land had been allotted to the Societies, their members would have been the actual and real beneficiaries. Therefore, they were certainly covered by the definition of "consumer" under Section 2 (1)(d) (ii), the second part of which includes any beneficiary of the services hired or availed for consideration which has been paid or promised or partly paid and partly promised.? As a sequel to this, it must be held that the members of the Societies had every right to complain against illegal, arbitrary and unjustified forfeiture of 10% earnest money and non-refund of 18% interest and the District Consumer Forum did not commit any jurisdictional error by entertaining the complaints."

(emphasis supplied)

In view of the above noted judgments, it must be held that the appellants, who had deposited the instalments of price for the flats being constructed by respondent No. 1 are covered by the definition of 'consumer' contained in Section 2 (1)(d) of the Act and the contrary view expressed by the National Commission in *B.K. Prabha v. Secretary Kendriya Upadyarasanga* (2004) 2 CLT 305, which has been reiterated in the impugned order is not correct.

The other question which needs to be considered is whether the District Forum should not have entertained the complaints filed by the appellants and directed them to avail the statutory remedies available under the Cooperative Societies Act. Shri Neeraj Jain vehemently argued that the forums constituted under the Act cannot grant relief to the appellants because the action taken by respondent No. 1 was approved by the authorities constituted under the Cooperative Societies Act, who were not impleaded as parties in the complaints.

In our view, there is not merit in the submission of the learned senior counsel. In the complaints filed by them, the appellants had primarily challenged the action of respondent No. 1 to refund the amounts deposited by them and thereby extinguished their entitlement to get the flats. Therefore, the mere fact that the action taken by respondent No. 1 was approved by the Assistant Registrar, Cooperative Societies and higher authorities, cannot deprive the appellants of their legitimate right to seek remedy under the Act, which is in addition to the other remedies available to them under the Cooperative Societies Act. Law on this issue must be treated as settled by the judgments of this Court in *Secretary, Thirumurugan Co-operative Agricultural Credit Society v. M. Lalitha* (2004) 1 SCC 305, *Kishore Lal v. ESI Corporation* (2007) 4 SCC 579 and *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy* (2012) 2 SCC 506.

In the last mentioned judgment, this Court referred to the earlier judgments in *Fair Air Engineers (P) Ltd. v. N.K. Modi* (1996) 6 SCC 385, *Thirumurugan Co-operative Agricultural Credit Society v. M. Lalitha* (supra), *Skypak Couriers Ltd. V. Tata Chemicals Ltd.* (2000) 5 SCC 294, *Trans Mediterranean Airways v. Universal Exports* (2011) 10 SCC 316 and held the remedy available under the Act is in addition to the remedies available under other statutes and the availability of alternative remedies is not a bar to the entertaining of a complaint filed under the Act.

In the result, the appeals are allowed, the impugned order as also the orders passed by the State Commission are set aside and the matters are remanded to the State Commission with the directions that it shall decide the appeals filed by the appellants on merits after giving opportunities of hearing to the parties.