

(2015) 05 NCDRC CK 0053

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: 301 of 2013

Inder Nath Mehra And Ors.

APPELLANT

Vs

Purearth Infrastructure Ltd.

RESPONDENT

Date of Decision: May 15, 2015

Citation: 2015 2 CPR 754

Hon'ble Judges: AJIT BHARIHOKE J.

Judgement

1. INDER Nath and his son Rohit have filed the instant consumer complaint No. 301 of 2013 against M/s. Pure Earth Infrastructure Ltd. alleging deficiency in service on the part of the opposite party in respect of a unit/shop in the development project "Central Square" undertaken to be constructed by the opposite party at Bara Hindu Rao, Delhi.

2. AS the complainants had booked the commercial space in a commercial building, the first question which arises is whether the complainant is a "consumer" and he has locus standi to file a consumer complaint?

In order to find answer to the above question, it would be useful to have a look on section 2(1)(d) of the Consumer Protection Act, 1986, (in short the Act) which reads as under:

"Section 2(1)(d) of the Act defines the term "Consumer" as under:

"2. (1) d) "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 person, 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 any 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 of earning his livelihood by means of self-employment}"

3. ON reading of the above, it is clear that a consumer is a person who buys any goods or hires or avails of services for consideration but does not include a person who buys goods or hires or avails of such services for any commercial purpose.

4. EXPLANATION to Section 2(1)(d) gives a restricted meaning to the term "commercial purpose" by providing that commercial purpose does not include use by a person of goods bought or services availed by him exclusively for the purpose of earning his livelihood by means of self employment. Thus, it is clear that in order to avail of the benefit of the Explanation, the complainants have to show that the alleged services of the opposite party were availed by them exclusively for the purpose of earning his livelihood by means of self employment.

Learned counsel for the complainants has contended that although the complainants have booked a commercial a commercial unit yet they are the consumers as envisaged under section 2(1)(d) of the Act in view of the Explanation which gives restricted meaning to commercial purpose. In this regard, learned

counsel for the complainants have drawn our attention to para 3 & 5 of the complaint and submitted that in the said paragraphs, it is clearly explained that said unit was booked by the complainants with a view to enable the son of complainant No. 1 to earn his livelihood by means of self employment and also to meet the growing needs of the family of the complainants by setting up a jewellery showroom in the subject unit booked in the project undertaken by the opposite party. In support of his contention, learned counsel has relied upon the judgment of coordinate Bench of this Commission in Consumer Case No. 88 of 2012 titled Kushal K. Rana v. M/s. DLF Commercial Complexes Ltd.

5. IN order to appreciate the contention of the complainants, it would be useful to have a look on the allegations made in para 3 & 5 of the complaint, which are reproduced as under:

"3. That the complainant No. 1 and 2 are father and son respectively and being businessmen, the complainant No. 1 in order to settle one of his sons i.e. the complainant No. 2, decided to purchase a business premises to enable his aforesaid son to earn his livelihood by means of self employment.

5. That beckoned into the promising representations and inducements made by the opposite party, the complainants decided to purchase a Unit/Shop in one of the Plaza as being developed by the opposite party, i.e. Plaza -3, which was stated to be constructed in the "Central Square" at Bara Hindu Rao, Delhi. The opposite party represented to the complainants by painting an extremely rosy picture and lured them by saying that this would be the most promising and attractive business destination which would have immense commercial potential and any investment in the complex being built by the opposite party, would definitely result in huge benefits for their business. It is submitted here that the complainants are in the business of jewellery for a long time and keeping in view the growing needs of the family, they decided to purchase one Unit/Shop for setting up a jewellery shop showroom to earn their livelihood by means of self employment."

6. ON bare reading of the above allegations, it is evident that complainants No. 1 & 2 are engaged in the business of jewellery for a long time and they had booked the subject commercial unit with a view to set up a jewellery showroom. No doubt the

complainants have alleged in the complaint that they had booked the subject unit with the intention to meet the growing needs of the family by expanding the business and also to enable complainant No. 2 to earn his livelihood by means of self employment but aforesaid bald averment in the complaint by itself is not sufficient to conclude that the complainants are consumers in view of the Explanation to Section 2(1)(d) of the Act. In order to avail the benefit of restricted definition of "commercial purpose" given in the Explanation, the complainants are required to show that at least one of them is not gainfully employed to earn his livelihood. It is admitted case of the complainants that they are in the business of jewellery for a long time. Therefore, it cannot be said that the subject unit was booked by the complainants exclusively for the purpose of earning livelihood by way of self employment. Rather from the allegations, it is clear that the subject unit was booked to expand the jewellery business by opening a jewellery showroom. Thus, in our view, the complainants are not covered under the exception provided by the Exception to section 2(1)(d) of the Act.

In view of the above, we are of the opinion that as per the allegations in the complaint, the complainants are not the consumers as envisaged under section 2(1)(d) of the Act. So far as judgment in the matter of Kushal K. Rana (supra) relied upon by the complainants, it is of no avail to the complainants as it is based upon its own peculiar facts.

7. IN view of the discussion above, we are of the opinion that complainants are not "consumers" as envisaged under section 2(1)(d) of the Act. As such they have no locus standi to maintain the consumer complaint. Complaint, is, therefore, rejected. It is clarified that this order will not come in the way of the complainants to avail of their remedy before appropriate forum.