

WEE AAR CONSTRUCTIVE BUILDERS Vs D.P. GUPTA And CO. PVT. LTD.

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Nov. 9, 2004

Citation: 2005 1 CPJ 498

Hon'ble Judges: J.D.Kapoor , Mahesh Chandra , Rumnita Mittal J.

Advocate: B.P.Lathval

Judgement

1. COMPLAINANT has through this complaint sought the replacement of the defective bath tubs supplied by O.P. No. 1 and manufactured by

O.P. No. 2 amounting to Rs. 1,75,000/- and Rs. 1,00,000/- towards loss of reputation and goodwill and Rs. 1,00,000/- towards mental agony

and harassment caused by the O.P. in supply defective bath tubs which were refused by its customer namely ITDC.

2. THE complainant is a partnership firm duly registered under the Partnership Act. It was awarded the work contract by O.P. No. 3 ITDC for

renovation of bathrooms, plumbing and sanitary works in Qutub Hotel. On the insistence of O.P. No. 3 the complainant purchased 22 Nos. of

Commander Bath Tubs Jasper D from O.P. No. 1 on 26.7.1995 and installed these tubs in the hotel but later on it was shocked and surprised to

find that O.P. No. 3 had rejected these tubs as the colours of the tubs underwent a change after some time. When this fact was brought to the

notice of O.P. No. 2, the O.P. No. 2 agreed to replace the defective bath tubs but neither were these replaced nor was the cost of the bath tubs

was refunded to the complainant. However, on persistent demands and visits of the complainant the O.P. No. 2 offered to refund a sum of Rs.

93,500/-, towards the cost of the tubs for which complainant at first instance agreed but even this amount was also not paid to the complainant.

Hence this complaint.

It is pertinent to mention that ITDC claimed the cost of the bath tubs from the complainant by invoking arbitration clause of the work contract and

was awarded amount of Rs. 55,000/- payable by the complainant. While resisting the claim of the complainant, O.P. No. 2 took the plea that the

supply of bath tubs was made directly to the complainant against the bill dated 26.7.1995 as per order and specifications of tubs which were duly

inspected by the site incharge at the time of taking delivery and at that time the complainant did not complaint about the poor quality of the tubs nor

did he contact the O.P. No. 1 at all regarding the alleged defects. However, according to O.P. No. 1 complainant directly settled all the disputes

with O.P. No. 2 the manufacturer of bath tubs and after negotiations, the complainant wrote letter dated 27.6.1997 mentioning therein that he was

ready and willing to accept Rs. 93,500/- towards full and final settlement and since O.P. No. 1 was out of picture when the settlement and

negotiations were going on between the complainant and O.P. No. 2 directly he is not liable to compensate the complainant in any manner. In its

reply O.P. No. 2 stated that the complainant had agreed to accept Rs. 93,500/- towards full and final payment and this amount was

acknowledged by the complainant in the legal notice given by his Counsel and instant complaint has been fied with mala fide intentions to harass

O.P. No. 2.

As is apparent from the aforesaid conspectus of facts there is no dispute about the purchase of 22 Nos. of bath tubs from O.P. No. 1 for the value

of Rs. 1,34,191.20 nor is there any dispute that these bath tubs were manufactured by O.P. No. 2 and were found to be substandard as they

changed the colour after some time and because of this the complainant was ordered to pay Rs. 55,000/- to ITDC towards cost of bath tubs.

There is also no dispute that the complainant instead of negotiating with O.P. No. 1. entered into settlement with O.P. No. 2 directly. There is also

no dispute that the complainant agreed to receive an amount of Rs. 93,500/- which was offered by O.P. No. 2 towards full and final settlement.

3. SO far as the plea of O.P. No. 2 is concerned that they had paid this amount to the complainant there is no documentary evidence in support

thereof, thought there is reference in the notice given by the complainant through its Counsel that O.P. No. 2 has offered to pay the aforesaid

amount. The Counsel for the complainant contends that while giving notice he was under the impression that the complainant had already received

this amount when he was shown the letter sent by O.P. No. 2 offering payment of Rs. 93,500/- to the complainant whereas in actuality no such

payment was ever made by O.P. No. 2 or received by the complainant.

For want of any documentary evidence for such a huge amount we feel inclined to accept the contention of the Counsel for the complainant that

O.P. No. 2 never paid this amount though he agreed to pay by way of letter dated 29.6.1997 as O.P. No. 2 could not produce any documentary

evidence in proof of payment of Rs. 93,500/- made by O.P. No. 2 to the complainant.

4. SINCE the complainant directly entered into negotiation and settlement with O.P. No. 2, the manufacturer of bath tubs, the liability of O.P. No.

1 towards the complainant ceased to exist. The award of Rs. 55,000/- in favour of ITDC against the complainant is also significant circumstance or

fact which operates adversely against O.P. No. 2.

Taking overall view of the matter we find that the complainant is entitled to Rs. 93,500/- from O.P. No. 2 with 9% interest from the date of filing of

the complaint. The complainant is also awarded compensation of Rs. 20,000/- towards mental agony and harassment on account of having been

supplied substandard material that caused loss of its reputation. Complainant is also awarded Rs. 2,000/- towards cost of litigation. The aforesaid

amount shall be payable within two months.

A copy of this order as per statutory requirements be forwarded to the parties free of charges and thereafter the file be consigned to Record

Room. Complaint disposed of.