

(2011) 07 NCDRC CK 0025

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Kundlik Ganpat Mokal

APPELLANT

Vs

Jaysheel Construction Company

RESPONDENT

Date of Decision: July 25, 2011

Citation: 2011 0 NCDRC 502 : 2011 3 CPJ 404

Hon'ble Judges: V.R.Kingaonkar , Vinay Kumar J.

Final Decision: Appeal dismissed

Judgement

1. THIS appeal arises out of judgement and order rendered by Maharashtra State Consumer Disputes redressal Commission, Mumbai (hereinafter referred to as "the State Commission") in complaint case no. 319/1997 dismissing the complaint filed by the appellant.

2. BRIEFLY stated, the case of the appellant before the State Commission was that he had booked flat no. 1 of 1050 sq. ft. area in Mangesh Cooperative Housing Society. He was allotted the flat. The allotment letter was issued by one Mr. H.V. Phalle. The agreed price of the flat was @650/- per sq. ft. The construction of the flat was being carried out by respondent no. 1, Jaysheel Construction Company Ltd. Late Mr. H.V. Phalle was the Director of respondent no. 1 company and he was authorised to book the flats for members of Mangesh Cooperative Housing Society " OP No.3 before the State Commission and respondent no. 3 in this appeal. Though, he had deposited the required booking amount yet the respondent no. 1 did not arrange for admitting him as member of the respondent no. 3, i.e., Mangesh Cooperative Housing Society. He was not allotted any flat in the Mangesh Cooperative Housing Society. He, therefore, filed a complaint seeking allotment of

the flat alternatively for the refund of Rs.2,41,250/- paid to late Mr. H.V. Phalle for purchase of the said flat.

The respondent no. 2 denied that any payment was made to late Mr. H.V. Phalle by the appellant. They submitted that deceased Mr. H.V. Phalle was assigned contractual work to construct the residential building for and on behalf of proposed Mangesh Cooperative Housing Society. The booking of the flat was not the work assigned to late Mr. H.V. Phalle. However, he was authorised to receive money on the construction site if any one of the proposed members wanted to deposit such money, given by the cheque drawn in favour of the Housing Society. He was agent of the Mangesh Cooperative Housing Society for the limited purpose of collecting the amounts by cheques at the worksite from the proposed members. The complainant had paid only Rs.1,05,000/- to deceased Mr. H.V. Phalle as an agent of the Mangesh Cooperative Housing Society. The respondent nos. 1 & 2 further denied that any payment was acknowledged vide communication letter dated 30.07.1996. They submitted that late Mr. H.V. Phalle died on 5.01.1996 when respondent no.1 Vijay H. Phalle was a minor and was studying in 12th standard. He had no knowledge about the transactions between the appellant and deceased Mr. H.V. Phalle. They submitted that deceased Mr. H. V. Phalle was the sole proprietor of the respondent no. 1 " Jaysheel Construction Company. After the death of Mr. H.V. Phalle the contract was terminated by the respondent no. 3 " Mangesh Cooperative Housing Society and the work was got done from another agency. They submitted that the complainant has fabricated certain documents and lodged a false complaint.

The respondent no. 3 " Mangesh Cooperative Housing Society resisted the complaint on the ground that the appellant was not its consumer. According to the respondent no. 3, the work of construction was given to Jaysheel Construction Company in the year 1996 but the same could not be done and, therefore, it was executed through M/s. Vastu Rachna Builders and Developers. It was the case of the respondent no. 3 that late Mr. H.V. Phalle was never authorised to book the flats or to accept any amount from the prospective purchasers.

3. THE parties adduced certain evidence on record before the State Commission. Upon hearing learned advocates for the parties, the complaint was adjourned for further arguments. THE State Commission noticed that there was no cooperation from the side of the appellant (complainant) and his Advocate on further dates. Though it was part-heard complaint yet the complainant and his Advocate remained absent on further dates of hearing. THE counsel of the respondent no. 3 advanced

submissions on the date of hearing and thereafter the State Commission recorded adverse findings against the appellant. THE State Commission came to the conclusion that deceased Mr. H.V. Phalle was sole proprietor of Jaysheel Construction Company and after his death the liability cannot be fastened on the respondent nos. 1 & 2 who are the son and widow left by him. THE State Commission further observed that the appellant failed to prove that late Mr. H.V. Phalle was authorised agent of respondent no. 3 to issue any allotment letter to the prospective purchaser. THE State Commission further held that since Mr. H.V. Phalle died, the liability to pay the amount was not continued and could not be fastened on the members of his family. THE State Commission further held that there was no privity of contract between the appellant and the respondent no. 3. In keeping with such findings, the complaint was dismissed.

We have heard learned counsel Mr. S.K. Sharma as also the appellant in person as he himself wanted to make some submissions besides the argument of Mr. Sharma. We have also heard learned counsel for the respondents.

4. CRUCIAL question involved in the appeal is :

"Whether the appellant was allotted flat no. 1 by the respondent no. 3, i.e., the Mangesh Cooperative Housing Society and, therefore, is entitled to claim the flat or refund of money? If yes, from whom?"

The appellant seeks to rely on the receipts for the payment made by him on 1.11.1994 and 27.05.1995. It appears from both the receipts that deceased Mr. H.V. Phalle initially accepted Rs.5,000/- from the appellant on 1.11.1994 vide a cheque 7052 drawn at Abhuday Cooperative Bank Limited, as also, further payment of Rs.1,00,000/- on 27.05.95 was accepted by Mr. H.V. Phalle under the two cheques drawn on the same bank. It is obvious that all the three amounts were paid by way of cheques drawn in the name of the proposed Cooperative Housing Society. There is no tangible material on record to show that any further payment was made in cash to late Mr. H.V. Phalle. There is also no material to show that Mr. H.V. Phalle was authorised by the respondent no. 3 to collect the amounts in cash. It appears that he had been given allotment letter dated 1.05.1995. That letter shows payment of Rs.1,05,000/-. The appellant has produced on record Xerox copy of a written communication dated 30.07.1996. The said communication is purportedly signed by the respondent no. 1 Vijay H. Phalle. The communication does not show any payment made to respondent no. 1 " Vijay H. Phalle. It vaguely shows that on 3.02.1995 amount of Rs.16,250/- was given. One does not know to whom the payment was made on 03.02.1995. In fact, the so-called communication dated

30.07.1996 was obtained from respondent no. 1 " Vijay H. Phalle after the death of his father and most probably under duress. His father died on 05.01.1996. After about 7 months there was no reason for him to execute such a letter communication. In fact, on 03.02.1995, respondent no. 1 " Vijay H. Phalle was minor. It was unlikely that he had any knowledge about any transaction between his father and the appellant.

On perusal of the record, it is difficult to say that deceased Mr. H.V. Phalle was authorised to book the flats on behalf of Mangesh Cooperative Housing Society. There is also no material on record to show that Mangesh Cooperative Housing Society was a registered society at the relevant time even before the construction work was completed. The appellant failed to produce on record any resolution of the respondent no. 3 Mangesh Cooperative Housing Society which allowed his membership for flat no. 1. It may be mentioned that under provisions of the Maharashtra Cooperative Society Act, unless a person is allowed to become a member of the cooperative housing society, he cannot claim any relief from such society. The complainant has placed on record a letter dated 12.01.1996 issued by respondent no. 1 " Vijay H. Phalle for Jaysheel Housing Complex Pvt. Limited. It appears that the respondent no. 1 " Vijay H. Phalle informed one of the prospective purchasers by name Mr. A.S. Pawar that due to sad demise of the Managing Director " Mr. H.V. Phalle on 5.01.1996, the opening ceremony of the township project was postponed. That project of Jaysheel Township at Vihigar / Nere is altogether different from the work of the construction at Sector "18, New Panvel.

5. ALL said and done, it is not proved that the appellant is consumer qua the respondents. It is also not proved that he paid Rs.2,41,250/- to deceased H.V. Phalle though it is proved that he paid Rs.1,05,000/- to the latter Mr. H.V. Phalle. The respondent no. 3 cannot be made liable to repay the amount because there is no tangible material to show that deceased H.V. Phalle was duly authorised by the respondent no. 3 to admit the appellant as a member of the Cooperative Housing Society. In fact, the Cooperative Housing Society was not formed when the transactions took place and it was only a prospective society. Our attention was invited to the Judgement dated 1.08.2002 passed by the Maharashtra State Commission in Complaint No. 114 / 1997, "Vijaya B. Poduval & Ors. Vs. J.H. Phalle & Ors." We are of the opinion that the fact situation in the present case stands on different footings and, therefore, the Judgement referred by the learned Advocate for the appellant is not applicable to the present case.

6. FOR the foregoing reasons, we are of the opinion that the State Commission was justified in dismissing the complaint. The legal heirs of deceased Mr. H.V. Phalle cannot be made liable to repay the amount when identity of Jaysheel Construction Company was the sole proprietary business of deceased Mr. H.V. Phalle. The impugned judgement and order, therefore, does not require any interference. Hence the appeal is dismissed with no order as to costs. The statutory amount deposited, if any, be refunded to the appellant alongwith accruals.