

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 402 OF 2015

1. M/S. GRAND VENEZIA BUYERS ASSOCIATION
(REG)

Registered Office: C-387, 2nd Floor, Defence Colony,
New Delhi - 110 024.

.....Complainant(s)

Versus

1. M/S. GRAND VENEZIA COMMERCIAL TOWERS
PVT. LTD.

Through Its Director(s), 28, Raja Garden,
New Delhi - 110 015.

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE AJIT BHARIHOKE, PRESIDING MEMBER
HON'BLE MR. ANUP K THAKUR, MEMBER**

For the Complainant : Mr. Jayant K. Sud, Sr. Advocate with
Mr. Honey Khanna, Advocate

For the Opp.Party : Mr. Anil Airi, Sr. Advocate with
Mr. Ravi Chandana, Advocate

Dated : 06 Oct 2017

ORDER

JUSTICE AJIT BHARIHOKE, PRESIDING MEMBER

M/s Grand Venezia Buyers Association (Regd.) through its President has filed the consumer complaint against M/s Grand Venezia Commercial Towers Pvt. Ltd. alleging deficiency in service on the part of the above noted opposite party in respect of builder – buyer agreement between 35 members of the complainant Association and the opposite party in respect of respective office spaces booked by those members in the development project undertaken by the opposite party. It is alleged that aforesaid members have booked respective commercial spaces with the intention to use the same exclusively for earning livelihood by way of self employment.

2. The opposite party on being served with the notice of the complaint filed written statement wherein apart from the other pleadings on merit, the opposite party has taken preliminary objection challenging the maintainability of the consumer complaint. The stand of the opposite party is that consumer complaint has been filed by the complainant Association on behalf of the members of the association who have booked commercial spaces in the commercial project and those members cannot be termed as ‘consumers’ as envisaged under section 2 (1) (d) of the Consumer Protection Act, 1986 (in short, the Act).

3. Learned counsel for the opposite party has taken us through the definition of term 'consumer' as provided under section 2 (1) (d) of the Act and submitted that as per the definition, the consumer is a person who buys any goods or hires or avails of any service for consideration but does not include the person who has bought the goods or hired or availed of services for commercial purpose. Expanding on the argument, learned counsel for the opposite party has contended that admittedly, all the 35 members of the association on whose behalf complaint has been filed have booked commercial spaces in a commercial project undertaken by the opposite party. Therefore, in view of exception carved out in the definition of term 'consumer', none of the member is a consumer and as such, complaint is not maintainable.

4. Learned counsel for the complainant on the contrary has taken us through the explanation to section 2 (1) (d) and submitted that all the 35 members of the Association on whose behalf complaint has been filed had hired the services of the opposite party exclusively for the purpose of earning their livelihood by way of self employment. Therefore, it cannot be said that they hired the services of the opposite party for commercial purpose and that they are squarely covered by the definition of consumer as envisaged under section 2 (1) (d) of the Act.

5. In order to appreciate the contention of the parties, it would be useful to have a look on the definition of term 'consumer' as provided under section 2 (1) (d) of the Act. Relevant section reads as under:

(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 purposes ;

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."

6. On reading of the above, it is clear that a person is a consumer who buys any goods or hires or avails of any service for a consideration whether paid or partly paid or promised to be paid. The section, however, carves out an exception to the above definition by providing that if

the goods are bought or the services are hired or availed for commercial purpose, then the said person would not be consumer. The explanation to section 2 (1) (d) however, gives a restricted meaning to the term 'commercial purpose' by providing that commercial space does not include the use by a person of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood.

7. It is not disputed that instant complaint has been filed by the Complainant Association on behalf of its 35 members. It is also not disputed that aforesaid 35 members had availed of services of the opposite party by booking commercial spaces in the commercial project undertaken to be developed by the opposite party. Therefore, in order to qualify as consumers, the above noted members of complainant Association are required to show that their respective cases are covered under explanation to Section 2 (1) (d) of the Act.

8. In order to find out whether or not the benefit of the explanation to Section 2 (1) (d) of the Act is available to the members of the complainant Association, we have carefully gone through the consumer complaint and accompanying affidavits of the respective members. No doubt, stand taken by the above noted 35 members of the complainant Association in their respective affidavits is that they had booked respective commercial spaces with intention to use the same for earning livelihood for running their own ventures. The aforesaid stand of the respective complainants, however, is belied by the allegations made by the complainant Association in para 13 and 14 of the complaint. Relevant portion of para 13 & 14 are reproduced as under:

“13 That another allottee member namely Dr.Sanjeev Khattar booked a commercial space in the ‘Grand Venezia Commercial Complex’ admeasuring 725 sq. ft. on 24.11.2011 for a consideration of Rs.16,49,375/- with a clear assurance and understanding that the project would be completed by December 2013. In order to induce and lure this applicant, a higher rate of fixed / assured return was offered and the deposit towards the sales consideration was remitted by RTGS. Assurance and representation made by the officers of the Company were that the final payment shall be made only after the project is completed in all respects and ready to be offered for possession in compliance with the land allotting agency.

14. That the common feature amongst all the complainants herein is that till date despite almost a period of 2 to 5 years, having elapsed neither the possession is ready nor the assured monthly returns, rentals etc. have been paid.”

9. On reading of the above, it is clear that stand in the complaint is that complainants had booked commercial spaces in the subject project on being induced and lured of higher rate of assured returns from said allotted premises. The aforesaid conclusion is further strengthened from the prayer clause (h) of the complaint which is reproduced as under:

(h) direct the opposite party to immediately organize for the lease / rentals of the spaces before offering possession and in case of any defaults the opposite party be directed to make good the said assured rental.

10. On reading of the above, it is clear that the intention of the respective members of the complainant association while hiring the services of the opposite party was to earn lease and rental income and not to use those premises exclusively for the purpose of earning livelihood by way of self employment. Thus, in our view, the members of the complainant Association on

whose behalf the complaint has been filed cannot be termed as consumers because they had hired the services of the opposite party for commercial purpose. As none of the members on whose behalf the complaint is filed is a consumer , the consumer complaint filed by the complainant Association although filed under section 12 (1) (b) of the Act is not maintainable.

11. Counsel for the complainant has referred to several judgments. In our view, those judgments are not applicable to the facts of this case as the judgments have been rendered on their distinct facts.

12. In view of the discussion above, the complaint is rejected with the observation that this order will not come in the way of the complainant Association or its members to approach the forum having jurisdiction on the same cause of action.

.....J
AJIT BHARIHOKE
PRESIDING MEMBER
.....
ANUP K THAKUR
MEMBER