

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 186 OF 2022

1. GURUPYARA BHATNAGAR
R/o 4/41, Vidyut Nagar, Dayal Bagh
AGRA
UTTAR PRADESH

.....Complainant(s)

Versus

1. M/S. MVL CREDIT HOLDING AND LEASING LTD. & 4
ORS.

Registered Office at : F - 79/18, Sainik Farms,
NEW DELHI - 110068

2. PREM ADIP RISHI

Director, Mapplehill Credits Holdings and Leasing Ltd., F -
79/18, Sainik Farms,

NEW DELHI - 110068

3. KAMAL KUMAR JAIN

Director, Mapplehill Credits Holdings and Leasing Ltd., F -
79/18, Sainik Farms,

NEW DELHI - 110068

4. CHANDANI SINGH

Director, Mapplehill Credits Holdings and Leasing Ltd., F -
79/18, Sainik Farms,

NEW DELHI - 110068

5. M/S. SHIWALIK PROPERTY DEVELOPERS PVT. LTD.

Registered at : Office No. 112, Laxmi Chamber D - 223, Lalita
Park, Laxmi Nagar,

NEW DELHI - 110092

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

HON'BLE BHARATKUMAR PANDYA, MEMBER

FOR THE COMPLAINANT : MR. PRIYAM KAMRA, ADVOCATE

FOR THE OPP. PARTY : MR. LAKSHYA GUPTA, ADVOCATE

Dated : 30 January 2024

ORDER

1. Heard Mr. Priyam Kamra, Advocate, for the complainant and Mr. Lakshya Gupta, Advocate, for the opposite party on the preliminary issue whether the complainant who has booked five commercial units is a consumer within the meaning of "Consumer" as defined in the Consumer Protection Act, 2019.

2. Gurupyara Bhatnagar has filed the above complaint for directing the opposite parties to (i) pay/refund the amount of Rs.37776108/- as per statement of account; (ii) pay Rs.2/- crores

towards loss of business opportunity suffered due to his money blocked in the project of the opposite parties; (iii) pay Rs.one crore for harassment and mental agony caused to the complainant; (iv) pay litigation expenses to the complainant (v) any other order as deemed fit and appropriate in the facts and circumstances of the case.

3. The complainant stated that opposite party-1 is a real estate company engaged in construction, development, sale and other real estate activities. Opposite parties-2 to 4 are its Directors. Opposite party-5 is a company to which opposite parties-1 to 4 have transferred the rights of the complainant without his permission. Opposite parties-1 to 4 had launched an IT project "MVL I Park, near Red Cross Society Chandan Nagar Sector 15 Part II Gurugram Haryana." They also represented that requisite permission from Director, Town & Planning to set up the IT project and that they have all regal rights relating to sale, lease etc. The complainant, for the purpose of earning livelihood, booked five units (apartments) in the project, vide five separate agreements in March & May, 2012. The complainant stated that he had paid entire consideration of Rs.22101870/- for all five units. The apartments were completed but the opposite parties did not execute the lease deed despite various requests made by the complainant. The opposite parties also rented out the units booked by the complainant but paid the rent to the complainant upto September, 2016 only. The complainant also made police complaint against the opposite parties-1 to 4 for not executing the conveyance deed. Instead of executing the conveyance deed, the opposite parties-1 to 4 transferred the entire project in the name of opposite party-5. Alleging deficiency in service and unfair trade practice on the part of the opposite parties, the complainant filed the present complaint on 22.09.2022.

4. The opposite parties resisted the complaint by filing the written statement on 05.01.2023 *inter alia* raising the preliminary issue of maintainability on the ground that the complainant is not a consumer as he booked five units for commercial purpose. In the complaint itself it is admitted by the complainant that he had paid consideration for five units in the project. The opposite parties also arranged a tenant, namely, H & S Software Development and Knowledge Management Centre Pvt. Ltd., for the complainant. The opposite parties also intimated the complainant that as soon as he makes the entire consideration, the tenant would start paying rent to him. The opposite parties also adjusted the amount equivalent to 6 months rent against the consideration to be paid by the complainants. The complainant stated the opposite parties paid rent till September, 2016 and thereafter stopped paying the rent. The entire facts of the complaint show that the units were purchased by the complainant for commercial purpose and not for personal use. Therefore, the complainant is not a "Consumer" and is liable to be dismissed as not maintainable.

5. We have considered the arguments of the counsel for the parties and examined the record. The opposite parties alleged that the case of the complainant falls under exclusion of Section-2 (7) of the Consumer Protection Act, 2019. It is necessary to go through the definition of "Consumer" provided under Section 2 (7) of the Consumer Protection Act, 2019, (hereinafter referred to as the Act) is quoted below:-

"Section-2 (7)- "consumer" mean 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 and partly promised, or under any system of deferred payment, when such use is made with 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 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 such services for any commercial purpose;

Explanation.- For the purpose 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 livelihood by means of self-employment.

7. The term “housing construction” was added by Act No.50 of 1993, under Section-2(1) (o) of the Act. Earlier the Explanation was added by Act No. 50 of 1993 w.e.f. 18.06.1993 under Section-2(1)(d)(i) of the Act. By Act No. 62 of 2002, w.e.f. 15.03.2003, Section-2(1)(d) (ii) was also amended and the term “but does not include a person who avails such services for any commercial purpose” was added in it and the Explanation was placed in last.

8. Scope of the expressions “commercial purpose” and “exclusively for the purposes of earning livelihood by means of self-employment” came up for consideration before Supreme Court in relation to purchase of goods in **Laxmi Engineering Works Vs. P.S.G. Industrial Institute, (1995) 3 SCC 583**, wherein it has been held that the Explanation was an exception to an exception. Expression “commercial purpose” has not been defined, as such, its dictionary meaning has to be taken into consideration. “Commerce” means financial transaction, especially buying and selling of merchandise on large scale. In view of the Explanation the term “large scale” has no significance. As the Explanation excludes the transaction which was done for “exclusively for the purposes of earning livelihood by means of self-employment”, from the purview of commercial purpose as such purchase of commercial goods for earning livelihood by means of self-employment, will not exclude such a buyer from the purview of the “consumer” so long as it is used by the buyer or his family members or with the help of one or two other persons. It is question of fact and has to be decided in each case independently.

9. The interpretation of the phrase “commercial purpose” again came up for consideration in **Lilavati Kirtilal Mehta Medical Trust Vs. Unique Shanti Developers and others, (2020) 2 SCC 265**, Supreme Court has given various guidelines for deciding the commercial purposes i.e (i) manufacturing/industrial activities or business-to-business transactions between the commercial entities. (ii) the purchase of the good or service should have close and direct nexus with a profit-generating activity then it would be terms as “commercial purpose”. In **Shrikant G. Mantri Vs. Punjab National Bank, (2022) 5 SCC 42**, held that it is the purpose to which the goods so bought or put is material for deciding as to whether it

was for commercial purpose or not. The legislative intent is to keep the commercial transactions out of the purview of the said Act. In **National Insurance Company Limited Vs. Harsolia Motors, 2023 SCC OnLine SC 409**, held that the goods purchased or services availed should be used in any activity directly intended to generate profit, which is main aim of commercial purpose, in order to apply exception. In **Sunil Kohli Vs. Purearth Infrastructure Ltd., (2020) 12 SCC 235**, where commercial space was booked for doing business by way of self-employment, Supreme Court held that this case falls within Explanation to Section-2(1)(d) of the Consumer Protection Act, 1986.

10. In the light of aforesaid principles, the present case has to be examined. It is admitted case of the parties that the complainant purchased five IT/Cyber spaces in the multi-storied air-conditioned IT/Cyber complex, vide five separate builder-byer agreements, all dated 21.03.2012. In the agreements it is stated that the purchaser shall use the premises solely for IT/Cyber usages as permitted by the Government. In the agreement it is also mentioned that the opposite party had entered into a lease agreement with respect to the premises with M/s H & S Software Developmental and Knowledge Management Centre Pvt. Ltd., which shall start making the payment of lease rent to the allottee on receipt of full consideration by the developer. Pursuant to the lease agreement, M/s H & S Software Development and Knowledge Management Centre Pvt. Ltd. had deposited Rs.275652/- each for three units and Rs.196308/- and Rs.168606/- for two units (Total Rs.1191870/-) as security equivalent to 6 months' rent, which amount has been adjusted against the consideration paid by the complainant. All these facts are mentioned in the agreement and have not been rebutted by the complainant. Above facts proved that the complainant booked 5 commercial units, availing the services of opposite party for "commercial purpose" and not exclusively for earning livelihood by way of self-employment. As such Explanation of Section 2 (7) is not attracted in this case and the complainant is not a "consumer" and the complaint is not maintainable.

11. A four Members Bench of this Commission in **Synco Textiles Pvt. Ltd. Vs. Greaves Colton & Company Ltd., 1990 SCC OnLine NCDRC 3**, held that the expression "for any commercial purpose" are wide enough to take in all cases, where goods are purchased for being used in any activity directly intended to generate profit. Going to the plain dictionary meaning of the words used in the definition section, the intension of the Parliament must be understood to be to exclude from the scope of the expression 'consumer' any person who buys goods for the purposes of their being used in any activity engaged on a large scale for the purposes of making profit. The Parliament wanted to exclude from the scope of the definition not merely persons who obtains goods for resale but also those who purchase goods with a view of using such goods for carrying on any activity on a large scale for the purposes of earning profit. This judgement has been approved in **Laxmi Engineering's** case (supra). This view has again affirmed in **Shrikant G. Mantri's** case (supra).

ORDER

In view of aforesaid discussions, the complaint is dismissed as not maintainable, with liberty to the complainant to approach appropriate forum for required relief.

.....J
RAM SURAT RAM MAURYA

PRESIDING MEMBER

.....
BHARATKUMAR PANDYA
MEMBER