

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO(S). 10611 OF 2013****SANJAY BANSAL****Appellant(s)****VERSUS****M/S VIPUL LTD. (FORMERLY KNOWN AS VIPUL
INFRASTRUCTURE DEVELOPERS LTD.) & ANR.****Respondent(s)****JUDGMENT****Dr. Dhananjaya Y. Chandrachud, J.****Admit.**

The appellant filed a consumer complaint before the National Consumer Disputes Redressal Commission ("NCDRC"). The appellant alleged that there was a deficiency of service on the part of the developers in not executing agreements in respect of four flats which were booked by the appellant in a project called "Orchid Petals" located at Sector 49, Gurgaon. The following reliefs were sought in the complaint:

"It is therefore, most respectfully prayed that this Hon'ble Commission may kindly be pleased to direct the opposite parties to:

- a. Execute the buyers agreement/sale deed with the complainant, qua flat Nos. 1103, 1203, 903

in tower no. 15 and flat no. 1402 tower no. 21 in Orchid Petals Condominium Complex 1 sector 49, Gurgaon, Haryana.

- b. Pay Rs five lakhs as compensation for the harassment, agony and pain suffered by the complainant.
- c. Pay cost of the proceedings; and/or
- d. Any other / further compensation as complainant may be entitled may also be granted.

The respondents raised a preliminary objection to the maintainability of the complaint in their counter affidavit on the ground that since the appellant had booked four flats, the purpose was resale and commercial gain. Hence, it was pleaded that the appellant is not a "consumer" within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986 ("Act"). The averments in that regard in the objection raised by the second respondent are as follows:-

"1. ...The complainant had applied for these flats with a clear intention of resale. The purpose by applying for four flats i.e. on such a large scale by the complainant was only resale for commercial gain. The complainant, as is apparent from his complaint, intended to make short term profits by selling the four flats which were tentatively allotted to him; subject to certain conditions. The complainant had no intention to use the four flats as a residential / dwelling unit for himself or his family....."

The appellant contested the above objections and stated that the flats were not intended for commercial resale but for the members of his family. The appellant has made the following averments in response:

"1. It is admitted the complainant applied for the allotment of four flats in the 'Orchid Petals'

housing project, but it is denied that the complainant applied for the flats for commercial resale and to earn commercial gains there-from. The complainant wanted to live near his family members and therefore, he applied for the flats. It is surprising he applied for the flats. It is surprising that how and in what manner the defendant no. 2 suo motto came to the conclusion of the intention of the complainant of not using the flats as residential house for himself or his family members and also about his financial capacity to pay the installments of the flats. The complainant belongs to prestigious alumni of India Institute of Management and is a successful entrepreneur having an Income of Rs. 2.18 Crore as per the ITR of Assessment Year 2005-2006, Rs. 1.52 Crore as per the ITR of Assessment Year 2004-2005, therefore the opposite Parties allegation that the complainant has no capacity to pay is incorrect.

The NCDRC rejected the consumer complaint and upheld the objection. The grounds which weighed with the NCDRC emerge from the following extract from its decision:

"7. ... The fact that the complainant had booked four flats makes it clear that the aforesaid booking obviously was not for the purpose of residence and the hidden purpose behind aforesaid four bookings was to make profits on re-sale of the properties. Our aforesaid conclusion is strengthened from the fact that the complainant admittedly booked four flats knowing fully well that the opposite parties did not have necessary sanctions and approvals for the project at the relevant time. The plea of the complainant that he had booked those flats for himself and his family members is not acceptable for the reason that in the complaint the complainant has not clarified who were the family members for whose residence he had booked those flats. The complainant has placed on record the terms and conditions for registration and allotment of flats in the aforesaid project. On perusal of the terms and conditions signed by the complainant for respective flats it is clear that all these terms and conditions vis a vis the booked flats are signed by the complainant at Gurgaon on 4th August 2004 as sole/1st applicant. Though there is a column for signature of second applicant, it has not been signed by anyone. Had the plea of the complainant that he had booked those flats for the

residence of his family members been correct, he would have obtained the signatures of the respective family members as second applicant for whom the respective flats were booked. Thus, we have no hesitation in concluding that the flats in question have been booked by the complainant with the intention to make commercial gains by re-selling the flats on completion at higher rate."

Learned counsel appearing on behalf of the appellant submits that the fact that the appellant had booked four flats cannot be a reason enough to hold that he is not a "consumer" within the meaning of Section 2(1)(d). Learned counsel urged that the decision of the NCDRC to hold that the appellant is not a consumer is based on surmise without any evidence.

On the other hand, learned counsel appearing on behalf of the second respondent submitted that the appellant did not disclose before the NCDRC the names of the members of his family for whose benefit the flats were being purchased, and it was only during the pendency of the present proceedings that in the form of an additional affidavit, the lacuna in the pleading is sought to be covered up. Learned counsel supported the reasoning of the NCDRC that a purchaser of four flats cannot be recorded as a "consumer".

We find that the NCDRC has proceeded to decide the objections to the maintainability of the complaint on an *ipse dixit*. The fact that an individual has booked four flats may not by itself be a circumstance on the basis of which a conclusive presumption can be drawn that he or she is not a consumer in the absence of evidence regarding the purpose of the purchase. Ultimately, it is a matter to be decided on the

basis of evidence whether, as the appellant pleads, the flats were booked not for the purposes of resale, but for the members of his family. The appellant has seriously contested the claim of the developer that the flats were booked by way of an investment, for commercial resale.

At this stage before the NCDRC, there was no material on the basis of which a conclusion could have been drawn one way or the other. The NCDRC has sought to buttress its finding by recording that the appellant had booked the flats at a stage when sanction and approval for the project had not been obtained. This again may not strictly be a relevant consideration since a prospective buyer may invest in a building project bonafide, placing trust in the reputation of the builder to deliver possession. The fact that the appellant did not specifically mention the names of the members of his family may be one factor which may be placed in the balance in the ultimate decision. However, a finding, whether the appellant is nor is not a consumer should have been arrived at after the pleadings were complete and the parties had an opportunity to adduce evidence in support of their respective cases. Absent such an exercise, the decision of the NCDRC rests purely on assumption or surmise.

For the above reasons, we allow the appeal and set aside the impugned order of the NCDRC dated 5 August 2013. Consumer Complaint No. 85 of 2006 is accordingly, restored to the file of the NCDRC. We clarify that we have not expressed any opinion on the merits of the rival claims and contentions of

the parties including on the question whether or not the appellant is a consumer within the meaning of Section 2(1)(d) of the Act. The NCDRC shall decide that issue together with the complaint after evidence is adduced by the parties.

At this stage, the learned counsel appearing on behalf of the first respondent has stated that the first respondent was proceeded against ex-parte. Learned counsel has requested the Court to permit the first respondent to file its written statement and to contest the proceedings. This request has not fairly been opposed on behalf of the appellant. We accordingly, permit the first respondent to file a written statement within a period of four weeks from today and to contest the proceedings.

The appeal is, accordingly, disposed of. No order as to costs.

Pending application(s), if any, shall also stand disposed of.

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
APRIL 12, 2019

ITEM NO.36

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 10611/2013

SANJAY BANSAL

Appellant(s)

VERSUS

M/S VIPUL LTD. (FORMERLY KNOWN AS VIPUL
INFRASTRUCTURE DEVELOPERS LTD.) & ANR.

Respondent(s)

Date : 12-04-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s)

Mr. Shrish Kumar Misra, AOR
Mr. Kumar Manish, Adv.
Mr. Ajay Kumar, Adv.
Ms. Deepika Mishra, Adv.

For Respondent(s)

Sarojanand Jha, Adv.
Kirat Randhawa, Adv.
Purva Kohli, Adv.
Mr. Gautam Talukdar, AOR

Mr. Akshay Girish Ringe, Adv.
Mr. Siddharth Joshi, Adv.
Mr. Gagan Gupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

Admit.

The appeal is disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed reportable judgment is placed on the file)