

2024:PHHC:100966



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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CWP-10417-2024
Date of Decision: 05.08.2024

VIJAY KUMAR MAHAJAN

... Petitioner

VERSUS

**NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION, NEW DELHI AND OTHERS**

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the petition is to the order dated 20.09.2016 (Annexure P-14) and order dated 22.12.2023 (Annexure P-17) passed by respondent Consumer Commission(s) whereby the Consumer Complaint No.95 of 2013 filed by the petitioner has been dismissed.

Learned counsel for the petitioner contends that one Hardeep Singh was allotted a plot by M/s Bajwa Developers Ltd. vide allotment letter dated 02.02.2011 at Sr. No.512 situated in Jandpur area "Sunny Enclave" Kharar, District Mohali measuring 248.89 sq. yards for a total consideration of Rs.11,19,600/-. The petitioner agreed to buy the abovesaid plot for a sale consideration of Rs.54.75 lacs approximately and a sum of Rs.27,50,000/- was paid by him to Hardeep Singh. The date of final transaction was fixed as 10.04.2011, however, Hardeep Singh insisted that he would retain 30% ownership of the plot and that the petitioner-complainant would acquire only

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the remaining 70% by paying an additional amount of Rs.10,82,906/-. Following the abovesaid settlement, the petitioner issued a cheque for that amount in favour of M/s Bajwa Developers against receipt dated 04.04.2011. He approached the Consumer Court alleging that Hardeep Singh, with malicious intention, had imposed a condition allowing them to sell the plot to any other party at the rate of Rs.23,000/- per sq. yard and receive the sale consideration in a 70:30 ratio. He alleged that despite investing a substantial sum, the petitioner felt compelled to acquire the remaining 30% at an increased cost of Rs.17,17,000/- from Hardeep Singh. It is submitted that the respondent No.3 had colluded with respondent No.2- M/s Bajwa Developers to defraud the petitioner. They accepted a substantial sum of Rs.51.44 lacs approximately, and thereby causing a wrongful loss to the petitioner. A notice was served by him on the respondents for execution of the sale deed of plot No.512 within a period of one month. On failure thereof, the complaint was filed. The said consumer complaint was, however, dismissed by the State Consumer Disputes Redressal Commission, Mohali on 20.09.2016 by recording as under:

"14. Even if it is so, can it be held that the complainant had become the consumer of opposite party No.2, by virtue of that agreement or the endorsements thereon? Admittedly, opposite party No.2 was not a party to that agreement. No doubt, it is mentioned in the endorsement dated 04.04.2011 that complainant and opposite party No.3 had mutually decided that the complainant would pay an additional amount of Rs.10,82,906/- by cheque in favour of opposite party No.2 and accordingly paid that amount by means of cheque No.044111 dated 04.04.2011, but



neither it has been alleged by the complainant in his complaint that the said amount was paid by the complainant to opposite party No.2, through opposite party No.3, nor he produced any evidence to that effect. This inter-se transaction between the complainant and opposite party No.3 is not binding upon opposite party No.2. It is pertinent to note that the document dated 02.02.2011, Ex. C-4, which has been termed by the complainant as letter of allotment, is in fact the "NDC" (No Due Certificate) issued in favour of opposite party No.3 by opposite party No.2. A perusal thereof shows that it was plot bearing Serial No.512, which was allotted to him and full consideration thereof had been received by opposite party No.2. After that full consideration had been received by opposite party No.2, there was no question of the payment of the further amount to that opposite party. It has been specifically alleged by that opposite party, in its written reply, that the said amount is lying deposited with it, but the same was in respect of the other property. Confidence is created in the correctness of that stand of opposite party No.2 from the evidence produced on the record by the complainant himself. There was no privity of contract between the complainant and opposite party No.2 and at no stage he ever became the consumer of that opposite party. Therefore, the complaint against that opposite party is not maintainable.

15. So far as opposite party No.3 is concerned, the remedy of complainant against that opposite party lies before the Civil Court, as he has based his case against that opposite party on the Agreement to Sell and it is not his case that opposite party No.3 had agreed to provide any service to him. No such jurisdiction vests in the Foras under the Act to enforce the Specific Performance of the Agreement.



16. *It is pertinent to note that the complainant has nowhere alleged that he hired or availed of the services of any of the opposite parties and that there was any deficiency in service or that they adopted any unfair trade practice. His complaint is based upon fraud etc. and according to him, as a result of the act, so committed by the opposite parties, they caused wrongful gain to themselves and wrongful loss to him. For that, the complaint is competent, only before the Competent Court of Criminal Jurisdiction.*

17. *From the above discussion, we conclude that the complaint filed by the complainant is not maintainable under the Consumer Protection Act, 1986 and the same is hereby dismissed."*

Aggrieved thereof, the petitioner preferred appeal No.1450 of 2016 before the National Consumer Disputes Redressal Commission, New Delhi.

Upon consideration of the submissions advanced by both the parties, the appeal filed by the petitioner was also dismissed by the National Consumer Disputes Redressal Commission, New Delhi. The relevant extract thereof reads thus:

"20. The primary issue in the case revolves around the legitimacy of the property transaction involving the Appellant, Respondent No. 2, and Respondent No. 3. The moot points include the legality and relevance of agreement dated 11.02.2011 between the Appellant and Respondent No. 3 to purchase a plot (No. 512); the Appellant's allegation of fraud and conspiracy against Respondents No. 2 & 3 that they collaborated to deceive him by fabrication of documents and misrepresenting the details of property in question; whether the dispute falls under the purview of consumer protection laws; the nature of contractual relationship



between the parties, especially between the Appellant and Respondent No. 2; and the role and scope of liability of Punjab Urban Development Authority (PUDA).

21. *It is an admitted position that the contract in question was between the Appellant and Respondent No.3. The Counsel for the Appellant argued that even in the absence of any direct contract with Respondent No. 2, in essence, the Appellant stepped into the shoes of Respondent No. 3, who initially acquired the plot from Respondent No. 2. It was the Appellant who made the partial payment of Rs.10,82,906/- to Respondent No. 2 constituting total consideration paid by Respondent No. 3 to Respondent No. 2. Even if such argument is to be accepted, it cannot be held that the Complainant had become the consumer of Respondent No.2 even when the Agreement in question was not executed by them. While the endorsement dated 04.04.2011 states that he and Respondent No.3 had decided that he would pay an additional Rs.10,82,906/- to Respondent No. 2 and thus he paid the amount by cheque dated 04.04.2011, neither the Complainant alleged in his complaint that the said amount was paid by him to Respondent No.2 through Respondent No.3, nor he produced any evidence thereof. Such private transaction between them does not bind others. Pertinently further, the No Due Certificate dated 02.02.2011 was issued in favour of Respondent No.3 by Respondent No.2 acknowledging that the plot Serial No.512 was allotted to him and full consideration thereof had been received by Respondent No.2. Clearly, after full consideration was paid there was no scope for further payment. In any case, there was no privity of contract between him and Respondent No.2 and at no stage he ever became the consumer of Respondent No. 2. Therefore, the complaint against Respondent No.2 is not maintainable. As regards*



Respondent No.3, the remedy for the Complainant lies before competent Court based on the Agreement to Sell as it is not his case that Respondent No.3 had agreed to provide any service to him. Consumer Fora under the Act have no jurisdiction to enforce Specific Performance of Agreements In any case, at no stage the Complainant alleged that he hired or availed services of any Respondent and that there was deficiency in service or that they adopted unfair trade practices. His complaint is of misrepresentation, fraud etc alleged to have been committed by the Respondents to cause wrongful gain to themselves and wrongful loss to him. Thus, the complaint is liable to be tried in appropriate Civil/Criminal court.

22. In view of the foregoing deliberations, we find no material irregularity or illegality in the order dated 20.09.2016 passed by the learned State Commission in Consumer Complaint No. 95 of 2013. Consequently, the instant First Appeal No. FA/1450/2016 is dismissed."

The Consumer Courts/Commissions have dismissed the complaint of the petitioner as the same was found to be not maintainable for want of any privity of contract and relationship of 'consumer and service provider' with respondent No.4 – M/s Bajwa Developers Ltd.

After arguing the matter at some length, learned counsel for the petitioner seeks permission to withdraw the present petition with liberty to take recourse to the alternative efficacious remedies available to him in accordance with law.

Disposed of as withdrawn with the liberty as aforesaid.



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Needless to mention that in the event of the petitioner taking recourse to his alternative remedies, the period during which he pursued his remedies before the Consumer Court/Commissions as well as before this Court, shall be taken into consideration for the purpose of computing limitation.

AUGUST 05, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No