

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

FIRST APPEAL NO. NC/FA/390/2023

(Against the Order dated 22nd February 2023 in Complaint 6/2023 of the State Consumer Disputes Redressal Commission Punjab)

VIKESH KUMAR & ANR.

PRESENT ADDRESS - S/O VINOD KUMAR R/O H. NO. 524/19, CIVIL LINE, OPPOSITE DR. BHATIA HOSPITAL, GURDASPUR PUNJAB

SANDEEP KUMAR

PRESENT ADDRESS - S/O VINOD KUMAR R/O H. NO.524/19, CIVIL LINE, OPP. DR. BHATIA HOSPITAL, GURDASPUR, PUNJAB

.....Appellant(s)

Versus

M/S. ROSELYN SQUARE THROUGH ITS PROPRIETOR ROSY SINGLA

PRESENT ADDRESS - OFFICE: PR-7, 200 FT. AIRPORT ROAD, ZIRAKPUR , SAS NAGAR , PUNJAB ,

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA , PRESIDING MEMBER

HON'BLE AVM J. RAJENDRA, AVSM VSM (RETD.) , MEMBER

FOR THE APPELLANT:

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FOR THE RESPONDENT:

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DATED: 24/04/2025

ORDER

For the Appellant

Ananya Bhardwaj, Advocate (VC)

For the Respondent

Mr Saurabh Kumar, Advocate

ORDER

PER SUBHASH CHANDRA

1. This First Appeal under Section 51 of the Consumer Protection Act, 2019 (in short, the "Act")

is in challenge to order of the Punjab State Consumer Disputes Redressal Commission, Chandigarh ('the State Commission') in Complaint no. CC-6/2023 dated 26.09.2023 dismissing the complaint alleging deficiency in service in not complying with the agreed terms of the Undertaking Letters of Assured Return for payment of due and accrued assured monthly return in respect of the commercial area booked by the Appellant in Respondent's project.

2. We have heard the learned counsel for both the parties and have carefully perused the material on record.

3. The relevant facts of the case, in brief, are that the Appellants booked eight units of office spaces admeasuring super area of approximately 2400 sq ft in the Respondent's project 'Roselyn Square', PR-7 200 Ft Airport Road, Zirakpur, SAS Nagar, Punjab which comprised retail, office and SOHO Suites in a business environment on 09.07.2019. The Appellants state that the purpose of booking the units was to start a family business venture of a world class Coaching Centre Franchise through self employment in order to provide coaching for various examinations including IELTS, TOEFL and Spoken English for persons desirous of migrating overseas including administrative offices, canteen, etc. Respondent offered three payment plans such as (a) Down Payment Plan with Assured Returns, (b) Partial Payment Plan with Assured Returns and (c) Construction Linked Plan with no returns. Appellants opted for Plan (b) as it provided flexibility of 180 days to make down payment and paid 95% of the BSP amounting to Rs 1,56,54,078/-. Agreements for Sale were executed on 22.07.2019. Appellants issued request letters for availing the 'Scheme of Assured Return' which was approved by the respondent on 25.07.2019 with the commencement of payment of assured return with effect from 01.03.2021. Appellants issued an acceptance letter dated 25.07.2019 indicating acceptance of the terms and conditions. An Addendum to the Agreement for Sale was executed the same day, i.e., 25.07.2019 nullifying the possession clause. However, since the Respondent failed to pay the promised assured returns and since various efforts by the Appellants to ensure payments with accrued interest did not bear fruit, Appellants approached the State Commission in CC-6/2023 seeking redressal of their grievance. The State Commission, relying on the judgment of the Hon'ble Supreme Court in

Laxmi Engineering Works Vs. P.S.G. Industrial Institute, 1995 (3) SCC 583 dismissed the complaint *in limine* holding that the complainants/Appellants herein did not fall under the definition of 'consumer' as defined under the Act. The Appellants have impugned this order before us.

4. According to the Appellant, the State Commission erred in misreading the pleadings and evidence led by the Appellant and erroneously concluded that the complainants were not 'Consumer' under Section 2((7) of the Act. It was submitted that even though the units in question were commercial in nature, they had been purchased for the purpose of self-employment and earning of livelihood by way of self-consumption. It was argued that the State Commission failed to appreciate that the objective of the Appellants in booking the units was to set up a world class coaching institute headed by their family members who had prior experience and knowledge in education, marketing and career counselling and not by hiring of professionals. It was argued that the State Commission misinterpreted the ratio in **Laxmi Engineering Works** (supra) since it had held that if the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods is yet a consumer. It was also contended that the State Commission failed to consider that this Commission had held in **M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. Vs. Parika Ganeriwal**, FA No. 368 of 2020 dated 20.04.2022 that grant of an assured return as agreed between the parties was a valid consideration under the Act. Hence, it was the Appellant's case that the outright dismissal of the complaint by the State Commission be set aside.

5. Learned counsel for the Appellant also argued as per the written submissions and placed reliance on the judgment of the Hon'ble Supreme Court in **Rohit Chaudhary & Anr. Vs. M/s Vipul Ltd.**, MANU/SC/0983/2023 that "*When there is an assertion in the complaint filed before the Consumer Court or Commission that such goods are purchased for earning livelihood, such complaint cannot be nipped at the bud and dismissed. Evidence standard by parties will have to be evaluated on the basis of pleadings and thereafter conclusion arrived at.*" It is the case of the Appellants that they had discharged the initial onus of showing their *bona fides* regarding the purchase of the units in question. Therefore, it was for the Respondent to rebut the stand through

evidence or proof. However, the State Commission's order prevented this opportunity. Learned counsel placed reliance on the judgment of the Hon'ble Supreme Court on **Lilavati Kirtilal Mehta Medical Trust Vs. Unique Shanti Developers and Ors.**, MANU/SC/1574/2019 as per which "If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of generating livelihood by means of self-employment need not be looked into."

6. *Per contra*, the Respondent contended that admittedly the case related to purchase of commercial units in a commercial complex. Preliminary objection was taken that the Appellants were not 'consumers' as defined under Section 2(7) of the Act since the service was availed for a commercial purpose. It was argued that no exception had been carved out under the Act when a person hired or availed any service for commercial purposes, even if the same were solely for the purpose of earning livelihood by means of self-employment. It was further contended that 'housing construction' under the definition of 'service' in Section 2(42) could not be construed to include construction of a commercial complex for commercial activity as held by this Commission in **Freight System (India) Pvt. Ltd. Vs. Omkar Realtors & Developers Pvt. Ltd. & Ors.**, CC 886/2020, MANU/CF/0016/2021. Reliance was also placed on this Commission's judgment in **DLF Universal Ltd. Vs. Anjani Dass & Anr.**, FA 1791/2017 wherein it was held that since the plot was booked jointly by two persons, it had to be proved that both of them intended to earn their livelihood by means of self-employment in the building to be constructed and since this was not established, the State Commission had been held to lack jurisdiction to entertain the complaint. Respondent also contended that the State Commission had rightly held on the basis of **Laxmi Engineering Works** (supra) that the complaint was inadmissible.

7. Learned counsel for the Respondent also placed reliance on the recent judgment of the Hon'ble Supreme Court in **Virender Singh Vs. M/s Darshana Trading Co. through its Prop. Sanjay Seth (Dead) & Anr.**, in SLP (C) No. 5510/2020 decided on 18.03.2025 in which it had been held that even though in **Paramount Digital Colour Lab and Ors. Vs. Agfa India Private**

Limited and Ors., (2018) 14 SCC 81 a view had been taken that though the machine purchased had a commercial purpose, yet it had been used for 'self-employment' considering that the use of the machine was by the consumer and the size of his business,

What is important here is that if the machine is purchased for self-employment purposes, it cannot be categorised as "commercial purpose". But each case has to be seen in light of its own facts. In the case cited above i.e. *Paramount Digital* (supra), there were two unemployed graduate persons who had purchased the machine evidently for self-employment. But in the present case, the petitioner/complainant was already running a business as a commercial venture and admittedly, he had purchased the machine to expand his business. It is not a case where the petitioner was himself operating the machine, but he had employed workmen who were doing the job for him. Under these circumstances, no matter how small the venture is, it cannot be called self-employment for the purposes of the Act and therefore, we find no scope to take a different view than the one taken by the State Commission and the National Commission. The Special Leave Petition is, accordingly, dismissed.

As we have dismissed the petition primarily on the ground of jurisdiction under the Act, in case the petitioner moves a Civil Suit within four weeks from today, he would be at liberty to rely upon Section 14 of the Limitation Act, 1963 and the same shall be dealt with in accordance with law.

8. From the facts of this case, it is apparent that the Appellants booked commercial units with the objective of obtaining a franchise to run a coaching and immigration facilitation institute. It is argued by the Appellants that the purpose of the booking of the commercial units was for self-employment as certain relatives were qualified to undertake the activities. It is admitted that they would have hired other staff to provide the services. However, it is contended that the Appellants are not excluded under the ambit of Section 2(7) of the Act to be 'consumers' and that the State Commission erroneously ousted them through a flawed interpretation of the ratio in the judgment of the Hon'ble Supreme Court in ***Laxmi Engineering Works*** (supra) and that the complaint ought to have been admitted. The Respondent, on the other hand argued that the Appellants were not qualified to be 'consumers' under the Act since the property was admittedly commercial and had been booked for a commercial purpose.

9. It is apposite at this stage to examine the nature of the transaction between the parties. Admittedly, Respondent was constructing a commercial complex and Appellants approached her for allotment of units. Respondent offered three payment plans including (a) Down Payment Plan with Assured Returns, (b) Partial Payment Plan with Assured Returns and (c) Construction Linked Plan with no returns. Appellants opted for Plan (b) and paid 95% of the BSP amounting to Rs 1,56,54,078/-. Agreements for Sale were executed on 22.07.2019. and Appellants issued request letters for availing the 'Scheme of Assured Return' which was approved by the Respondent on 25.07.2019 with the commencement of payment of assured return with effect from 01.03.2021. Appellants issued an acceptance letter dated 25.07.2019 indicating acceptance of the terms and conditions. Thereafter, an Addendum to the Agreement for Sale was executed the same day, i.e., 25.07.2019 nullifying the possession clause. Thus, it is evident that the Appellants had willingly foregone the option of possession of the units booked for which justification is now provided that it was for self-employment. It is also evident that the Appellants were interested in the assured returns on the payment made towards the consideration.

10. Be that as it may be, the finding of the State Commission that the Appellants were not 'consumers' under the provisions of the Act cannot be faulted for the reason that the Appellants have not brought on record any evidence of the use the units booked even though it is asserted that they intended to obtain a franchise and engage staff to run the coaching institute for self-employment. As held by the Hon'ble Supreme Court, each case has to be considered upon the facts of that case. Mere assertion regarding self-employment cannot be considered adequate justification in this case. No evidence of the Appellants being engaged in self-employment for the purpose of earning their livelihood has been brought on record to justify that they were 'consumers' within the ambit of Section 2(7) of the Act which reads as under:

2. (7) "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 service 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 service 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 service for any commercial purpose.

Explanation. — For the purposes of this clause, —

(a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;

(b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

[Emphasis supplied]

The Hon'ble Apex Court in **Virender Singh** (supra) has clearly laid down that irrespective of the size of the business, it cannot be considered to be for self-employment if the petitioner was not operating the machine himself and had employed workmen who were doing the job for him, and since in the instant case the Appellants had not provided any evidence that they were providing the coaching, it cannot be concluded that they were 'self-employed' under the Act. As also held by this Commission, it is for both the Appellants to establish that they had booked the units for the purpose of their self-employment which they have failed to do. Reliance of the Appellants on the judgment in **Parika Ganeriwal** (supra) are of no avail to the Appellants as the facts in that case are different in as much as the issue of 'commercial purpose' was not established. The reliance of the Appellants on **Rohit Chaudhary and Anr.** (supra) is also of no avail to the Appellants since no evidence has been placed on record to evidence self-employment by the Appellants in the stated activity of coaching in the units booked. The contentions of the Appellants are therefore not tenable. The State Commission's order is held to be justified.

11. For the aforesaid reasons and the discussion above, we do not find merit in the contentions of the Appellants that warrant interference with the findings of the State Commission in the impugned order. The Appeal is found to be without merits and is therefore dismissed. There shall

be no order as to costs. Liberty is granted to the Appellants to approach the appropriate Civil Court, in case desired, for which purpose they are permitted to avail the provisions of Section 14 of the Limitation Act.

12. The appeal is disposed of in the above terms. There shall be no order as to costs. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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AVM J. RAJENDRA, AVSM VSM (RETD.)
MEMBER