

IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION,
NEW DELHI

FIRST APPEAL NO. 89 OF 2017

(Against the order dated 08.06.2016 in C. C. No. 364 of 2013 of
State Consumer Disputes Redressal Commission, Maharashtra)

1. Mrs. Rajni Suryakant Gujar
Through Power of Attorney
Mr. Mukul Suryakant Gujar

2. Mukul Suryakant Gujar

Both R/at: Flat No.5, Saiyali Apt.
Kasturba Society, Behind Hotel Kirti,
Vishrant Wadi, Pune- 411015

..... Appellants

Versus

1. Shree Vinayaka Developers
Regd. Office: Picasso Plaza, 209, 2nd Floor
N.I.B.M. Road, (Above Jyoti Restaurant)
Kondhwa, Pune- 411048
Through Partners

a) Mr. Venkatesh Babu
Residing at: H-6, Disney Park,
Azad Nagar, SRPF Post, Wanowrie,
Pune-411022

b) Mr. Sathya Mohan Rao
Residing at: D-4 Mayfair Eleganza,
N.I.B.M. Road, Kondhwa,
Pune- 411048

c) Mr. Kumar Srinivas Mandera
Residing at: A-2, Vidya Paradise,
Opp. Atur Nagar, Undri,
Pune- 411028

..... Respondents

BEFORE:

HON'BLE MR. INDER JIT SINGH, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER

For the Appellants

: Mr. Dnyanaraj G. Sant, Advocate
(through video conferencing)

For the Respondents

: Mr. Viraj Kadam, Advocate with
Mr. Rahul Kumar, Advocate (R1(a) & R1(b))
Respondent No. 1 (c) Ex-parte

Pronounced on : 6 June, 2025

ORDER

DR. SADHNA SHANKER, MEMBER

1. The instant appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (for short "the Act") in challenge to the Order dated 08.06.2016 of the State Consumer Disputes Redressal Commission, Maharashtra (hereinafter referred to as the "State Commission") in complaint no. 364 of 2013 whereby the complaint was dismissed.

2. Brief facts of the case are that the complainants initially purchased a plot admeasuring 3.5 Aars from Survey No. 43/2/2, situated at Undri, Pune, for a total consideration of ₹18,00,000/- and a sale deed was executed in favour of the complainants. Subsequently, the complainants decided to purchase Plot No. 2, admeasuring 7000 sq. ft., at Survey No. 43/2/4/1, 43/1/1/4A/13, 43/1/1/4A/13, 43/1/1/4A/6 and 43/1/2/4 at Undri, Pune and in respect thereof, a Memorandum of Understanding (MoU) was executed on 09.12.2010. Prior to and pursuant to the execution of the MoU, the complainants made a total payment of Rs. 50 lakhs (i.e. ₹10,00,000 on 29.11.2010, Rs. 10,00,000/- on 02.12.2010 and Rs. 5,00,000/- on 12.01.2011; Rs. 25,00,000/- on 06.06.2011, 10.06.2011 and 15.06.2011) in respect of plot no. It is alleged that despite receipt of the entire consideration, the opponents allegedly failed to execute the corresponding sale deed. Furthermore, one of the partners, Opponent No.

1(c), allegedly absconded. Opponents No. 1(a) and 1(b) subsequently published a notice in a newspaper on 15.05.2012 stating that Opponent No. 1(c) was no longer a partner in their firm. The complainants contended that the failure of the opponents to execute the sale deed, despite having received full consideration, constitutes a deficiency in service under the Consumer Protection Act. Accordingly, the complainants have filed the present consumer complaint before the State Commission with the following prayer:-

- A. Opponents be directed jointly and severally to give compensation amounting to Rs.62,05,000/- together with interest @ 15% p.a. from the date of filing of this complaint till the realization of amount, to the complainants.
- B. In case the Opponents are unable to pay the compensation amount of Rs.62,05,000/-, the opponents be directed to execute sale Deed of immovable property situated at S. NO. 46/16, Undri, Pune, admeasuring 7000 sq. ft.
- C. Possession of the above mentioned property with proper demarcation and fencing be given to the complainant.
- D. The Opponents may be ordered to pay to the Complainants the cost of this Complaint.
- E. Such other orders may be passed, as the Hon'ble Tribunal deems fit and proper in the interest of justice and equity.

3. The State Commission, vide its order dated 08.06.2016, dismissed the complaint on the ground that the complainants are not the consumers and the consumer complaint is not a consumer dispute.

4. Aggrieved by the Order dated 08.06.2016 of the State Commission, the complainants have filed the instant appeal before this Commission.

5. Before us, counsel for the appellants / complainants has argued that despite making full and final payment of Fifty Lakhs Rupees towards the purchase of the land property, the opponents failed and neglected to execute the Sale Deed in their favour. The said amount of fifty lakh is still lying with the opponents as on date and the same has neither been refunded nor adjusted in any lawful manner, which amounts to unjust enrichment on the part of the opponents. It is further argued that the appellants / complainants that Opponent Nos. 1(a) and 1(b) are now seeking to disclaim liability by alleging that Opponent No. 1(c) ceased to be their partner. It is the appellants' / complainants position that this assertion is a subsequent development raised as a means to evade accountability. The appellants further contend that Opponent Nos. 1(a) and 1(b) were actively engaged in the transaction in question and, at the relevant time, provided unequivocal assurances that either the sale deed would be duly executed or, in the alternative, the entire amount paid would be refunded along with interest. The appellants further contend that the refusal or failure of the opponents to honour their assurance constitutes not only a breach of contract but also amounts to deficiency in service and an unfair trade practice under the Consumer Protection Act. It is

submitted that the conduct of the opponents reflects a clear intention to defraud the appellants / complainants by receiving the entire amount and thereafter evading execution of the Sale Deed or refund.

6. Learned counsel for the respondents reiterated the factual background of the case and submitted that the appellants / complainants are engaged in the business of property brokerage, earning their livelihood through the sale and purchase of land and real estate. It was further contended that the appellants / complainants do not qualify as a "consumer" within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986 no consideration was paid to the partnership firm in relation to the disputed Plot No. 2, which forms the subject matter of the present proceedings. He further argued that the appellants / complainants has placed on record four hand loan agreements, according to which, Opponent No. 1(c), Mr. Kumar Srinivas Mandera, took loan from the appellants / complainants. These loans were disbursed by way of cheques, with the respective cheque numbers duly recorded in each agreement. The appellant now seeks to treat the amounts advanced under these hand loan agreements as the sale consideration for the aforementioned plot.

7. It was further submitted that the alleged sale transaction concerning Plot No. 2 was entered into by the appellants / complainants with Opponent No. 1(c), Mr. Kumar Srinivas Mandera, in his personal capacity. The appellants / complainants have placed on record a purported Memorandum of

Understanding (MoU) (02 nos.) dated 09.12.2010. The said MoU bears the signature of Mr. Kumar Srinivas Mandera solely in his individual capacity and not as a partner or representative of Opponent No. 1. Moreover, Clause 4 of the MoU expressly states that the document writer, i.e., Opponent No. 1(c), is experiencing personal financial hardship and, as a result, he is selling the said plot to the appellants / complainants. The language and tenor of the MoU clearly indicate that the transaction was undertaken by Mr. Mandera in his personal name and capacity. Accordingly, Opponent No. 1, the partnership firm, has no connection with or obligation arising from the alleged understanding recorded in the said MoU.

8. It was argued that the appellants / complainants were fully aware of the alleged fraud by Opponent No. 1(c), as Opponent Nos. 1, 1(a), and 1(b) had issued a public notice dated 15.05.2012 warning against his actions. Following this, the appellants / complainants issued a letter dated 25.05.2012 acknowledging the fraud. He also lodged FIR No. 452 dated 23.07.2012 at PS Havell, Pune, against all partners of the firm, wherein he admitted being a property agent and having reviewed the partnership deed before advancing funds. Despite Clause 16 of the deed requiring transactions to be in the firm's name, the appellant dealt with OP 1(c) in his personal capacity and transferred funds to his personal account. As the matter involves alleged criminal acts already under investigation, it falls outside the scope of the Consumer Protection Act and the jurisdiction of the consumer forum.

9. We have heard the arguments of learned counsel for the parties and considered the rival contentions and perused materials available on record. The question which falls for our consideration is whether the appellants / consumers are consumers within the ambit of the Act.

10. Upon careful consideration of the pleadings, documentary evidence, and arguments advanced by both parties, it is an admitted fact that the appellants / complainants are engaged in the business of property brokerage and deals in real estate transactions for commercial gain. The documents placed on record, including the FIR and hand loan agreements, further confirm that the transaction in question was undertaken in the ordinary course of the appellant's real estate dealings. The Hon'ble Supreme Court in **Laxmi Engineering Works v. P.S.G. Industrial Institute**, (1995) 3 SCC 583, has held that a person who avails of goods or services for any commercial purpose does not qualify as a "consumer" under the Act. In the present case, the transaction does not pertain to personal use but was part of the appellant's business activity.

11. Moreover, the Memorandum of Understanding dated 09.12.2010, signed solely by Opponent No. 1(c), Mr. Kumar Srinivas Mandera, makes it clear that the transaction was entered into by him in his personal capacity. Clause 4 of the MoU explicitly states that the sale was motivated by his personal financial hardship. No evidence has been produced to show that the firm or its other partners, Opponent Nos. 1(a) and 1(b), were party to or authorized the said transaction.

12. It is also pertinent to note that the appellants / complainants has lodged FIR No. 452/2012, acknowledging the fraudulent conduct and criminal breach of trust allegedly committed by Opponent No. 1(c). The Hon'ble Supreme Court in **Paramjeet Singh v. National Insurance Co. Ltd.**, (2019) 7 SCC 244, has held that matters involving complex questions of fact and fraud are best adjudicated by civil or criminal courts and not by consumer fora, which are summary in nature. Likewise, in **Chetan Arvind Mehta v. Inspector General of Police**, 2020 SCC OnLine NCDRC 325, it was reiterated that consumer fora cannot adjudicate disputes rooted in allegations of criminal fraud and breach of trust.

13. The partnership deed also mandates, under Clause 16, that all transactions must be conducted in the name of the firm. However, the appellants / complainants voluntarily chose to transact with Mr. Mandera in his individual capacity and made payments to his personal bank account, thereby knowingly acting outside the boundaries of the firm's legal structure.

14. In view of the above facts and binding judicial precedents, it is clear that the appellant does not qualify as a "consumer" within the meaning of the Consumer Protection Act, 1986. The transaction in question was with an individual and not with the firm or its authorized partners. The nature of the dispute involves serious allegations of fraud, criminal breach of trust, and unauthorized financial dealings, which are matters for adjudication under criminal and civil law and not within the jurisdiction under the Consumer Protection Act, 1986.

15. In view of the above, we are of the opinion that the State commission has passed a well-reasoned order.

16. The appeal is dismissed. All pending applications, if any, stand disposed off. The appellants / complainants are, however, at liberty to pursue their remedy before the appropriate court of competent jurisdiction.

Sd/-

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(DR. INDER JIT SINGH)
PRESIDING MEMBER

Sd/-

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(DR. SADHNA SHANKER)
MEMBER

Naresh/reserved