

HARESH KISHINDAS DUA V. RUPAREL ESTATES (I) PRIVATE LIMITED & 6 ORS.

1. HARESH KISHINDAS DUA

R/o 101, Wellington, Hiranandani Estate, Ghodbunder Road,
Thane 400607,
Maharashtra

.....Complainant(s)

Versus

1. RUPAREL ESTATES (I) PRIVATE LIMITED & 6 ORS.

Regd. Off. Sea Homes, 2nd Floor, Plot No. 3, Sector 36, Karavi
Village, Palm Beach Road, Nerul (W), Navi Mumbai,
Maharashtra 400706

2. Ruparel Realty

Ancillary of Ruparel Estaes (I) Pvt. ltd. Marathon Futurex,
1002,

B-wing, N. M. Joshi Marg, Lower Parel, Mumbai 400013

Maharashtra

3. Sanjeev Vasant Divekar

Ruparel Estates (I) Pvt. Ltd. K-22, Sector 7, Vashi Navi
Mumbai

400703

4. Nitin Shrirang Shinde

Ruparel Estates (I) Pvt. Ltd. Sea Homes, 2nd Floor, Plot No.
3,

Sector 36, karavi Village Palm Beach Road, Nerul (W) Navi
Mumbai

Maharashtra 400706

5. Mr. Amit Ruparel

Ruparel Estates (I) Pvt. Ltd. Sea Homes, 2nd floor, Plot No.
3,

Sector 36 Karavi Village, Palm Beach road, Nerul (W) Navi
Mumbai

Maharashtra 400706

6. Mr. Mahendra Karsandas Ruparel Chairman
Ruparel Estates (I) Pvt. Ltd. L1 & L2, Senapati Bapat Marg,
Next

to Magnet Mall, Opp. Matunga West Station, Matunga West,
Mumbai 400013

7. Mr. Parikshit Sharma

Employee of Ruparel Estates (I) Pvt. Ltd. L1 & L2, Senapati
Bapat Marg, Next to magnet Mall, Opp. Matunga West Station,
Matunga West,
Mumbai 400013

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 1842 OF 2016

Date of Judgement: 09 Jan 2023

Judges:

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

HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Mr. Abhijat, Advocate

Ms. Mansi Sharma, Advocate

For the Opp.Party : Mr. Mohd. Shahan Ulla, Advocate

Mr. Deepanshu Latka, Advocate

Facts:

Complainants Haresh and Rashi Dua booked a 2BHK flat with Opposite Party (OP) Ruparel Estates Pvt Ltd in their project 'Ruparel Iris' in Mumbai on 09.09.2013. Complainants were allotted flat no. 2702 for Rs. 2.375 crores. They paid Rs. 1.28 crores in instalments from 2013 to 2016 as per payment plan. In November 2015, complainants requested OP to provide agreement copy to facilitate bank loan for balance payment. OP

sent draft agreements but details were incorrect. In December 2015, OP informed complainants that flat no. 2904 was allotted to them instead of 2702. In February 2016, OP sent an agreement showing escalated price of Rs. 2.39 crores. On 08.03.2016, OP raised a demand for Rs. 45.88 lakhs payable by 31.03.2016 linked to completion of 20th floor slab. But only 18 floors were actually completed then. Complainants requested OP to resolve pricing issue and postpone demand. OP informed that price reduction was not possible. On 22.03.2016, OP emailed complainants that their allotment stood cancelled. Complainants contested this stating they never asked for cancellation. OP did not respond to further communication from complainants. Hence, complainants filed the consumer case seeking refund with interest, compensation and litigation costs.

Court's Elaborate Opinion:

Complainants fall under the definition of 'consumer' under the Consumer Protection Act. There is no evidence of commercial purpose behind the booking. Email dated 22.03.2016 from OP confirming cancellation is on record. Complainants' contention that they never asked for cancellation appears correct. Changing allotment after taking substantial payments from complainants is unfair trade practice. Raising demand paired to 20th floor slab completion when only 18 floors were completed is also unfair. Even if complainants had defaulted on demand payment, cancellation without refunding their money is arbitrary and illegal.

Arguments by Complainants:

OP arbitrarily changed allotment and escalated prices after taking substantial money from complainants. They raised unfair demand and illegally cancelled allotment without returning money on false grounds. Seeking refund of paid amount of Rs. 1.28 crores with interest, compensation of Rs. 20 lakhs for harassment and Rs. 5 lakhs as litigation costs.

Arguments by Opposite Party:

Allotment change and pricing was due to layout plan changes by authorities. Complainants were not ready to pay new higher price or new demand raised. They requested cancellation of allotment in discussions which was then communicated on 22.03.2016. Hence cancellation is not illegal or arbitrary. Complainants concealed facts. There is no deficiency of service or unfair trade practice by OP. Complaint should be dismissed.

Sections:

Section 2(1)(d) for definition of 'consumer'

Cases Referred/Cited:

No case has been cited or referred.

Referred Laws:

Companies Act 1956 stated for registration of opposite party company. Consumer Protection Act 1986 stated for basis of complaint.

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Court

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Full Text of Judgment:

1. Heard Mr. Abhijat, Advocate, for the complainants, and Mr. Mohd. Shahan Ulla, Advocate, for the opposite parties.
2. Hareesh Kishinchand Dua and Mrs. Rashi Dua have filed above complaint, for directing the opposite parties to (i) refund entire amount of Rs.12878963/-, deposited by them with interest @24% per annum from the date of respective deposit till the date of actual payment, or in alternative, allot the flat booked by them on agreed price of Rs.23750000/-, (ii) pay Rs.2000000/-, as compensation for mental agony and harassment, (iii) pay Rs.500000/-, as litigation cost; and (iv) any other

relief which is deemed fit and proper in the facts and circumstances of the case.

3. The complainants stated that Ruparel Estates (I) Private Limited (opposite party-1) was a company, registered under the Companies Act, 1956 and opposite parties-2 to 6 were its Directors, Managing Director, Chairman and Employee. They were engaged in the business of development and construction of group housing project and selling its unit to the prospective buyers. The opposite parties launched a group housing project, in the name of "Ruparel Iris" at Cadastral Survey No.564 of Mahim Division and Final Plot No.273 of Town Planning Scheme Mahim No. III at S.B. Marg, Tulsi Pipe Road, Mahim, Mumbai-400016, in the year 2013 and made wide publicity of its facilities and amenities. The complainants booked a 2BHK Flat on 09.09.2013 and deposited booking amount of Rs.2500000/-. The opposite parties allotted Unit no.-2702, on 10.09.2013, for total sale price of Rs.23750000/-. As per demands dated 06.03.2014, 21.10.2014, 25.11.2014, 10.03.2015, 06.08.2015 and 07.03.2016, the complainants deposited total Rs.12878963/-. Payment plan was "construction link payment plan". On 06.11.2015, the complainants requested the opposite parties for executing an agreement in their favour, so that they could secure loan from bank for paying remaining instalments. The opposite parties supplied a draft agreement on 26.11.2015, which did not contain any particular of the flat. The complainants pointed out the discrepancies in the agreement through email. Opposite party-6, vide email dated 30.11.2015, replied that flat number and floor number etc. had to be confirmed/checked by sir (managing director). On 19.12.2015, opposite party-6 informed on telephone that Flat No.2904 has been allotted to them. Opposite party-6 sent another draft agreement on 05.02.2016, in which, total price was mentioned as Rs.23990000/-. Through email dated 08.02.2016, the complainants inquired from opposite party-6, in respect of escalation of price. On 26.02.2016, opposite party-6 told on telephone that the issue would be resolved soon. The opposite parties raised a demand of Rs.4588426/- (the instalment

payable on completion of 20th slab) on 08.03.2016 payable till 31.03.2016. The complainants found that on the site only 18th slab was completed as such they requested to resolve the issue of escalation in price, execution of agreement and postponing this demand, on 09.03.2016. However, Managing Director informed that it was not possible to reduce the price. On 22.03.2016, the complainants informed that they were ready to pay escalated price and requested for execution of the agreement. Opposite party-6, vide email dated 22.03.2006, informed that the allotment of the complainants had been cancelled. The complainants wrote email dated 25.03.2016 that they had never requested for cancellation of the agreement. Thereafter, the complainants gave various emails to the opposite parties from 25.03.2016 till 29.09.2016 but the opposite parties did not respond. Then the complaint was filed on 08.11.2016, alleging unfair trade practice.

4. The opposite parties filed its written reply on 15.02.2017 and contested the matter. The opposite parties did not dispute, booking of the flat, allotment of the flat, deposits made by the complainants and change allotment and price. The opposite parties stated that due to change in layout plan by the authorities, allotment of the complainants was changed. The complainants were earlier allotted flat No.2702, which was on 27th floor and changed flat was on 29th floor as such the price was increased. During discussions on the change of flat and increase of price, complainant-1 was not ready to pay demand of Rs.4588426/- as raised on 08.03.2016 and increase of price of the changed flat and told to cancel the allotment as such allotment was cancelled and the complainants were informed vide email dated 22.03.2016. The complainants have deliberately concealed material facts and evidence. The opposite party has not committed unfair trade practice or any deficiency in service. Preliminary objection that the complainants were not the consumers and the complaint was not maintainable, has been raised. The complaint is liable to be dismissed.

5. The complainants filed Rejoinder Reply on 12.05.2017,

Affidavit of Evidence and Affidavit of Admission/Denial of documentary evidence of Haresh Kishinchand Dua and Affidavit of Evidence and Affidavit of Admission/Denial of documentary evidence of Mrs. Rashi Haresh Dua. The opposite parties filed Affidavit of Evidence of Amit M. Ruparel. Both the parties filed their short synopsis of the arguments.

6. We have considered the arguments of the parties and examined the record. The preliminary issue raised by the opposite parties has no substance. For excluding a home buyer from the definition of 'consumer' as defined under Consumer Protection Act, 1986, it is required to be proved that service was availed for 'commercial purpose'. The opposite parties argued that the complainants had stated in the complaint that for securing the future of their family they had booked the present flat. The complainants gave an online advertisement for sale of the flat on 11.08.2015. From which, it is proved that the complainants had not booked the flat for their residence but for earning profit. In Rejoinder, the complainants have stated that complainant-1 was a chartered accountant and employed in corporate sector and complainant-2 was house wife. They booked this flat for their residence. Subsequently, the complainants realized difficulties in paying the instalment as such approached the opposite party to buy-back the flat. As the opposite parties were not ready to purchase it as such online advertisement was given. There is no evidence that the complainants were engaged in buying and selling the property. At subsequent stage if the complainants offered the opposite party to buy back the flat or gave an advertisement for selling their flat as they found for themselves it difficult for paying the instalment no inference can be drawn that the complainants had obtained the flat for commercial purpose.

7. Allegation of the opposite parties that the complainants has not filed email dated 22.03.2016, is incorrect. Email dated 22.03.2016 has been filed on page 198 of the complaint and its protest email dated 25.03.2016 has also been filed on that page, in which, it has been stated that complainant-1 had

not requested to cancel the allotment. As such the allegation that on the request of the complainants, allotment was cancelled does not appear to be correct. The opposite parties changed the allotment after realizing money of 19 instalments, which was unfair. The opposite parties, vide demand letter 08.03.2016 raised a demand of Rs.4588426/- (the instalment payable on completion of 20th slab), which was payable till 31.03.2016. Prior to 31.03.2016, the complainants cannot be treated as a defaulter. In any case, after cancelling the allotment, it was imperative for the opposite parties to return the money of the complainants along with interest. As such cancellation of the allotment was arbitrary and illegal.

ORDER

In view of the aforesaid discussions, the complaint is partly allowed with cost of Rs. one lac. The opposite parties are directed to refund entire amount of Rs.12878963/-, with interest @9% per annum from the date of respective deposit till the date of actual payment to the complainants, within a period of two months from the date of this judgment.