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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1292 OF 2008
G.D.A. & ANR.

Appellant(s)

VERSUS

MITHILESH GOEL

Respondent(s)

O R D E R

1) Heard Ms. Reena Singh, learned counsel appearing for the appellants.

2) This appeal arises out of a complaint made by one Smt. Mithilesh Goel, who had made an application to the Ghaziabad Development Authority in the year 1993 for allotment of a house in 'Govindpuram Housing Scheme' in H.I.G. category, Ghaziabad. The estimated cost at that point of time was to be Rs. 5,40,000/- and the complainant deposited Rs. 1,35,000/- on 08.09.1993.

3) On 10.09.1993, the Authority issued an allotment letter-cum-payment schedule allotting House No. J-75 to the complainant and the estimated cost thereof which, as has been stated herein before, was intimated as Rs. 5,40,000/-. By 16.07.1997, Smt. Goel paid a sum of Rs. 5,72,800/- which was beyond the estimated cost of Rs. 5,40,000/-. However, after seven years, on 02.11.2000, the Authority intimated the final cost of the

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house as Rs. 6,42,464/- and demanded the balance amount. When the complainant protested, the Authority kept on upping its demand until finally the complainant was constrained to move the Monopolies and Restrictive Trade Practices Commission (for short the 'Commission') on the ground that the upping of this demand in an arbitrary fashion would amount to an unfair trade practice.

4) Without going to any other point, we feel that the Commission has acted outside its jurisdiction under Section 36A. Section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (for short the 'Act') reads as follows:-

â S 36A. Definition of unfair trade practice.-

In this Part, unless the context otherwise requires 'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods for the provisions of any services, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:-

(1) The practice of making any statement, whether orally or in writing or by visible representation which,-

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or mode;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits

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which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation

which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of,

any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be-

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been, or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation : For the purposes of clause (1), a statement that is-

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

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(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business and the nature of the advertisement.

Explanation.- For the purposes of clause (2),
"bargain price" means-

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or

(b) a price that a person who reads, hears, or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) Permits-

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole,

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

(4) Permits the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards

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prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods.

(5) Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services. â- \235

5) It will be noticed that â- Sunfair trade practiceâ- \235 will fall under this Section only when â- Sgoodsâ- \235 or â- Sthe provision of any servicesâ- \235 are involved. In particular, the unfair trade practice alleged and found in favour of the complainant is under sub-clause (ii) of sub-section (1) under which a person falsely represents that the services are of a particular standard, quality or grade.

6) We find that the alleged arbitrary upping of the amount to be paid towards the house, which is an immovable property, cannot possibly be said to be a false representation by the Ghaziabad Development Authority that services are of a particular standard, quality or grade. This is for two reasons. First and the foremost, there is no false representation by the Authority, inasmuch as what was communicated to the complainant was only an estimated cost of the house in question. That estimate was revised later owing to several factors. This itself would show that there is no false representation within Section 36A(1)(ii) of the Act. Secondly, what was given was allotment of a house which

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is an immovable property, and not services of any kind. This being the case, we are of the view that the impugned order must be set aside as it is outside the jurisdiction of the Commission.

7) Accordingly, the impugned judgment passed by the Commission is set aside and the appeal is allowed with no order as to costs.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(ABHAY MANOHAR SAPRE)

New Delhi;
April 26, 2017.

ITEM NO.104

COURT NO.12 SECTION XVII
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1292/2008

G.D.A. & ANR.

Appellant(s)

VERSUS

MITHILESH GOEL

Respondent(s)

(with office report)

Date : 26/04/2017 This appeal was called on for hearing today.

CORAM :

HON&#39;BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON&#39;BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Appellant(s) Ms. Reena Singh, Adv.

Mr. T. Mahipal, AOR

For Respondent(s) Mr. Gopal Prasad, AOR (N.P.)

UPON hearing the counsel the Court made the following

O R D E R

The impugned judgment passed by the Commission is set aside and the appeal is allowed with no order as to costs in terms of the signed order.

(R. NATARAJAN)

(SNEH LATA SHARMA)

Court Master Court Master

(Signed order is placed on the file)