

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 3786-3787 of 2019

Manjit Gupta

.... Appellant(s)

Versus

**Oberoi Realty Ltd (Formerly Oberoi
Constructions Ltd) & Anr**

....Respondent(s)

ORDER

1 These appeals arise from the orders of the National Consumer Disputes Redressal Commission¹ dated 18 April 2017 and 10 July 2017 rejecting the consumer complaint² filed by the appellant on the ground that he is not a consumer within the meaning of Section 2(1)(d) of the Consumer Protection Act 1986. The NCDRC held that the case involved the sale of a ready flat, together with a parking space, and hence, there was no element of hire or availment of any service.

2 After notice was issued by this Court on 25 March 2019, the first and the second respondents appeared through counsel.

3 On 16 July 2019, the following order was passed:

“Learned Counsel appearing on behalf of the 1st Respondent states that within a period of 30 days, the developer will apply for permission to the Municipal Corporation of Greater Mumbai and

1 “NCDRC”

2 Consumer Case No 806 of 2017

upon due inspection, obtain permission for allotment of the second parking space to the appellant.

The learned counsel appearing on behalf of the second respondent, has no objection to the developer carving out the parking space as required to be given to the appellant. Accordingly, we direct that these proceedings be now listed on 20.08.2019."

4 Thereafter, on 4 November 2019, the following order was passed:

"During the course of the hearing, learned counsel appearing on behalf of the second respondent states that the second respondent has offered an amount of Rupees 5,81,602 (inclusive of interest) to the appellant towards refund of the amount which was erroneously recovered from the appellant for club membership charges and transfer premium. The appellant has disputed the computation of the amount. In order to obviate any further dispute on the computation of the claim together with interest, we direct that the second respondent shall pay an amount of Rs 6.50 lakhs to the appellant in full and final settlement of this head of claim. The appellant, who appears in person, states that he is ready and willing to accept the amount of Rs 6.50 lakhs in full and final settlement. The payment shall be made over to the appellant within a period of two weeks from the date of receipt of a certified copy of this order by electronic transfer into a bank account which shall be nominated by the appellant under intimation to the Advocate-on-Record for the second respondent.

The only remaining issue which survives for consideration is the allotment of a second parking space to the appellant.

Learned counsel appearing for the second respondent states that an agreement was entered into between the parties on 19 October 2019 for the allotment of the second parking space. However, the appellant, who appears in person, has made a grievance that the second parking space which has been allotted to him is not vacant and some other vehicle is being parked there.

We direct the second respondent to file an affidavit within a period of two weeks from today specifically setting out whether the second parking space which is allotted to the appellant is unencumbered and vacant and whether it has been allotted to or is being utilized by any other party.

List the Appeals on 9 December 2019."

5 In pursuance of the order dated 4 November 2019, certain developments have taken place. Firstly, the appellant, who appears in person, states that the second respondent has paid an amount of Rs 6.50

lakhs to him. Secondly, affidavits have been filed both by the first and the second respondents stating specifically that a car parking space, bearing No P II-683, has been provided to the appellant, together with necessary documentation. The appellant has affirmed the said position.

6 The appellant submitted that he had paid an amount of Rs 1,36,489 to the cooperative society on account of arrears of maintenance charges. He seeks a refund of the amount on the ground that the builder is liable to bear the said expenses. This is disputed during the course of the hearing before this Court by the learned counsel for the first respondent.

7 In order to put an end to the dispute, learned counsel appearing on behalf of the first respondent stated that, without in any manner admitting the entitlement of the appellant, the first respondent would pay a sum of Rupees two lakhs to the appellant within a period of two weeks from today in full and final settlement. We appreciate the fair statement which has been made on behalf of the first respondent by the learned counsel and it is ordered accordingly.

8 In view of the above developments, we are inclined now to close the proceedings since the dispute has been duly resolved. Hence, it is not necessary for this Court to render any finding on the jurisdictional issue which was raised before the NCDRC. All controversies by and between the appellant and the respondents shall stand finally and completely resolved in terms of the above order.

9 Nothing contained in this order shall amount to any expression of opinion on the consumer complaints which are pending between the first and the second respondents.

10 We clarify, on the request of learned counsel for the second respondent, that the statement which was made on behalf of the second respondent on 16 July 2019 will not affect the pending proceedings between the respondents.

11 The appeals are accordingly disposed of. There shall be no order as to costs.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Hrishikesh Roy]

**New Delhi;
December 09, 2019**

ITEM NO.39

COURT NO.8

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).3786-3787/2019

MANJIT GUPTA

Appellant(s)

VERSUS

OBEROI REALTY LTD (FORMERLY OBEROI
CONSTRUCTIONS LTD) & ANR.

Respondent(s)

Date : 09-12-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Appellant(s) Appellant-in-person

For Respondent(s) Mr. Amit Agrawal, AOR

Mr. Vivek Kohli, Adv.
Ms. Yeshi Rinccen, Adv.
Mr. Bharat Swaroop, Adv
Mr. Sureshan P., AORUPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed
order. There shall be no order as to costs.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)