

Case brief: Ambrish kumar Shukla and 21 others vs. ferrous infrastructure (National consumed dispute redressal commission)

Facts

The appellant ambrish kumar is non resident Indian staying at USA. He purchased a flat in a scheme of the respondent and it was allotted to him in august 2007. It was agreed between both the parties that the flat would be delivered to him within three years in case of any uncertainty three months grace period would be there (force majeure). The flat was booked by the appellant for rs 98, 13,760 and the appellant had already paid 76, 48,940 before he came to know that no progress was made in the flat purchased by him except the basic structure being prepared by the respondents. The appellant demanded refund from the respondent of the amount paid by him along with 18% interest and the respondent refused to do so. The appellant approached the National consumed dispute redressal commission (NCRDC) for claiming his refund on the grounds of malpractice and unfair trade practice.

Issues

Whether the defendant had indulged into unfair trade practice.

Is he liable to refund the amount paid by the appellant?

Arguments

The major arguments from the side of the appellants were that respondent has indulged into unfair trade practices and he has not delivered the flat as agreed between both the parties and he is refusing to refund the amount paid for the flat he had booked which was not delivered to him as promised to him by the respondents. The respondents argued that NCRDC does not have pecuniary jurisdiction to entertain this claim as the claim amount is less than rs one crore. Further the appellant is NRI and he does not have the intention to reside here and he will sell the property for profits, hence he does not qualify as consumer according to the act. Moreover there was stay put on the construction by the high court of Andhra pradesh, force majeure which halted the construction.

Judgement

The commission held that it has pecuniary jurisdiction to admit this claim as the amount demanded as refund that is 76, 48,940 along with 18% interest amounts more than one crore rupees , hence it would be under their pecuniary jurisdiction according to the section 21 (a) of the consumer protection act.

Further the commission held that consumer protection act does not create any difference between citizen and non resident Indian and relying on that logic is not fair. The commission held that six years had passed away since the stay was vacated, if the respondent had the intention to deliver the flat he could have easily done that in 2 years but he didn't delivered and he cannot use force majeure as defence.

The commission ordered the respondent to refund the amount to the appellant with 10% interest.

