Bunga Daniel Babu vs M/S Sri Vasudeva Constructions & Ors on 22 July, 2016

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Bench: N.V. Ramana, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 944 OF 2016
(@ Special Leave Petition (Civil) No.1633 of 2015)

BUNGA DANIEL BABU Appellant (s)

VERSUS

M/S SRI VASUDEVA CONSTRUCTIONS & ORS Respondent(s)

J U D G M E N T

Dipak Misra, J.

The assail in the present appeal, by special leave, is to the judgement and order passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") in Revision Petition No. 258 of 2013 whereby the said Commission has approved the decision of the State Consumer Disputes Redressal Commission, Hyderabad which had reversed the view of the District Consumer Forum that the complainant is a "consumer" within the definition under Section 2(1)(d) of the Consumer Protection Act, 1986 (for brevity, "the Act") as the agreement

of the appellant with the respondents was not a joint venture. The District Forum had arrived at the said decision on the basis of legal principles stated in Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. and anr.[1]. The State Commission had opined that the claim of the appellant was not adjudicable as the complaint could not be entertained under the Act inasmuch as the parties had entered into an agreement for construction and sharing flats which had the colour of commercial purpose. Thus, the eventual conclusion that the State Commission reached was that the complainant was not a consumer under the Act. The said conclusion has been given the stamp of affirmance by the National Commission.

2. The factual score that is essential to be depicted is that the appellant is the owner of the plot nos. 102, 103 and 104 in survey no. 13/1A2, Patta no. 48 admeasuring 1347 sq. yards situate at Butchirajupalem within the limits of Visakhapatnam Municipal Corporation. Being desirous of developing the site, the land owner entered into a Memorandum of Understanding (for short "the MOU") with the respondents on 18.07.2004 for development of his land by construction of a multi-storied building comprising of five floors, with elevator facility and parking space. Under the MOU, the apartments constructed were to be shared in the proportion of 40% and 60% between the appellant and the respondent No. 1. Additionally, it was stipulated that the construction was to be completed within 19 months from the date of approval of the plans by the Municipal Corporation and in case of non-completion within the said time, a rent of Rs. 2000/- per month for each flat was to be paid to the appellant. An addendum to the MOU dated 18.07.2004 was signed on 29.04.2005 which, inter alia, required the respondents to provide a separate stair case to the ground floor. It also required the respondents to intimate the progress of the construction to the appellant and further required the appellant to register 14 out of the 18 flats before the completion of the construction of the building in favour of purchasers of the respondents.

3. As the factual matrix would further unfurl, the plans were approved on 18.05.2004 and regard being had to schedule, it should have been completed by 18.12.2005. However, the occupancy certificates for the 12 flats were handed over to the occupants only on 30.03.2009, resulting in delay of about three years and three months. In addition, the appellant had certain other grievances pertaining to deviations from sanction plans and non-completion of various other works and other omissions for which he claimed a sum of Rs.19,33,193/- through notices dated 6.6.2009 and 27.6.2009. These claims were repudiated by the respondents vide communications dated 17.07.2009 and 16.08.2009.

4. Being aggrieved by the aforesaid communications, the appellant approached the District Forum for redressal of his grievances. The District Forum appreciating the factual matrix in entirety framed two issues for determination, which in essence are, whether the complainant was a "consumer" within the definition of Section 2(1)(d) of the Act; and whether there was any deficiency in services on the part of the opposite party. The District Forum after analysing various clauses of the MOU and the addendum and placing reliance on the decision of the Court in Faqir Chand Gulati (supra) came to hold that the transaction between the parties could not be termed as a joint venture, in order to exclude it from the purview of the Act. Accordingly, the District Forum opined that the complainant came under the definition of Consumer under Section 2(1)(d)(ii) of the Act. On the second point of deficiency as well, it partly allowed the claim in favour of the appellant-complainant by awarding a

sum of Rs. 15,96,000/- towards rent for delayed construction, Rs. 19,800/- as reimbursement of vacant land tax, Rs. 70,000/- as cost for rectification of defects in the premises and Rs. 25,000/- for mental agony. It was further directed that the abovesaid sum shall carry interest @ 9% per annum from the date of filing of the complaint. Be it stated, cost of Rs. 10,000/- was also awarded.

5. The respondent constrained by the decision of the District Forum preferred an appeal before the State Commission which did not agree with the finding of the District Forum and came to hold that the appellant- complainant did not come within the ambit of definition of "consumer" under the Act and accordingly dismissed his claims as not maintainable. The appellate forum expressed the view that as the agreement was entered into by the appellant-complainant for more than two plots and there was an intention to sell them and let them on rent and earn profit, the transaction was meant for a commercial purpose. Grieved by the said decision, the appellant-complainant invoked the revisional jurisdiction of the National Commission which concurred with the view expressed by the State Commission by holding that the State Commission had rightly distinguished the authority in Faqir Chand Gulati's case on facts because the flats were not for personal use and the complainant had already sold four of the twelve flats.

6. The seminal issue that emanates for consideration is whether the appellant-complainant falls within the definition of "consumer" under Section 2(1)(d) read with the Explanation thereto of the Act. The issue that further arises for determination is whether the National Commission has rightly distinguished the authority in Faqir Chand Gulati's case. It is necessary to mention that the controversy involved in the case had arisen prior to the 2002 amendment by which the definition of the term "consumer" has been amended in the dictionary clause.

7. To appreciate the heart of the dispute, we think it apposite to x- ray the definition of the term "consumer" from the inception till today. Section 2(1)(d) at the commencement of the Act read as follows:-

> "Section 2(1)(d) "consumer" means any person who—
>
> (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
>
> (ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;" The aforesaid definition, as is manifest, did not include a person who obtained such goods for resale or for any commercial purpose.

8. In Morgan Stanley Mutual Fund v. Kartick Das[2] the question that arose before a three-Judge Bench was whether the prospective investor in future goods could be treated as a consumer. Answering the question in favour of the appellant, the Court opined that a prospective investor like the respondent was not a consumer. However, a passage relating to the description of consumer from the said authority is worth reproducing:-

> "The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer."

9. In Lucknow Development Authority v. M.K. Gupta[3], the two-Judge Bench adverted to the concept of "consumer" as defined under the Act. Analysing the definition in the context of the Act, the Court held:-

> "It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. The legislature has taken precaution not only to define 'complaint', 'complainant', 'consumer' but even to mention in detail what would amount to unfair trade practice by giving an elaborate definition in clause (r) and even to define 'defect' and 'deficiency' by clauses (f) and (g) for which a consumer can approach the Commission. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services. The common characteristics of goods and services are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. But the defect in one and deficiency in other may have to be removed and compensated differently. The former is, normally, capable of being replaced and repaired whereas the other may be required to be compensated by award of the just equivalent of the value or damages for loss."

10. While adverting to the term "service" as defined in clause (o), the Court ruled:-

> "In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users. But the legislature did not stop there. It expanded the meaning of the word further in modern sense by extending it to even

> such facilities as are available to a consumer in connection with banking, financing etc. Each of these are wide-ranging activities in day to day life. They are discharged both by statutory and private bodies. In absence of any indication, express or implied there is no reason to hold that authorities created by the statute are beyond purview of the Act."

11. The abovementioned definition was amended in the year 1993. The definition under Section 2(1)(d) that defined "consumer" after the amendment of 1993 read as follows:-

> "Section 2(1)(d) "consumer" means any person who—
>
> (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
>
> (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;

Explanation.—For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment."

12. In Laxmi Engineering Works v. P.S.G. Industrial Institute[4], while dealing with the connotative expanse of the term "consumer" in the unamended definition, the Court considering the Explanation added by the Consumer Protection (Amendment) Act, 1993 (50 of 1993) ruled that the said Explanation is clarificatory in nature and applied to all pending proceedings. Further proceeding, the Court held that:-

> "……..
>
> (ii) Whether the purpose for which a person has bought goods is a "commercial purpose" within the meaning of the definition of expression 'consumer' in Section 2(d) of the Act is always a question of fact to be decided in the facts and circumstances of each case.
>
> (iii) A person who buys goods and uses them himself, exclusively for the purpose of earning his livelihood, by means of self-employment is within the definition of the

expression 'consumer'."

13. It is necessary to state here that in the said case prior to recording its conclusions, the Court has elaborately dealt with the definition of "consumer" under Section 2(1)(d)(i) and Explanation added by 1993 amendment Act. Because of what we are going to ultimately say in this case, we think seemly to reproduce the relevant discussion from the said authority:-

> "11. Now coming back to the definition of the expression 'consumer' in Section 2(d), a consumer means insofar as is relevant for the purpose of this appeal, (i) a person who buys any goods for consideration; it is immaterial whether the consideration is paid or promised, or partly paid and partly promised, or whether the payment of consideration is deferred;
>
> (ii) a person who uses such goods with the approval of the person who buys such goods for consideration; (iii) but does not include a person who buys such goods for resale or for any commercial purpose. The expression 'resale' is clear enough. Controversy has, however, arisen with respect to meaning of the expression "commercial purpose". It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning. 'Commercial' denotes "pertaining to commerce" (Chamber's Twentieth Century Dictionary); it means "connected with, or engaged in commerce;

mercantile; having profit as the main aim" (Collins English Dictionary) whereas the word 'commerce' means "financial transactions especially buying and selling of merchandise, on a large scale" (Concise Oxford Dictionary). The National Commission appears to have been taking a consistent view that where a person purchases goods "with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit" he will not be a 'consumer' within the meaning of Section 2(d)(i) of the Act. Broadly affirming the said view and more particularly with a view to obviate any confusion — the expression "large scale" is not a very precise expression — Parliament stepped in and added the explanation to Section 2(d)(i) by Ordinance/Amendment Act, 1993. The explanation excludes certain purposes from the purview of the expression "commercial purpose" — a case of exception to an exception. Let us elaborate: a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others' work for consideration or for plying the car as a taxi can be said to be using the typewriter/car for a commercial purpose. The explanation however clarifies that in certain situations, purchase of goods for "commercial purpose" would not yet take the purchaser out of the definition of expression 'consumer'. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods is yet a 'consumer'. In the illustration given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, he does not cease to be a consumer. In other words, if the buyer of goods uses them himself, i.e., by self-employment, for earning his livelihood, it would not be treated as a "commercial purpose" and he does not cease to be a consumer for the purposes of the Act. The explanation reduces the question, what is a "commercial purpose", to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to

which the goods bought are put to."

14. In Kalpavruksha Charitable Trust v. Toshniwal Brothers (Bombay) Pvt. Ltd. and another[5] reiterating the principles stated in Laxmi Engineering Works (supra), the Court ruled whether a person would fall within the definition of "consumer" or not would be a question of fact in every case. In the said case, the National Commission had already returned a finding that the appellant therein was not a "consumer" as the machinery was installed for commercial purpose. An argument was advanced that the activity of a charitable institution, though commercial in nature, was a part of charitable activity. For the said purpose, reliance was placed on CIT v. Surat Art Silk Cloth Manufacturers' Association[6]. The two-Judge Bench distinguished the said verdict on the ground that it was a decision rendered under the Income Tax Act. It was also urged there that if the dominant object of the trust or institution is charitable, the activity carried on by it would not be treated as an activity for profit. To bolster the said submission, the authority in CIT v. Federation of Indian Chambers of Commerce and Industries[7] was commended to the Court but the same was not accepted on the foundation that the verdict was in the context of Income Tax Act. Eventually, the Court held thus:-

> "In the instant case, what is to be considered is whether the appellant was a "consumer" within the meaning of the Consumer Protection Act, 1986, and whether the goods in question were obtained by him for "resale" or for any "commercial purpose". It is the case of the appellant that every patient who is referred to the Diagnostic Centre of the appellant and who takes advantage of the CT scan, etc. has to pay for it and the service rendered by the appellant is not free. It is also the case of the appellant that only ten per cent of the patients are provided free service. That being so, the "goods" (machinery) which were obtained by the appellant were being used for "commercial purpose"."

15. The purpose of referring to the aforesaid pronouncements is to appreciate the views expressed by this Court from time to time prior to the amendment in 2002 and also the philosophy behind the consumer protection and the concept of rendition of service. It is necessary to mention here that the definition of the term "consumer" has been amended by the Consumer Protection (Amendment) Act, 2002 (62 of 2002) with effect from 15.03.2003. Be it stated, clause 2(1)(d)(ii) was substituted. We think it appropriate to reproduce the same:-

> "Section 2(1)(d) "consumer" means any person who— x x x x x
>
> (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;

Explanation.—For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment."

16. The bold portions indicate the nature of amendment in the definition of the word "consumer". In the first part it excludes services for any commercial purpose. After the amendment the decisions that have been rendered by this Court require careful consideration. As has been stated earlier, on behalf of the complainant heavy reliance was placed on the authority in Faqir Chand Gulati (supra) but the same has been distinguished by the National Commission.

17. The decision in Faqir Chand Gulati (supra), we are disposed to think, requires appropriate appreciation. Be it noted, it is relatable to a stage where the amended definition had not come into existence. Despite the same, it is noticeable that the principles laid down therein are pertinent and significant to the existing factual scenario. In the said case, the Court while dealing with a building construction agreement between a landowner and a builder, was required to decide whether the owner of a plot of land could maintain a complaint under the Act claiming that he was a consumer and the builder, a service provider. The two-Judge Bench after referring to various authorities opined thus:-

> "20. There is no dispute or doubt that a complaint under the Act will be maintainable in the following circumstances:
>
> (a) Where the owner/holder of a land who has entrusted the construction of a house to a contractor, has a complaint of deficiency of service with reference to the construction.
>
> (b) Where the purchaser or intending purchaser of an apartment/flat/house has a complaint against the builder/developer with reference to construction or delivery or amenities.

But we are concerned with a third hybrid category which is popularly called as "joint-venture agreements" or "development agreements" or "collaboration agreements" between a landholder and a builder. In such transactions, the landholder provides the land. The builder puts up a building. Thereafter, the landowner and builder share the constructed area. The builder delivers the "owner's share" to the landholder and retains the "builder's share". The landholder sells/transfers undivided share(s) in the land corresponding to the builder's share of the building to the builder or his nominees. As a result each apartment owner becomes the owner of the apartment with corresponding undivided share in the land and an undivided share in the common areas of the building. In such a contract, the owner's share may be a single apartment or several apartments. The landholder who gets some apartments may retain the same or may dispose of his share of apartments with corresponding undivided shares to others. The usual feature of these agreements is that the landholder will have no say or control in the construction. Nor will he have any say as to whom and at what cost the builder's share of apartments are to be dealt with or disposed of. His only right is to demand delivery of his share of constructed area in accordance with the specifications.

The builders contend that such agreements are neither contracts for construction, nor contracts for sale of apartments, but are contracts entered for mutual benefit and profit and in such a contract, they are not "service providers" to the landowners, but a co- adventurer with the landholder in a "joint venture", in developing the land by putting up multiple-housing (apartments) and sharing the benefits of the project. The question is whether such agreements are truly joint ventures in the legal sense.

x x x x x

25. An illustration of joint venture may be of some assistance. An agreement between the owner of a land and a builder, for construction of apartments and sale of those apartments so as to share the profits in a particular ratio may be a joint venture, if the agreement discloses an intent that both parties shall exercise joint control over the construction/development and be accountable to each other for their respective acts with reference to the project.

x x x x x

29. It is, however, true that where the contract is a true joint venture the scope of which has been pointed out in paras 21 to 25 above, the position will be different. In a true joint venture agreement between the landowner and another (whether a recognised builder or fund provider), the landowner is a true partner or co-adventurer in the venture where the landowner has a say or control in the construction and participates in the business and management of the joint venture, and has a share in the profit/loss of the venture. In such a case, the landowner is not a consumer nor is the other co-adventurer in the joint venture, a service provider. The landowner himself is responsible for the construction as a co- adventurer in the venture. But such true joint ventures are comparatively rare. What is more prevalent are agreements of the nature found in this case, which are a hybrid agreement for construction for consideration and sale and are pseudo joint ventures. Normally a professional builder who develops properties of others is not interested in sharing the control and management of the business or the control over the construction with the landowners. Except assuring the landowner a certain constructed area and/or certain cash consideration, the builder ensures absolute control in himself, only assuring the quality of construction and compliance with the requirements of local and municipal laws, and undertaking to deliver the owners' constructed area of the building with all certificates, clearances and approvals to the landowner." [Emphasis added]

18. It worthy to note that in the said case a stand was taken by the respondent that the agreement was a 'collaboration agreement' as it was so titled. Emphasis was laid on the fact that the agreement showed the intention to collaborate and, therefore, it was a joint venture. The Court ruled that the title or caption or nomenclature of the instrument/document is not determinative of the nature and character of the instrument/document, though the name usually gives some indication of the nature of the document and, therefore, the use of the words 'joint venture' or 'collaboration' in the title of an agreement or even in the body of the agreement will not make the transaction a joint venture, if there are no provisions for shared control of interest or enterprise and shared liability for losses. After so stating, the Court proceeded to observe that if there is a breach by the land owner of his

obligations, the builder will have to approach a civil court as the land owner is not providing any service to the builder but merely undertakes certain obligations towards the builder, breach of which would furnish a cause of action for specific performance and/or damages. It has also been stated therein that while the builder commits breach of his obligations, the owner has two options; he has the right to enforce specific performance and/or claim damages by approaching civil court or can approach consumer forum under the Act. In the course of delineation, the Court proceeded to state:-

> "But the important aspect is the availment of services of the builder by the landowner for a house construction (construction of the owner's share of the building) for a consideration. To that extent, the landowner is a consumer, the builder is a service provider and if there is deficiency in service in regard to construction, the dispute raised by the landowner will be a consumer dispute. We may mention that it makes no difference for this purpose whether the collaboration agreement is for construction and delivery of one apartment or one floor to the owner or whether it is for construction and delivery of multiple apartments or more than one floor to the owner. The principle would be the same and the contract will be considered as one for house construction for consideration...."

19. In our considered opinion, the aforesaid passage is extremely illuminative. It can be unhesitatingly stated that though the controversy in the said case had arisen before the amendment of 2002, the principles laid down therein would apply even after the amendment if the fact situation comes within the four corners of the aforestated principles. In this context, we may usefully refer to the recent pronouncement in Punjab University v. Unit Trust of India and others[8] wherein a two-Judge Bench, while dealing with the term "consumer", observed that it is clear that "consumer" means any person who hires or avails of any services for a consideration, but does not include a person who avails of such services for any commercial purpose and the "commercial purpose" does not include services availed by him exclusively for the purposes of earning his livelihood by means of self-employment. Be it noted, the Court was considering whether the deposit of money in mutual fund scheme could amount to availing of services for "commercial purposes". The Court after referring to few passages from Laxmi Engineering Works (supra) has observed that:-

> "21. It is thus seen from the above extracts from Laxmi Engg. Works (supra) that Section 2(1)(d)(i) is discussed exclusively by this Court. We are of the opinion that clauses (i) and (ii) of Section 2(1)(d) of the Act must be interpreted harmoniously and in light of the same, we find that the Explanation following Section 2(1)(d)(ii) of the Act would be clarificatory in nature and would apply to the present case and as held by this Court in Laxmi Engg. Works (supra), the term "commercial purpose" must be interpreted considering the facts and circumstances of each case." Though the said decision was rendered in a different context, yet the principle that commercial purpose is required to be interpreted considering the facts and circumstances of each case has been reiterated. We respectfully concur with the same.

20. The obtaining factual matrix has to be tested on the touchstone of the aforestated legal position. The National Commission has affirmed the order passed by the State Commission on the ground

that the complaint is not a consumer as his purpose is to sell flats and has already sold four flats. In our considered opinion, the whole approach is erroneous. What is required to be scrutinised whether there is any joint venture agreement between the appellant and the respondent. The MOU that was entered into between the parties even remotely does not indicate that it is a joint venture, as has been explained in Faqir Chand Gulati (supra). We think it appropriate to reproduce the relevant clauses from the MOU:-

> "3. The apartments shall be shared by the owner and the builder in the proportion of 40% and 60% respectively in the built-up area including terrace rights all additional constructions in the said complex. The common areas shall be enjoyed jointly.
>
> xxxxx xxxxx
>
> 5. The builder shall commence construction and complete the same within a period of nineteen months from the date of granting of approval for the plans by the Municipal Corporation, Visakhapatnam. In case of non-

completion of the constructions in the complex within the above mentioned time, builder should pay rent Rs.2,000/- per month for each flat in a 40% share of the owner.

xxxxx xxxxx

11. The builder shall pay a sum of Rs.5 lakhs (Rupees five lakhs only) to the owner as interest free security deposit. The security deposit of Rs.5 lakhs shall be refunded at the time of completion of the apartment by way of cash.

xxxxx xxxxx

15. The owner hereby agrees that out of his 40% share in the built-up area of the Apartment complex to be given to him by the builder, the owner shall register one flat of his choice of a value of Rs.6,00,000/- in the fourth floor of the said building in favour of the builder or his nominee towards the cost of the items set out in the specifications hereto attached agreed to be provided by the builder for the benefit of the owner in the apartments intended for the share of the owner. In case the cost of the flat is found to be more or less than Rs.6 lakhs, then both parties shall adjust the difference by payment of the same by way of cash."

21. On a studied scrutiny of the aforesaid clauses, it is clear as day that the appellant is neither a partner nor a co-adventurer. He has no say or control over the construction. He does not participate in the business. He is only entitled to, as per the MOU, a certain constructed area. The extent of area, as has been held in Faqir Chand Gulati (supra) does not make a difference. Therefore, the irresistible conclusion is that the appellant is a consumer under the Act.

22. As the impugned orders will show, the District Forum had allowed the claim of the appellant. The State Commission had dismissed the appeal holding that the claim of the appellant was not

entertainable under the Act, he being not a consumer and the said order has been given the stamp of approval by the National Commission. Therefore, there has to be appropriate adjudication with regard to all the aspects except the status of the appellant as a consumer by the appellate authority. Consequently, the appeal is allowed, the judgments and orders passed by the National Commission and the State Commission are set aside and the matter is remitted to the State Commission to re-adjudicate the matter treating the appellant as a consumer. We hereby make it clear that we have not expressed any opinion on the merits of the case. In the facts and circumstances of the case, there shall be no order as to costs.

.....J. [Dipak Misra] New Delhi.

.....J. July 22, 2016. [N.V. Ramana]

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[2] (2008) 10 SCC 345 [4] (1994) 4 SCC 225 [6] (1994) 1 SCC 243 [8] (1995) 3 SCC 583 [10] (2000) 1 SCC 512 [12] (1980) 2 SCC 31 [14] (1981) 3 SCC 156 [16] (2015) 2 SCC 669