

ASSOCIATION FOR CONSUMER WELFARE AND AID

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v.

GRANITE GATE PROPERTIES PRIVATE LIMITED & ANR.

(Civil Appeal No. 259 of 2019)

MARCH 25, 2019

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**[DR. DHANANJAYA Y. CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Party: Deletion of name from array of parties – In the instant case, the appellant-Association representing the buyers filed consumer complaint seeking diverse reliefs including the grant of possession of flats to the allottees of the real estate project and restraining the respondents from charging additional amount for alleged increase in the area of the flats otherwise than in accordance with the allotment letters – The case of the appellant before the National Commission was that the second respondent was in fact the main promoter of the project and that it was vested with the primary responsibility of completing the project – In the complaint, the second respondent was arrayed as opposite party No. 1, while the first respondent was opposite party No. 2 – National Commission directed deletion of second respondent from array of parties and admitted complaint only against the first respondent on the ground that the consumers in the complaint did not hire or avail the services of the said party and therefore were not its consumers – Whether a direction for the deletion of the second respondent was warranted – In the counter affidavit which was filed in these proceedings, the second respondent stated that the first respondent was set up as a special purpose vehicle by a consortium of which the second respondent was a part and that a construction agreement was entered into between the first and second respondents – Held: It is not possible for the Court to conclude at this stage that the second respondent was unconnected with the project or was impleaded as a party to the proceeding without any reason or basis – The issue as to whether, and if so, what relief can be ultimately granted in the consumer complaint is a matter which has to be determined during the course of the hearing of the complaint – Consequently, on the basis of the averments contained in the complaint as well as on the

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A *material placed on the record by the second respondent, an order for deletion was not warranted at this stage – The second respondent is restored as a party to the proceedings before the National Commission – Consumer Protection Act, 1986.*

Disposing of the appeals, the Court

B **HELD:** At the present stage, the limited issue with which this Court is concerned is whether a direction for the deletion of the second respondent was warranted. On the basis of the material on record, it is not possible for the Court to conclude at this stage that the second respondent was unconnected with the project or was impleaded as a party to the proceeding without any reason or basis. The second respondent is accordingly restored as a party to the proceedings before the NCDRC. The complaint shall stand admitted against both the first and second respondents for final disposal. [Paras 9, 11, 13][900-G; 902-B; D-E]

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 259 of 2019

With

Civil Appeal No. 1501 of 2019.

E From the Judgment and Order dated 31.07.2018 of the National Consumer Disputes Redressal Commission, New Delhi in Consumer Complaint No.1616 of 2018

Avi Tandon, Anish Agarwal, Omar Waziri, Ms. Vanshika Gupta, Ms. Meghna Tandon, Ms. Vibhooti Malhotra Advs. for the Appellant.

F Dhananjai Jain, George Thomas, Dhananjay, Nakul Dewan, Arush Khanna, Ms. Nooreen Sarna, Lakshay Mehta, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y. CHANDRACHUD, J.

Civil Appeal No. 259 of 2019

G 1. Admitted.

H 2, By the impugned order dated 31 July 2018, the National Consumer Disputes Redressal Commission¹ directed that the second respondent (Three C Universal Developers Private Limited) be deleted from the array of parties. The complaint has been admitted only against Granite Gate Properties Private Limited, the first respondent to the present appeal.

3. The only ground on which the above directions have been issued are spelt out thus: A

“The consumers on whose behalf this complaint is instituted did not hire or avail the services of opposite party No. 1 and therefore, they cannot be said to its consumers.”

4. Notice was issued in these proceedings on 7 January 2019. A counter affidavit has been filed by the second respondent which was ordered to be deleted by the NCDRC from the array of parties. B

5. The consumer complaint filed by the appellant, which is an association representing the buyers, seeks diverse reliefs including the grant of possession of flats to the allottees of the real estate project together with common amenities and restraining the respondents from charging additional amounts for alleged increases in the area of the flats otherwise than in accordance with the allotment letters. The averments in paragraphs 5 and 13 of the complaint before the NCDRC read as follows: C
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“5. That the Allotment Letters clearly provide that the projects are being undertaken by Opposite Part 2 (which is formed by Opposite Party 1 specifically for the purpose of construction of Lotus Panache). The entire consideration amount for the project was required to be paid to Opposite Party 2 by the allottees, although the project was marketed by Opposite Party 1 and the parties marketed themselves as “The 3C Company” which is also evident from the letterhead of the Company on which the Allotment Letters were printed.” E

13. The Companies registered project Lotus Panache under Uttar Pradesh Real Estate Regulatory Authority and M/s Granite Gate Properties Pvt. Ltd. was declared by the Companies as the Promoter of the project. However clearly as per the agreement, Three C Universal Developers Private Limited was the main company as it has formed the SPC (which was formed specifically for development of the project Lotus Panache and was the one which was marketing and executing the agreements), therefore having been vested the primary responsibility of the entire project together with all the other opposite parties who also are jointly and severally responsible for all the obligations contained herein. F
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A Further, the details of Project Lotus Panache as obtained from the website of Uttar Pradesh Real Estate Regulation Authority clearly shows the proposed date of completion of the project as 31.12.2022. Surprisingly, the original start date has been specified as 11.5.2010 and the modified start date for the project has been specified as 10.8.2017.”

B In sum and substance therefore, the case of the appellants before the NCDRC is that the second respondent, Three C Universal Developers Private Limited, is in fact the main promoter of the project and that it is vested with the primary responsibility of completing the project. Para 17.1 of the complaint reads as follows:

C “17.1 The Opposite Parties state that the Allottees had entered into Agreements with only Opposite Party 2 and no one else. However, clearly Opposite Party 1 and Opposite Party 2 have been acting as one and the same Company. Opposite Party 1 has admittedly marketed the Project and the Companies have represented themselves together as “The 3C Company”. The allotment letter names Opposite Party 1 as one of the Parties and the Builder Buyer Agreement specifically recognises that Opposite Party 2 is only a Special Purpose Company formed by the Opposite Party 1 for a particular purpose.”

E 7. In the complaint before the NCDRC, Three C Universal Developers Pvt. Ltd. (the second respondent to the present appeal) is arrayed as opposite party No. 1, while Granite Gate Properties Pvt. Ltd. (the first respondent to the present appeal) is opposite party No. 2.

F 8. In the counter affidavit which has been filed in these proceedings, the second respondent has stated that the first respondent was set up as a special purpose vehicle by a consortium of which the second respondent is a part. Moreover, it has been stated that a construction agreement was entered into between the first and second respondents on 15 December 2009.

G 9. At the present stage, the limited issue with which this Court is concerned is whether a direction for the deletion of the second respondent was warranted.

H 10. We may note the submission which has been urged on behalf of the appellants to the effect that under Section 2(zk) of the Real Estate

(Regulation and Development) Act, 2016, the definition of the expression “promoter” would include the entity which is constructing the building as well as the entity which is selling the apartments or plots. A

Section 2(zk) reads as follows:-

“(zk) “promoter” means,— (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or B

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or C

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or D

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or E

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or F

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or G

(vi) such other person who constructs any building or apartment for sale to the general public. G

Explanation.— For the purposes of this clause, where the person who constructs or converts a building into apartments or develops H

A a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;”

B 11. On the basis of the material which is on record, it is not possible for the Court to conclude at the present stage that the second respondent is unconnected with the project or has been impleaded as a party to the proceeding without any reason or basis. The issue as to whether, and if so, what relief can be ultimately granted in the consumer complaint is a matter which will be determined during the course of the hearing of the complaint.

C 12. Consequently, we are of the view that on the basis of the averments contained in the complaint as well as on the material which has been placed on the record by the second respondent, an order for deletion was not warranted at this stage.

D 13. We accordingly, allow the appeal and set aside the impugned order of the NCDRC dated 31 July 2018. The second respondent is accordingly restored as a party to the proceedings before the NCDRC. The complaint shall stand admitted against both the first and second respondents for final disposal.

E 14. We however, clarify that all the rights and contentions of the parties are kept open to be urged before the NCDRC.

15. The appeal is, accordingly, disposed of. There shall be no order as to costs.

F 16. Pending application(s), if any, shall also stand disposed of.

Civil Appeal No. 1501 of 2019

17. Admitted.

G 18. For the reasons indicated by this Court while disposing of the companion civil appeal (Civil Appeal No. 259 of 2019), the order of the NCDRC dated 20 July 2018 directing the deletion of Three C Universal Developer Pvt. Ltd. is set aside.

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19. The appeal shall stand disposed of in similar terms as the A
order passed in the companion appeal. There shall be no order as to
costs.

20. Pending application(s), if any, shall stand disposed of.

Devika Gujral

Appeals disposed of. B