

(1999) 07 NCDRC CK 0080

In the National Consumer Disputes Redressal Commission

ANJANA MOHAN

APPELLANT

Vs

RAJARSHI SAHKARI AWAS SAMITI LIMITED

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Citation : 1999 2 CPJ 663

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the order and judgment dated 7.8.1995 passed by District Forum, Lucknow. The facts of the case stated in brief are that the complainant on 8.6.1993 gave in favour of opposite party, Rajarshi Sahkari Awasi Samiti Limited, a membership firm for purchase of plot No. A/25 measuring 4,500 sq. ft. at the rate of Rs. 60/- per sq. ft. Part payment of Rs. 27,110/- was made on the same day to opposite party, Rajarshi Sahkari Awasi Samiti Limited but the Samiti did not give the plot as promised. After great pressure the opposite party gave a cheque for Rs. 27,000/- but it was dishonoured and the complainant therefore, filed a claim petition for refund of Rs. 27,000/- which was deposited by her for purchase of the plot.

2. THE claim was registered by the opposite party Rajarshi Sahkari Awasi Samiti. It admitted" that the complainant is a member of the Society and as such is not entitled to file this complaint before this Forum and under the provisions of the Cooperative Society Act, and this claim cannot be tried by this Forum. After perusing the evidence on record and hearing the Counsels, the learned District Forum came to the conclusion that the claim is not triable in the District Forum and it should be tried before any other Authority. With this finding, the claim petition was dismissed.

Aggrieved against this order, the claimant has filed this appeal challenging the correctness of the order passed by the learned District Forum.

3. WE have heard the learned Counsel for the complainant-appellant and the

opposite party. On behalf of the learned Counsel for the complainant, it was argued that the bar of Section 70 of the Cooperative Societies Act will not be applicable in the present case because it does not specifically exclude the jurisdiction of the District Forum. According to the learned Counsel, the remedy before the District Forum is an alternative remedy and can be availed of irrespective of the provisions of Section 70 of the Cooperative Societies Act. In this connection, learned Counsel for the opposite party has conceded that the Forum had jurisdiction to try this case. Moreover, on this point the Hon'ble Supreme Court, in the case of Fair Air Engineers Private Limited & Ors. v. N.K. Modi, III (1996) CPJ 1 (SC), had an occasion to interpret Section 34 of the Arbitration Act alongwith provisions of Section 3 of the Consumer Protection Act. The Apex Court in para 11 has held as under : "It would thus be clear that, by invocation of Section 34, the party to the proceedings does not get an automatic right to have the proceedings pending before the Judicial Authorities stayed. The said section gives discretion to the Authorities to stay the proceedings on their satisfying that there was no sufficient reason why the matter should not be referred in accordance with the agreement between the parties for arbitration when the party seeking stay of the proceedings was and still mains ready and willing to do all things necessary to the proper conduct of the arbitration. In other words, on judicial satisfaction as to the contract between the parties and subject matter of the dispute to the nature of the dispute, the Judicial Authority has been invested with a discretion to stay the proceedings or proceed with the matter pending before it. Similar power is available under Section 8 of the Arbitration and Conciliation Ordinance, 1996. The Act was enacted to provide for protection of the interests of consumer and for that purpose the Act has made provision for the establishment of the Consumer Councils and other Authorities, viz. District Forums, State Commissions and National Commission for settlement of consumers' disputes and for matters connected therewith."

4. THUS from the perusal of this ruling, it is clear that the District Forum or State Commission has to see whether the case could have been tried by the District Forum or not. The opposite party, who has raised this plea, does not get an automatic right for stay of the proceedings. THUS in view of this ruling, it is held that Section 70 of the U.P. Cooperative Societies Act has no bar for filing a claim petition before the District Forum or State Commission. However, during the course of the arguments, learned Counsel for the respondent did not address on this question. Now the next question is whether the amount of Rs. 27,000/- deposited by the complainant with the Cooperative Society, opposite party, is liable to be refunded or not. According to the learned Counsel for the complainant the opposite party is liable to refund this amount as there was deficiency of service on the part of the opposite party in not giving the land as promised and in default refund of sum of Rs. 27,000/-. It has been pointed out by the learned Counsel for the complainant that the cheque which was issued by the opposite party was dishonoured by the Bank and the amount still stands unpaid. On the other hand, learned Counsel for the opposite party has argued

that the amount of Rs. 27,000/- was paid by means of cheque and the cheque has been dishonoured, the complainant should have filed a suit for recovery of the amount in a regular civil Suit. This argument of the learned Counsel for the opposite party does not hold good and cannot be accepted. No doubt it is true that the cheque was issued for payment of Rs. 27,000/- but if the cheque has not been honoured, then it will not amount to payment of the money by the opposite party to the complainant. Unless, the cheque is honoured, it does not amount to payment of the sum for which the cheque has been issued. When the payment has not been credited into the account of the complainant, how can it be said that the amount has been paid to the complainant. The amount is still with the opposite party and the opposite party has not parted away with that amount. When the amount has not been withdrawn from the bank account of the opposite party, it cannot be said that the amount has been paid. Therefore, the dishonoured cheque will not amount to payment of the amount as alleged by the learned Counsel for the opposite party.

5. THE opposite party has admitted that a sum of Rs. 27,000/- was deposited for allotment of a piece of land. It is also an undisputed fact that the plot has not been allotted. Once the plot has not been allotted, the opposite party has no right to retain the amount and is liable to pay back the amount. As the opposite party, inspite of demand has failed to pay the amount, there is a deficiency in service on the part of the opposite party and the opposite party is liable to make good the loss also which has been suffered by the complainant besides the refund of Rs. 27,000/-.

6. THE complainant has also claimed damages and compensation for non-allotment of the plot besides refund of the amount. According to the complainant if the amount would have been refunded in time, then she would have applied in the schemes of Lucknow Development Authority for taking another property. At the time of filing the complaint, the value of the land in L.D.A. was Rs. 100/- per sq. ft. while the land which was to be sold by the opposite party was Rs. 60/- per sq. ft. In this way the complainant would have got a plot of 4,500 sq. ft. at the rate of Rs. 100/- per sq. ft. at Rs. 4,50,000/-. After deducting the amount of Rs. 27,000/- the cost of the plot which was to be delivered possession of by the opposite party, the loss comes to Rs. 1,80,000/-. This amount has been claimed as increase in the cost of the property. THE amount claimed by the complainant has not been disputed by the opposite party by saying that the cost of the land by Lucknow Development Authority was not Rs. 100/- per sq. ft. as alleged by the complainant. Thus we have no reason to doubt the price given by the complainant. Thus the claimant is entitled for a sum of Rs. 1,80,000/- as compensation on account of increase in cost of land. The complainant is also entitled to get 18% per annum interest as damages from the date of complaint till the date of payment.

Thus we find that the claimant is entitled to get refund of Rs. 27,000/- which is deposited by the claimant with the opposite party, compensation of Rs.

1,80,000/- on account of escalation in price. She is also entitled to get damages in the form of interest at the rate of 18% per annum on Rs. 27,000/- from the date of deposit, till date of payment and on Rs. 1,80,000/- from the date of the complaint. The appeal is, therefore, liable to be allowed. ORDER The appeal is allowed and the order and judgment of the District Forum is set aside. The claim of the petitioner for an amount of Rs. 27,000/- against the opposite party is decreed alongwith damages in the form of interest at the rate of 18% per annum from 8.6.1993 till the date of payment and claim of Rs. 1,80,000/- is also decreed against the opposite party alongwith damages in the form of interest at the rate of 18% per annum from the date of complaint till the date of payment. Let compliance of this order be made within a period of two months from today. Appeal allowed.