(2001) 02 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

ANSAL HOUSING AND CONSTRUCTIONS LIMITED — APPELLANT

Vs

PRAVEEN DUBLISH — RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Citation : 2002 2 CLT 445 : 2002 2 CPJ 303

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

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 10.4.2000 passed by District Consumer Forum, Ghaziabad in Complaint Case No. 165/1995.

2. THE facts of the case stated in brief are that the complainant applied for a house in Abhilasha Apartments of Vaishali, Ghaziabad and on 11.4.1992 deposited the reservation amount. THE complainant was allotted by means of lottery house No. 6/501 in Abhilasha Apartments. This information was given by letter dated 1.5.1992 and the complainant was also asked to pay 10% amount of the cost of the house. THE complainant in compliance of the letter deposited the amount of Rs. 39,837.50 on 25.6.1992. By letter dated 1.8.1992 the complainant was informed by the opposite party that a copy of the allotment letter is being sent, but along with allotment letter same unobjectionable material alongwith booklet was sent on which the complainant was asked to sign. THE complainant refused to sign the same. THE opposite party, Ansal Housing and Construction Company, issued four letters for depositing Rs. 37,425/- towards the first instalment. As the father of complainant No. 2. Anand Swaroop was seriously injured in an accident and remained in bed for four months, the complainants could not deposit the money in time. This amount was deposited on 20.2.1993 and on 25.2.1993 the opposite party/appellant demanded the second and third instalments which were due on 14.11.1992 and 15.2.1993. THE amount of both these instalments were Rs. 74,850/- (Rs. 37,425/- per instalment). On 22.2.1993 the complainant deposited a sum of Rs. 37,425/- and demanded the receipt. He was assured that the receipt will be sent later on as

the clerk was not available at that time. As this amount was deposited in cash, therefore, the complainants reminded the appellants to send the receipt of this amount, but no reply was received of this prayer. After some time the complainant came to know that the house allotted to the complainants has been allotted to some other party. This act of the appellants is malicious and they have done it in order to harm the complainants. THE complainants tried to contact the appellant several times but he could not succeed. THEreafter by letter dated 31.1.1995 the complainants were informed that the house has been allotted to some other persons and the amount deposited has been forfeited. THE complainants are willing to pay the entire cost of the allotted house. THE complainant has prayed that the entire amount deposited by him along with 18% per annum interest be returned to him along with Rs. 50,000/- as compensation. The opposite party in their written version has admitted the allotment of the house to the complainants. The last payment was made by the complainants on 22.6.1992. As the complainants did not deposit the amount demanded by the opposite party vide letter dated 15.2.1993, therefore, this allotment letter was cancelled. This suit has been filed more than two years after cancellation of the allotment on 23.2.1992 and hence the same is barred by limitation. It is alleged that the Civil Court has the jurisdiction to decide this case and not the District Forum. It is further alleged that the complainant did not deposit the amount in time. Therefore, letters dated 10.8.1992, 16.9.1992, 18.11.1992 were issued for deposit of rest of the amount. The complainant had accepted the terms and conditions before the allotment of the house. As the complainant did not pay the amount in time hence allotment has been cancelled on 23.2.1993. It has further been alleged that the letter dated 25.2.1993 has been wrongly issued on account of employees in routine manner as no necessity of issuing this letter was there because the allotment had already been cancelled on 3.2.1993.

In the said letter it was left to be written that the first instalment due on 14.8.1992 was also not paid. It is not possible to believe that the complainant will pay the amount in cash without obtaining any receipt. Before paying the amount in dispute, the previous amount was paid through bank draft.

3. THE parties led evidence in support of their respective contentions. THE learned District Forum, after hearing both the parties and perusing the evidence on record, came to the conclusion that the complainants have deposited the amount in cash for which no receipt was issued. It, therefore, directed the opposite party/appellant to return the entire deposited amount alongwith 18% per annum interest. THE learned District Forum also directed for payment of Rs. 8,000/- on account of mental torture etc. and Rs. 200/- as cost. Aggrieved against the order of the learned District Forum, the opposite parties have come in appeal and have challenged the correctness of the order passed by the District Forum.

4. WE have heard the learned Counsel for the parties. Learned Counsel for the appellant argued that it cannot be believed that the complainants would have

paid a huge amount of Rs. 37,425/- in cash without obtaining a receipt. It is held by the learned District Forum that a sum of Rs. 37,425/- has been paid by the complainants to the appellant in cash, in proof of which it has relied on the copy of the accounts submitted by the complainants which shows that on the same date a sum of Rs. 37,425/- was withdrawn by the complainants from their own account. A certified copy of the accounts issued by the Bank has been filed by the complainants. This fact goes to show that an exact amount which was alleged to have been paid by the complainants was withdrawn by the complainants from their account. The fact of payment also finds support from the other evidences on record. If no amount was paid then no further demand could have been made by the appellant from the complainants. But in the present case by letter dated 25.2.1993 the appellant had demanded further amount of next instalment which was to be paid. If an amount of Rs. 37,425/- had been paid on 20.2.1993 only then letter dated 25.2.1993 demanding further amount would have been issued. The fact that the payment has been made is also supported from the following facts. It has been alleged that when the payment was not made, the allotment letter was cancelled on 15.2.1993, but immediate intimation of the cancellation of the allotment was not sent by the appellant to the complainants. It was for the first time, sent by letter dated 31.1.1995 that the allotment has been cancelled. This fact has been alleged by the complainants which has not been disputed by the other side. Thus we find that after the alleged cancellation of the allotment letter the intimation was communicated after a period of two years which caused doubt on the theory of the appellant. It cannot be accepted that the letter dated 25.2.1993 was issued by the employees of the appellant in a routine manner. The accounts are kept by the appellant and the payment in the present case had been made on 20.2.1993. There was a gap of five days during which period intimation must have been sent to the other department that the payment has been made and only then this letter would have been issued reminding for payment of future instalments. The learned District Forum has in detail considered each and every aspects of the matter and has come to a definite conclusion that the payment in cash was made by the complainant and the allotment has been illegally cancelled by the appellants. Thus it shows that the deficiency in service is on behalf of the appellant and the order of the learned District Forum for refund of the entire amount deposited along with 18% per annum interest is justified.

5. LEARNED Counsel for the appellant has argued that only two Members, namely the President and one Member has signed the judgment. It has not been signed by the third Member. Section 14, Sub-clause 2(A) provides that every order made by the District Forum shall be signed by the President and the Member/Members who conduct the proceedings. This shows that if only one Member is present along with President, then only that Member will sign the order sheet or the judgment and if all the three Members are present, then they will sign the order sheet or judgment. A proviso has been added to this section which provides that if there is a difference of opinion between the Members, then

the point of difference shall be settled by them and the matter shall be referred to the third Member for hearing on those points and thereafter the judgment shall be delivered in accordance with the majority decision. In the present case the President and one Member has signed the judgment. Even if it is presumed that the third Member also joined the proceedings and he refuses to sign the judgment prepared by the President and one of the Members or does not express his opinion, then the President and one Member can deliver the judgment which shall be considered to be the majority opinion and the case will be deemed to have been decided in accordance with the opinion expressed by the President and the Member. In the present case the judgment is by majority and it is immaterial if one Member has not signed the judgment. This argument of the learned Counsel has no force and is rejected.

6. THE learned Counsel for the appellant has further argued that the interest awarded at the rate of 18% per annum is on the higher side. He has argued that interest at the rate of 6% per annum should only be awarded while the learned Counsel for the complainant has argued that interest at the rate of 18% per annum be awarded. Learned Counsel for the complainant/respondent has placed reliance on the case of Dr. Ramesh Chandra Ramaniklal Shah & Ors. v. Lata Construction Company & Ors., I (1996) CPJ 81 (NC), decided by the National Commission. In that case the possession was not delivered within the time given in the agreement. When the house was not delivered in time the National Commission found that there was a deficiency in service on behalf of M/s. Lata Construction Company and awarded interest at the rate of 18% per annum. Similarly the National Commission in the case of George Thomas & Ors. v. Ghaziabad Development Authority, I (1999) CPJ 18 (NC), has held that the possession was not given to the allottee as per the scheme. THE option was given by the Ghaziabad Development Authority to the complainant for taking another plot but the complainant did not agree to this proposition. On the basis of these facts, the National Commission held that there was deficiency in service on behalf of the Ghaziabad Development Authority and allowed interest at the rate of 18% per annum because Ghaziabad Development Authority recovers interest at the rate of 18% per annum on defaults on the amounts payable to it. Thus this case-law also shows that the interest at the rate of 18% per annum is payable by the Development Authorities. The learned Counsel for the opposite party has also placed reliance on the case of Surendra Kaur v. Government of Punjab & Ors., (1998) 9 Supreme Court Cases 592. The Hon''ble Supreme Court has allowed interest at the rate of 18% per annum.

When the delay is on the part of the appellant it is liable to pay interest to the complainant for the period during which the amount remained deposited with it. The learned District Forum has awarded interest at the rate of 18% per annum from the respective dates of deposits till the date of payment. Learned Counsel for the appellant has argued that the interest awarded at the rate of 18% per annum is on the higher side and has placed reliance on the case of Ghaziabad Development Authority v. Union of India & Anr., II (2000) CPJ 1 (SC)=IV (2000)

SLT 654=2000 CTJ 205. In this case the Hon''ble Supreme Court has held as under : "When a Development Authority announces a scheme for allotment of plots, the brochure issued by it for public information is an invitation to offer. Several members of public may make applications for availing benefit of the scheme. Such applications are offers. Some of the offers having been accepted subject to rules of priority or preferences laid down by the Authority result into a contract between the application and the Authority. The legal relationship governing the performance and consequences flowing from breach would be worked out under the provisions of the Contract Act and the Specific Relief Act except to the extent governed by the law applicable to the Authority floating the scheme. In case of breach of contract, damages may be claimed by one party from the other who had broken its contract obligation in some way or the other. The damages may be liquidated or unliquidated. Liquidated damages are such damages as have been agreed upon and fixed by the parties in anticipation of the breach. Unliquidated damages are such damages as are required to be assessed. Broadly the principle underlying assessment of damages is to put the aggrieved party monetarily in the same position as far as possible in which it would have been if the contract would have been performed. Here the rule as to remoteness of damages comes into play. Such loss may be compensated as the parties would have been contemplated at the time of entering into the contract. The party held liable to compensation shall be obliged to compensate for such losses as directly flow its breach."

7. THE Supreme Court goes to say that "the ordinary heads of damages allowable in contracts for sale of land are settled. A vendor who breaks the contract by failing to convey the land to the purchaser is liable to damages for the purchaser''s loss of bargain by paying the market value of the property at the fixed time for completion less the contract price. THE purchaser may claim the loss of profit he intended to make from a particular use of the land if the vendor had actual or imputed knowledge thereof. For delay in performance the normal nature of damages is the value of the use of the land for the period of delay, viz. usually its rental value". On the question of interest which is to be awarded, the Hon''ble Supreme Court has held that the terms of the brochure issued by the Authority are relevant in a particular case. The Hon''ble Supreme Court has distinguished the case of Sovintorg (India) Limited v. State Bank of India, New Delhi, II (1999) CPJ 4 (SC)=VI (1999) SLT 545=(1999) 6 SCC 406, in which the rate of interest was enhanced to 15% per annum. It was observed as under : "However, in the case before us, the parties have not tendered any evidence enabling formation of opinion on the rate of interest which can be considered ideal to be adopted. The rate of interest awarded in equity should neither be too high or too low. In our opinion awarding interest at the rate of 12 per cent per annum would be just and proper and meet the ends of justice in the cases under consideration. The provision contained in the brochure issued by the Development Authority that it shall not be liable to pay any interest in the event of an occasion arising for return of the amount should be held to be applicable

only to such cases in which the claimant is itself responsible for creating circumstances providing occasion for the refund. In the cases under appeal the fault has been found with the Authority. The Authority does not, therefore, have any justification for resisting refund of the claimants'' amount with interest."

8. THE rate of interest allowed by the Hon''ble Supreme Court was only 12% per annum. That was the interest on the basis of the facts which were placed before the Hon''ble Supreme Court. THE Court itself has observed that in that case which was before it, the parties have not tendered any evidence enabling formation of any opinion on the rate of interest which can be considered ideal to be adopted. Thus the case which was decided by the Hon''ble Supreme Court was on facts of that particular case in which the parties did not lead any evidence. THE Hon''ble Supreme Court observed that it may come to a definite conclusion on the rate of interest on the basis of peculiar facts of the case. The facts of the present case are different from the facts of the case decided by Hon''ble Supreme Court. Here in the terms and conditions of allotment 26% per annum interest is to be charged in case of delay in payment of any instalment by the appellant. Thus when the appellant is charging interest at the rate of 26% per annum if any delay is made in the payment of instalments, then the same applies to it also. When the appellant has made provision for charging penal interest at the rate of 26% per annum on delayed payments, then on principles of equity and law, it is bound to pay interest at the same rate. In case of George Thomas & Ors. v. Ghaziabad Development Authority (supra). The National Commission has held that the interest payable shall be 18% per annum because the Development Authority is charging the same rate of interest from the allottees in case they fail to pay instalment in time. The rate of interest payable to the allottees who had deposited the amount for taking the flat from the Development Authority came before a Full Bench of Allahabad High Court in the case of Smt. Vrinda Gujrati & Ors. v. Bareilly Development Authority & Ors., 1996 (II) Allahabad Rent Cases 383. In pages 22 and 23 of the judgment, the Hon''ble High Court has held that the persons who have applied for taking a flat, there is a statutory obligation cast upon the authorities to complete the same within the time schedule mentioned in the offer and if they fail to discharge the same, the affected allottees are entitled for the interest for the delayed delivery of possession, as the allottees have parted with the money which was earning interest. It was also held that the petitioners are entitled to get interest at the rate of 18% per annum for the delayed delivery of possession on the amount deposited by him till the actual date of delivery of possession. Therefore, keeping in view the facts of the case and law applicable to it as laid down by Hon''ble Supreme Court, it is held that in the present case the rate of interest payable shall be at the rate of 18% per annum. Recently the Hon''ble Supreme Court had an occassion to consider the question of interest in the case of Haryana Urban Development Authority v. Rajnish Chander Sharda, III (2000) CPJ 8 (SC)=VII (2000) SLT 142=JT 2000 (8) SC 154. The short order of the Hon''ble Supreme Court is being reproduced below : "There is no merit in this appeal considering

what has been stated by the appellant in its own written statement fixed before the National Commission Disputes Redressal Commission, we express our surprise that it should have filed this appeal at all. Learned Counsel for the appellant now desires to confine the appeal only to the interest that has accumulated because of the stay order that was passed at the appellant''s instance by this Court. In the order of the National Commission it is stated that the respondent had claimed compensation for having being compelled to live in rented accommodation from 1982 till 1994 at the rate of Rs. 1,600/- per month. Instead of making that award, the National Commission directed the appellant to pay interest at the rate of 18% per annum on the amounts that had been deposited by the respondent from time to time from 1979 onwards till a new plot could be allotted to him and possession thereof could be delivered. Given the facts, we see no justification in interfering with that direction and, consequent upon the dismissal of the appeal and the vacation of the stay order, that directions must now be fully complied with."

9. IT has further been argued by the learned Counsel for the appellant that the compensation of Rs. 8,000/- which has been awarded by the learned District Forum is very much on the higher side. We have considered the facts of the case and we do not find that the compensation awarded is on the higher side.

10. THUS on the basis of above discussions, we find that the appeal has no force and is liable to be dismissed. ORDER The appeal is dismissed and the judgment and order of the learned District Forum are confirmed. The appellant shall pay a sum of Rs. 2,000/- as cost of the appeal to the respondent/complainant. Let compliance of the order be made within a period of two months from the date of this order. Let copy as per rules be made available to the parties. Appeal dismissed.

