(2016) 09 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

Case No : 2600 of 2016

BALJIT SINGH SANDHU S/O. S. JAGIR SINGH — APPELLANT

Vs

JALANDHAR IMPROVEMENT TRUST THROUGH ITS CHAIRMAN — RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Citation : 2016 4 CPR 202

Hon'ble Judges : V.K. Jain

Final Decision : Petition Disposed

Judgement

1. The complainant/petitioner applied to the respondent for the allotment of a residential plot in its Surya Enclave Extension Development Scheme. In the draw of lots held on 04.11.2011, plot no. 13C in the aforesaid scheme was allotted to him. Pursuant to the draw of lots, allotment letter dated 02.04.2012 was issued to the complainant requiring him to deposit 25% of the value of the plot i.e. Rs.1862450/- by 01.05.2012. The complainant however, failed to make payment by the aforesaid date and sought extension of time for this purpose. This is also the case of the petitioner/complainant that though he was willing to deposit 25% of the sale price, he, on visiting the site, found that there was no development working going on at the site and it was not possible even to identify plot no. 13C, which had allotted to him. This is further the case of the petitioner/complainant that the original owners of the land which was to be developed into plots, had obtained a stay order from the High Court against their dispossession from the said land and therefore, there was no likelihood of immediate implementation of the scheme. The complainant/petitioner then approached the concerned District Forum by way of a consumer complaint, seeking refund of the amount of Rs.8,50,000/- which he had paid to the respondent alongwith compensation etc. The aforesaid amount had been paid by him while applying for the allotment of the plot.

2. The complaint was resisted by the respondent. It was inter-alia stated in the reply that the complainant had defaulted in making payment of 25% of the sale

consideration as per the terms of the letter of allotment to him. It was pointed out in the written version that besides paying 25% of the sale consideration by 01.05.2012, the petitioner/complainant was required to pay the balance amount in instalments on or before the due dates which had been duly intimated to him. It was further stated in the reply that the petitioner/complainant had also directly approached the Government of Punjab for extension of time for making payment and the Government vide its memo dated 18.04.2013, had granted the requisite permission for depositing 25% of the sale value alongwith other charges. The petitioner/complainant however, failed to pay the said amount.

3. The District Forum vide its order dated 21.04.2014, directed the respondent to refund the amount of Rs.8,50,000/- to the complainant/petitioner, alongwith interest @ 9% per annum and cost of litigation quantified at Rs.3,000/-.

4. Being aggrieved from the order passed by the District Forum, the respondent Jalandhar Improvement Trust approached the concerned State Commission by way of an appeal. Vide impugned order dated 08.04.2016, the State Commission allowed the appeal and dismissed the complaint filed by the petitioner. Being aggrieved, he is before this Commission by way of this revision petition.

5. Some of the terms and conditions of the scheme in which allotment was sought by the petitioner/complainant, read as under: 2. The cost of the plots is payable in instalments. Only 10% of the total cost is payable at the time of submission of application and 15% of the total cost is payable within one month from the issue of allotment letter. The balance amount is payable in 5 equated 6 monthly instalments along with 10% interest. The first instalment will be payable after 6 months from the date of allotment. Besides this, 4% cess charges are also payable on the total cost of the plot at the time of the allotment. The allottee can also deposit total cost of the plot in lump-sum within 30 days of the issue of the allotment letter. In such case 5% discount will be given on 75% of the cost of the plot.

13. The plots are being allotted on As and Where basis.

Refund of Earnest Money

4. The Earnest Money of successful applicants shall not be refunded in any case.

It is thus, evident that while applying for the allotment of the plot, the petitioner/complainant knew that 15% of the total cost will have to be paid by him within one month from the issue of allotment letter and the balance amount would be payable in 5 equated 6 monthly instalments commencing six months from the date of allotment. Thus, the petitioner/complainant knew, at the time of submitting his application that he has to complete 25% of the payment inclusive of the application money within one month from the issue of allotment letter and the balance amount has to be paid by him in instalments as stipulated in the brochure containing the terms and conditions on which plots were offered by the respondent. The petitioner/complainant also knew that in case of default in payment, the earnest money would be forfeited.

6. The aforesaid terms and conditions also find incorporation in the allotment letter issued to the complainant. It was clearly stipulated in clause 3 of the allotment letter that in case the instalments were not deposited within the prescribed period, the plot would be forfeited as per rules. It was also stipulated in clause 6 of the allotment letter that 25% of the sale price has to be paid within 30 days failing which the respondent will have full right to cancel the allotment and forfeit the amount deposited by the allottee.

7. Considering the terms and conditions of the scheme as also the terms and conditions stipulated in the allotment letter, the complainant was under a contractual obligation to pay 25% of the sale price of the plot within 30 days from the issue of the allotment letter. Admittedly, the petitioner/complainant did not pay 25% of the sale price of the plot within the aforesaid period. Therefore, exercising its right under the terms and conditions contained in the brochure and the allotment letter, the respondent was entitled to cancel the allotment and forfeit the amount which the complainant/petitioner had deposited.

8. Even if it is accepted that there was no development going on at the site when allotment was made to the petitioner/complainant, he ought to have made payment as per the terms and conditions of the allotment since the payment plan stipulated in the scheme and the allotment letter was not a development linked plan but was a time linked plan wherein the allottee has to make payment in a time bound manner and in the event of default in making payment, the earnest money can be forfeited as per the terms and conditions of the allotment. Had the petitioner/complainant made payment as per the terms and conditions of allotment and the respondent had failed to deliver possession of a developed plot, he would have been justified not only in seeking refund of the money paid by him but also claiming adequate compensation from the respondent. But, the petitioner/complainant himself having default in making payment of the instalments for the plot allotted to him, he cannot seek refund of the amount which he had deposited as earnest money.

9. For the reasons stated hereinabove, I find no good reason to take a view different from the view taken by the State Commission. The revision petition is therefore, dismissed with no order as to costs.

10. During the course of hearing, it has been pointed out by the learned counsel for the petitioner/complainant that due to an inadvertent error, he had described the order of the High Court dated 26.09.2013 as status quo though it is only an adjournment order. The aforesaid clarification is recorded on the request of the counsel.