
(2009) 01 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Beml (Hrs -Mkt) Sc/St Employees Welfare Association

APPELLANT

Vs

M. Chandrashekar And Ors.

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Citation : 2009 2 CPJ 152

Hon'ble Judges : ASHOK BHAN , B.K.TAIMNI J.

Advocate : S.M.SURI , V.S.Chopra , M.I.Sindgi

Judgement

1. PETITIONER was the opposite party before the District Forum, where the respondents/complainants had filed the complaints alleging deficiency in service on the part of the petitioner.

2. UNDISPUTED facts of the case are that the petitioner/opposite party introduced a housing scheme for the benefit of needy members for residential purpose. As per the scheme, the lay -out to be called as "BEML Shirdi Sai Layout" was to be formulated in Medahalli, Seegahalli areas near Krishnarajapuram, Bangalore. Attracted by these propositions, the responden -complainants applied for sites measuring 30 x 40 ft. each. The total consideration, i.e. Rs. 2,28,000, was paid but when the petitioner Association did not come forward to provide sites to the complainants by executing the sale -deed, complaints were filed by the complainants before the District Forum alleging deficiency in service. The matter was contested by the petitioner as an opposite party before the District Forum. The District Forum after taking into consideration the pleadings and evidence led by the parties passed the following order: "These complaints are allowed as hereunder in part. The alleged deficiency of service by the OP Association is established by the complainants in the above cases. Though the relief as to a direction to the OP Association to execute the Sale Deed in respect of the respective site mentioned in the respective complaint in favour of the respective complaint is negatived, for the reasons stated supra, in the alternative, the OP -Association is directed to refund the amounts paid by the complainants by way of consideration along with an interest at 18% p.a. from

the respective date of payment on the respective amount as stated supra, till refund. In addition to the same, the OP -Association shall compensate the complainants in each case in a sum of Rs. 1,00,000.00 (Rupees one lakh) for the sufferance and loss occasioned on account of the deficiency in service by the OP -Association. The OP -Association is further directed to pay a sum of Rs. 10,000.00 (Rupees ten thousand) to the complainant in each case towards the cost of litigation. The OP -Association is granted 30 days time from this date to comply this order. If not complied with by then, the said amount of compensation of Rs. 1,00,000.00 (Rupees one lakh) each shall carry interest at 18% p.a. from the date of the respective complaint, i.e. 13.12.2006, till payment."

3. NOT satisfied with the relief granted / aggrieved by this order, both the parties filed separate appeals before the State Commission. The State Commission disposed of the appeals in following term: "In the result, we pass the following order - Appeals are disposed of in the following terms - (1) The OP is directed to refund the amounts paid by the complainants towards sale consideration of sites along with interest @ 18% per annum from the respective dates of payment till realisation within three months from today.

(2) The OP is also directed to pay Rs. 10,00,000 (Rupees ten lakh only) as compensation to each of the complainants in relation to the site measuring 30" x 40" applied by the complainants within three months from today.

(3) In the even if the OP fails to pay the compensation and the amount ordered to be refunded within three months as stated above, the OP shall be liable to pay interest at 18% per annum on the said sums payable from the date of filing of the complaints before the District Forum till realisation.

(4) In addition, the OP is also directed to pay Rs. 5,000 as cost of litigation to each of the complainants."

Aggrieved by this order, the petitioner filed revision petitions before this Commission, which were disposed of by remanding the case to the State Commission in following term: "Accordingly, the impugned order passed by the State Commission is set aside and the matters are remitted to the State Commission. The State Commission would decide as to whether the Association - builder had allotted 60 plots out of the same land which was agreed to be sold to the complainants and, if so, to find out as to what would be the reasonable compensation which could be awarded to the complainants, if required, even more than Rs. 10 lakh.

In case the Bangalore Development Authority has since then allowed the petitioner to develop the land out of which plots were agreed to be sold to the complainants, then the State Commission may direct the petitioner to allot plots of the same size to the complainants as originally agreed in the said area. It would be open to the complainants to file, before the State Commission, additional evidence in support of their case that each of them is entitled to get compensation of Rs. 10 lakh (or more) if it is found that it is not possible for the

petitioner to allot the plots. The State Commission is requested to dispose of these matters within three months from the date of receipt of a copy of this order. The parties shall remain present before the State Commission on 23.6.2008 for appropriate directions.

During the pendency of the remitted Appeals before the State Commission, it would be open to the complainants to withdraw the amount of Rs. 4 lakh per complainant deposited by the petitioner because the complainants had individually paid amount varying from Rs. 2.5 lakh to Rs. 2.75 lakh for purchase of the plots. The petitioner is directed to pay Rs. 10,000 as costs to each complainant."

4. ON remand, the State Commission passed the order in following terms: "All the appeals are disposed of in the following terms: (1) The OP Association is directed to refund the amounts paid by the complainants towards the sale consideration of site/sites measuring 30" x 40" along with interest at 18% p.a. from the respective dates of payments till realisation. (2) The OP Association is also directed to pay Rs. 2,00,000 as compensation to each of the complainants in relation to site measuring 30" x 40". (3) The National Commission by its order dated 6.5.2008 has permitted the complainants to withdraw the amount of Rs. 4,00,000 per complainant which has been deposited by the OP Association as per the order of the National Commission. If any of the complainants have already withdrawn the said amount, the OP Association is directed to pay the balance amount after adjusting the amount withdrawn by the complainants and in the even the amount payable by the OP is less than Rs. 4,00,000, the complainants are directed to refund the excess amount to the OP. (4) Parties to bear their own costs."

5. AGGRIEVED by this order, the petitioner has filed these revision petitions before us.

6. SINCE the point at issue is the same in all these revision petitions, we go on to dispose of all these revision petitions through a common order.

7. WE heard the learned Counsel for the petitioner at considerable length and perused the material on record as also the memo of revision filed before us.

8. IT appears that the petitioner having not been able to appreciate that this is the second round of litigation and as per order dated 6.5.2008 passed by this Commission, case was remanded to the State Commission (as already reproduced above), with specific directive/points on which State Commission was to hear the parties and passed order according to law. Since no appeal against the order dated 6.5.2008 passed by this Commission, was filed by the petitioner, this order has become final, in view of which the State Commission was obliged to look into only the points relating to "as to whether the petitioner association had allotted 60 plots out of the same land, which was agreed to be sold to the complainant and, if so, what would be the reasonable compensation, even more than Rs. 10 lakh, and secondly, if Bangalore Development Authority allowed the

petitioner to develop the land out of which plots were agreed to be sold to the complainants then the State Commission may direct the petitioner to allot the plot of the same areas to the complainants as originally agreed..” Hence, the mandate for consideration before the State Commission was limited to the issues on which the case was remanded and State Commission has dealt with each of these issues separately.

9. IN the memo of revision petition filed before us now, a large number of grounds have been taken. We are afraid we are bound to limit ourselves to deal with the points, limited to the issues, on which the case was remanded to the State Commission. If the petitioner was not satisfied with the issues on which the case was remanded and since he has not filed any appeal, he is bound by the order dated 6.5.2008 passed by this Commission.

10. AS per the order of the State Commission (page 11), it has observed that “..the Association has also clearly stated that no site is available in the layout in respect of which the complainants have paid the money seeking for allotment of site as all the sites have been disposed of...” In view of above observation of the State Commission, if the complainants have not accepted to get any site other than this and have requested for refund of money, no fault could be fastened on the respondents/complainants. This then leads us to the question of compensation which was/could be granted to the complainants/ respondents. As far as the compensation is concerned, in our order dated 6.5.2008, we have observed that it would be open to the complainants to file before the State Commission additional evidence in respect of the case, that each of them is entitled to get compensation of Rs. 10 lakh or more if it is found that it is not possible for the petitioner to allot the plot. This is what the State Commission has done. In the absence of the prevalent market rates of the plot(s) in question, they have relied upon the zone -wise notification of prices applicable in that area. In that notification (appearing at page 82 of the paper -book) for Seegahalli "House Building Cooperative Societies" the revised market value rate per sq. feet is Rs.400 per sq. ft. If based on this we calculate the cost of the plot today, it will be about Rs. 4,80,000. Different complainants have deposited the requisite amounts against the original price of Rs. 2,28,000, but now the market price of the same plot is Rs. 4,80,000. Hence, as rightly held by the State Commission, the complainants need to be compensated for the difference, and this is exactly what has been done by the State Commission based on the material issued by the State Government for the relevant period.

11. BESIDES this relief, for retaining the money for the period for which it was retained by the petitioner, for no fault of the complainants, and since plots are not being allotted to the complainants, the award of 18% interest on the deposited amount is held to be in order as per law laid down by the Hon'ble Supreme Court in the case of Ghaziabad Development Authority v. Balbir Singh, II (2004) CPJ 12 (SC)=III (2004) SLT 161=(2004) 5 SCC 65.

12. LEARNED Counsel for the petitioner tried to argue that each of the members

was giving a pass -book under BEML Sauda Layout giving particular account number with the object that the amount, if any, would be subscription or payment so paid by any member to give dwelling sites to the members by formulating its layout plan at Seegahalli.

13. WE have also carefully gone through the material and find that as per settled law starting from Lucknow Development Authority v. MK Gupta till the time of the judgment of the Hon''ble Supreme Court in the case of Ghaziabad Development Authority v. Balbir Singh, we see no co -relationship with the pass -book, and the deficiency in service on the part of the petitioner, by not having allotted the plot as well as not executing the sale -deed after receiving the full payment from the members. This is plain and simple case of deficiency in service on the part of the petitioner.

14. WE have also carefully gone through all the grounds of revision mentioned in the Revision Petition, but we are of the view, as already stated earlier, they are not entertainable at this stage as we will like to limit ourselves to the grounds/ points on which the case was remanded for retrial and State Commission rightly dealt with these points. We are also unable to entertain any new objection or point which is beyond the ambit / grounds of remand.

15. WE will also like to indicate here that respondents/complainants have not filed revision petitions otherwise we would have been constrained to consider and award the cost escalation in the building cost on the criteria as per law laid down by the Hon''ble Supreme Court in the case of Ghaziabad Development Authority v. Balbir Singh (supra).

16. IN the aforementioned circumstances, we find no ground to interfere with the well reasoned order passed by the State Commission, which is as per law settled by the Hon''ble Supreme Court. These revision petitions have no merits, hence dismissed. No order as to costs. R.Ps. dismissed.