
(2003) 08 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

BHAGWATI SAHKARI AVAS SAMITI LIMITED

APPELLANT

Vs

BISHAMBHAR NATH ARORA

RESPONDENT

Date of Decision : 25-08-2003

Acts Referred:

Citation : 2004 4 CPJ 527

Hon'ble Judges : Palok Basu , Rachna J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal has been preferred by appellants, Bhagwati Sahkari Avas Samiti Limited and Sudhir Saluja against the judgment and order dated 12.6.2002 passed by District Consumer Forum-I, Bareilly in Complaint Case No. 102/1999.

2. MR. R.K. Gupta, learned Counsel for the appellant has been heard. The entire record has been perused. Sri Bishambhar Nath Arora, respondent No. 1, has argued the matter himself, who was one of the complainants. The complainants went to the District Forum with the allegation that the aforesaid Society sponsored scheme for allotment of plot/land, on coming to know of which, the complainant deposited Rs. 27,617/-. The payment was made through cheque No. 954573 dated 23.1.1992. The sum of Rs. 10,000/- was also said to have been paid towards the sale price amount of the plot. The complainant was asked to prepare himself for execution of the registered sale deed for which he purchased non-judicial stamps papers worth Rs. 4,800/-, the deed was drafted on 6.1.1993 but the opposite parties (appellants) deviated from executing the deed and ultimately did not honour the commitment and, therefore, defaulted in the service for which money was paid.

On notice, the appellants denied the deposit of the sum of Rs. 10,000/- made subsequently and stated that Sushil Arora made the deposit of the sum of Rs. 10,000/- to the secretary of the society in his individual capacity and not to the society. They denied the assurance to the complainant to go and purchase the non-judicial stamp paper for executing the sale deed. It was further contended in the additional pleas given in the written statement filed by the appellants before

the District Forum that while the complainant did deposit Rs. 27,617/-, the complainant was called by the opposite parties but he did not turn up, upon which the office bearers of the answering opposite parties visited the residence of the complainant noted as 161, Aqab Kotwali, Bareilly but they did not receive any information about the correct address of the complainant. Hence the complaint was opposed and it was stated that on merits the complaint was to be dismissed.

3. AN additional plea was taken that since the matter was allegedly finalised in the year 1992 and the complaint was filed in the year 1999, it was clearly time-barred and no decree could be passed in a time barred complaint. The District Forum has held that: (1) The fact that the sum of Rs. 27,617/- was paid on 23.11.1992 is proved. It is also proved that the opposite parties had agreed to sell the plot to the complainant for the aforesaid amount.

(2) The addition sum of Rs. 10,000/- was deposited with the opposite parties towards the said transaction and not as an independent payment to the Secretary of the opposite party (appellant) No. 1. The averments made in the affidavit of the complainant himself and also that of Susheel Arora fully substantiates the allegations made by the complainant. Notice issued on behalf of the complainant to the appellant was admittedly served.

(3) Sudhir Saluja admitted that shopping complex was planned to be built on a plot for which Rs. 27,617/- was paid by the complainant. The sum of Rs. 10,000/- was paid to Sudhir Saluja by Sushil Arora who is the brother-in-law of Bishambhar Nath Arora. However, towards the end of the decree it has been found that said Rs. 10,000/- should be refunded. It may be pointed out here that once the finding recorded is that Sushil Arora was the brother-in-law of the complainant and the transaction was one and the only referred to by Bishambhar Nath Arora for a plot in the aforesaid housing complex, the said sum of Rs. 10,000/- should also be taken to be a payment towards the allotment/registration of the sale deed regarding the plot booked by Bishambhar Nath Arora. To that extent, the decree, if ultimately the order turns in favour of the complainant, is to be modified.

(4) Since Vinod Grover refused to help the complainant six months before on the ground that he is ceased to be the Secretary of the opposite party, society, a notice was served on 11.12.1998 and from that date the limitation should begin. It has also been found that a legal notice was issued on 18.1.1999 which was returned back with the endorsement that "addressee had gone to America". Since the complaint was lodged on 22.9.1999 it is well within time.

Mr. R.K. Gupta wanted to argue that all the aforesaid findings are without any evidence. However, he could not bring to the notice any such evidence or material on the basis of which the aforesaid findings can be said to be against the record. He insisted that the finding with regard to the limitation should be interfered with. Firstly there is no material for the aforesaid argument and

secondly from the date notices were issued, the complaint will be within the time. Even otherwise it was within the jurisdiction of the District Forum to have condoned the delay, if any, in filing the complaint.

4. ONCE the complainant has succeeded in proving that Rs. 27,617/- were paid and further that Rs. 10,000/- were also paid by Sushil Arora on behalf of the complainant to the appellants, the appellants are duty-bound to execute the deed. It may be pointed out that during the course of arguments Mr. R.K. Gupta said that there was no plot left which may now be registered in the name of the complainant/respondent. It should at once be stated here that in the grounds of appeal no such plea exists which may show that the appellant does not have any other plot. The averment in para 6 is totally vague in which it has been stated that the appellants have no plot or the like now and, therefore, the order of the District Forum is incorrect. The vagueness lies in the fact that the order specifically is relating to plot No. 55, Durganchal, Phase I, Pilibhit Road, Bareilly and, therefore, there is no denial that no such plot is available. In view of the aforesaid discussion, the judgment and order passed by the District Forum does not suffer from any error whatsoever. The appeal consequently fails and is dismissed. The parties will, however, bear their costs. Let copy as per rules be made available to the parties. Appeal dismissed.