
(1993) 10 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

BRIJ KISHAN GUJRATI

APPELLANT

Vs

PREM KUTIR CO-OP. GROUP HOUSING SOCIETY LTD.

RESPONDENT

Date of Decision : 22-10-1993

Acts Referred:

Citation : 1994 1 CPJ 217

Hon'ble Judges : R.N.Mittal , A.N.Saxena J.

Final Decision : Complaint allowed with costs

Judgement

1. THIS order will dispose of C-35 and C-44 of 1993 which contain similar questions of law and fact. The facts in the judgment are being given from C-35/93.

2. BRIEFLY the facts are that the complainant applied for membership of the Opposite Party in the month of June" 90. The Opposite Party asked the complainant to deposit Rs. 110/- as membership fee and Rs. 1,05,000/- as cost of the flat. He deposited Rs. 110/- on 7.6.90 and Rs. 1,05,000/- on 13.6.90 in the account of the opposite party vide Pay Order Drawn on the Punjab National Bank, Katra Mohan, Delhi. It is pleaded by the complainant that the respondent did not issue share certificate inspite of various representations made to them. They also wrote that in case it was not possible for them to issue share certificate they should refund the amount with interest to him. Inspite of that neither he was made the member nor the amount deposited by him was refunded to him. Consequently he has prayed that the respondent be directed to pay the following amount to him:- (a)Amount deposited for membership Rs. 110.00 (b)Amount deposited for cost of flat Rs. 1,05,000.00 (c)Interest from 13.6.90 to 13.12.92 @ 24% p.a. Rs. 85,082.00 (d)Damages for harassment Rs. 25,000.00 Rs. 2,15,192.00 The complaint has been contested by the respondent. They inter-alia pleaded that the amounts of Rs. 110/- and Rs. 1,05,000/- were given by him voluntarily and in collusion with the President of the Society Sh. S.L. Gupta and that the letter acknowledging the receipt of the amounts by Sh. S.L. Gupta was un-lawful. They, however, admitted the receipt of the amounts and stated that

they were always ready to refund the same without interest and damages and they are ready to do so even now. They also pleaded that the complainant filed a complaint before the Joint Registrar, Co-operative Societies regarding this matter which was dismissed. Therefore, the present complaint is barred by res-judicata.

The first question that arises for determination is whether the complainant deposited the amount of Rs. 110/- and Rs. 1,05,000/- voluntarily without the permission of the respondent. There is not much dispute about the facts of the case. The amounts were deposited by the complainant vide Pay Order drawn on the Punjab National Bank in the account of the respondent. Sh. S.L. Gupta issued the letter dated 12.9.90 containing acknowledgement of the aforesaid amounts and stated therein that the formal receipt would be issued in due course. Thereafter the complainant served notices dated 4.4.91, 7.6.91 & 12.6.91 on the respondent. In the first notice he requested them that the share certificate be issued within 15 days. Thereafter in the two notices he requested them to issue the membership number or refund the amount to him. The respondent did not acknowledge any of the said letters nor refunded the amount. In case they thought that the amounts had been illegally deposited by him in collusion with Sh. Gupta they would have either refunded the amount to him through cheque or bank draft or they would have asked him to collect the amount from the office. However, they even did not care to acknowledge his letters. That goes a long way to show that the plea has been taken mala fide by the respondent with a view to utilise the amount deposited by him. Consequently it cannot be held that the two amounts of Rs. 100/- and Rs. 1,05,000/- were deposited by the complainant without the permission of the respondent.

3. THE 2nd question that arises for determination is, whether the order of the Joint Director is res-judicata between the parties. In that case the complainant had requested the Joint Director that the respondent be directed to show his name in the list of members. That prayer of the complainant was declined by the Joint Director on the ground that according to the administrative instructions issued by the Registrar, Cooperative Societies the question of membership, expulsion its clarification etc. were not covered u/Sec. 60 of the Co-operative Societies Act and that such matters should be referred to the Registrar for decision. THE claim of the complainant in the present complaint is regarding the refund of the amount deposited by him. Thus the reliefs claimed in both the cases are different. In the circumstances we are of the view, that the complaint is not barred by the principle of res-judicata. The third question that arises for determination is, whether the complainant is entitled to damages for harassment. The facts of the case go to show that the complainant had not been paid the amount inspite of repeated requests and reminders. In such circumstances a person does feel mental torture and harassment. Consequently we grant Rs. 5,000/- to the complainant on account of mental torture & harassment. The last question that arises for determination is whether the complainant is entitled to interest on the amount. The Opposite Party is ready and willing to refund the amount without interest. However, it cannot be denied

that it utilised the amount deposited by him for a long time. If it wished, it could have refunded the amount when the complainant asked them to do so. However, it has not been done by them. The complainant has thus been deprived of the use of the amount. Taking into consideration the aforesaid circumstances we are of the view that the complainant is entitled to interest on this amount. We fix 18% p.a. as the rate of interest. C-44/93

4. THE facts of this complaint are the same as those of C-35/93. THE amount deposited by the complainant with the opposite party is also the same. It is relevant to point out that in this case the formal receipts signed by two of the office bearers were issued in favour of the complainant. This fact conclusively shows that the amount was not deposited without the permission of the Opposite Party as pleaded by the respondent. No other argument has been raised in the present case. For the aforesaid reasons we accept both the complaints with costs and direct the respondent to re-pay the amount of Rs. 110/- and Rs. 1,05,000/- with interest @ 18% p.a. w.e.f. 12.9.90 in complaint No. C-35/93 and w.e.f. 9.8.90 in complaint No. C-44/93 till the date of re-payment alongwith Rs. 5,000/- within a period of three months to each of the complainant. In case they fail to make payment of the amounts within the said period, action shall be taken against them u/Sec. 27 of the Consumer Protection Act. Costs Rs. 2,000/- in each case. Complaint allowed with costs.