

(2010) 09 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Central Government Employees Welfare Housing Organization	APPELLANT
Vs	
Anil Mishra	RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Citation : 2010 4 CPJ 100

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Abhijeet Sinha , R.Javahar Lal

Judgement

1. THE present revision petition has been filed by the Central Government Employees Welfare Housing Organization (in short "the CGEWHO")-Petitioner in this case against the order passed by the State Consumer Disputes Redressal Commission, Delhi, in Appeal No. 170 of 2006, in favour of Shri Anil Mishra, Respondent in this case.

2. BRIEFLY, the facts of the case according to the Petitioner are that the Petitioner is an autonomous body with the aim and objective to construct and provide dwelling houses to Central Government employees in various cities at affordable costs. In 1995, the Petitioner undertook a housing scheme in Sector 56, Gurgaon, Haryana and the Respondent (Shri Anil Mishra) applied for a "DX" dwelling unit under this scheme. Since a "DX" dwelling unit was not available at that time, the Respondent was allotted a smaller Type "C" dwelling unit and was placed in the waiting list for a "DX" unit. In April 1999, the Respondent was offered a "DX" dwelling unit when it became available subject to payment of penal interest at the rate of 18% as stipulated in Rule 17 of the CGEWHO Rules. The Petitioner has further stated that although the Respondent was fully aware of the additional amount that he would have to pay as per Rule 17, he made a request to the Petitioner for exemption of payment of this amount which was rightly rejected.

3. THE Respondent's contention is that his case was not covered under Rule 17 which reads as follows: "Employees who join a Scheme after the initial enrollment or are late in paying their instalments, will be charged interest from

the respective dates of instalments. The rate of interest on these payments will be 18% per annum. This rate of interest is subject to change. The CGEWHO reserves its right to terminate the registration and cancel the allotment without giving any further notice, in case of default in making the scheduled payment beyond 120 days from the last date of payment."

4. THE Respondent states that he was not a late entrant to the scheme since he accepted allotment of a type "C" unit and being waitlisted for "DX" Unit cannot be interpreted that he applied late for this unit - or was a late entrant to the scheme. Further, he made all payments as per schedule before the stipulated time, because of which the Petitioner gave him the benefit of 10% interest as provided in the scheme. The above clearly indicated that Respondent's case did not attract 18% penal interest.

5. THE Respondent, therefore, wrote to the President of the Governing Council of the Petitioner requesting that in case interest is not waived, the matter should be referred to arbitration in accordance with Rule 38 of the CGEWHO Rules. The Petitioner however, refused to appoint an arbitrator and asked the Respondent to pay Rs. 4,97,433 inclusive of an amount of Rs. 1,15,444 with interest for late payment/joining. Without prejudice to his rights, the Respondent made the payment of interest under protest. Since the Respondent did not get any relief from the Petitioner, he filed a complaint before the District Forum seeking refund of Rs. 1,15,444 with interest @ 18% from 31.5.2000 to date of payment and Rs. 5,000 as compensation.

6. THE District Forum after hearing both the parties ruled in favour of the complainant/ Respondent. The relevant portion of the order of the District Forum reads as follows: "The OP was undoubtedly empowered by the Rules to levy interest @ 18% but only on two categories of beneficiaries of the Scheme. One category is where the beneficiaries joined the Scheme after initial enrollment and the other category includes those who made the payment after the scheduled date of payment. The complainant does not fall in any of these two categories. The complainant admittedly had enrolled at the time of initial enrolment and admittedly had been making the payment of the allotted type of unit on time. The complainant had opted for Type DX dwelling unit and he was allotted Type C and subsequently when the vacancy arose for allotment of dwelling unit DX type he was offered the same which he accepted and made the payment of the difference between the price of Type C and type DX dwelling unit. We are, therefore, of the considered opinion that the OP was not justified in recovering interest @ 18% from the complainant. Since the OP had paid interest @ 10% to the complainant on the amount which he had deposited before time, the OP would be justified in levying the same rate of interest on the so-called delayed payment. We may clarify here that there was no intentional delay on the part of the complainant in making the payment of type DX unit but the delay occurred as he was allotted type DX unit at a later stage. Charging of higher rate of interest than applicable under the Rules can be termed as unfair and deficiency

in service."

7. THE District Forum, therefore, directed the Petitioner to refund the excess amount recovered from him along with 9% interest from the date of deposit till date of payment. Petitioner shall calculate the interest at 10% for the so-called delayed period and refund the excess amount recovered as noted above.

8. AGGRIEVED by this order, the Petitioner filed an appeal before the State Commission. The State Commission vide order dated 26.4.2006 rejecting the Petitioner's appeal and modified the impugned order of the District Forum. The relevant portion of the State Commission's order reads as follows: "In our view any clause which is unconscionable is not actionable. In the instant case, the Respondent was liable to pay the same cost of Type "DX" unit which was being charged from other allottees of DX units. Even otherwise, he was a wait listed consumer and not a defaulter and, therefore, was not liable to pay interest. Merely, because there was term of contract between the parties to charge interest @ 18% over and above the difference of cost between Type "C" and Type "DX" units the finding of the District Forum that the Respondent did not avail any of the categories from whom such interest was chargeable needs no interference. However, keeping the premise on which the appellant proceeded by charging interest @ 18%. In view of this we feel inclined to modify the impugned order by directing the appellant to refund only the amount charged by it towards 18% interest as Respondent will not be entitled for any compensation more than this. FDR, if any deposited by the appellant be returned to the appellant forthwith under proper receipt."

9. AGGRIEVED by the order of the State Commission, Petitioner has filed the present revision petition.

10. LEARNED Counsel for the Petitioner essentially reiterated the position as stated before the State Commission and earlier before the District Forum and submitted that it was within its right to charge penal interest @ 18% per annum, as specified in Rule 17. The fact that the Respondent had paid this amount in full also indicates that he had accepted this decision. It also needs to be appreciated that the Petitioner is a non-profit welfare organization and has to work according to the Rules and Regulations approved by its Governing Council. Despite this, Petitioner showed consideration to the Respondent by not charging him 10% cancellation charges when he moved from Type "C" unit to "DX" Unit. Further, additional interest of 18% per annum was charged to him only on the differential amount between Type "C" and "DX" Unit and not on the entire amount.

11. COUNSEL for the Petitioner has also submitted that because the Fora below failed to appreciate that if the Petitioner did not charge 18% interest from the Respondent, then the persons who have already been allotted Type "C" unit, will also adopt the procedure as has been down in the case of the Respondent which in turn will create multiplicity of disputes between the Petitioner and other allottees. Further, the Respondent should have gone in for arbitration within the

period stipulated under Rule 38 i.e. 2 months before cause of action and before taking the possession of his unit which he did not do.

12. LEARNED Counsel for the Respondent contended that Rule 17 makes it very clear that only late entrants and defaulters would have to pay the penal interest and the Respondent did not fall in either of the two categories for reasons submitted in detail before the District Forum. He further pointed out that subsequently Rule 17 was amended, to read as follows: "Employees who join a scheme after the initial enrolment, including wait-listed registrants, or are late in paying their instalments, will be charged interest from the respective dates of instalments towards Equalization charges. The rate of interest on these payments will be 18% per annum".

13. THIS would indicate that it was only later decided that wait-listed persons would also have to pay 18% penal interest towards equalization charges. The earlier Rule 17 clearly did not provide for this and the amended Rule 17 was relevant only to those persons who joined in the second phase of the scheme.

14. SECONDLY, no consideration as such was shown to the Respondent by not charging him the 10% cancellation charges because the same had been recovered from the person who withdrew from the "DX" Unit. Hence, there was no loss to the Petitioner organization.

15. WHILE, it is a fact that the Respondent had paid the amount demanded, it was clearly stated in writing by him that this payment was made under protest. Therefore, the Petitioner's contention that the Respondent having paid the full amount is proof of his having accepted the required amount is not borne out by evidence on record. All these facts were fully appreciated by the learned District Forum and the State Commission who ruled in the Respondent's favour.

16. WE have considered the submissions of the learned Counsel and the evidence on record. We agree that Rule 17 is not relevant in the case of the Respondent, for the reasons very clearly and cogently elaborated by the Counsel for the Respondent. We do not agree with the Petitioner's contention that once the Respondent had paid the entire amount demanded including the penal interest, there was no further cause of dispute because, the Respondent had clearly stated that he was paying this amount under protest.

17. SINCE we have held that Clause 17 would not be applicable, we do not endorse the observation made by the State Commission that Clause 17 being unconscionable in the facts of the case is not actionable. We do not endorse the reasoning adopted by the State Commission, but for the reasons stated above, we uphold the final conclusion arrived at.

18. WE however, uphold the order of the District Forum in toto. Petitioner is directed to refund the Respondent an amount of Rs. 1,15,444 being the excess amount recovered from him along with 9% interest from the date of deposit till date of payment. Petitioner shall calculate the interest @ 10% for the so-called

delayed period of payment and refund the excess amount recovered as noted above, with no other costs. Ordered accordingly. Revision Petition allowed.