
(2002) 11 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

DEEPMANGAL LAND ORGANISOR

APPELLANT

Vs

NIRMALABEN NANABHAI VAKIL

RESPONDENT

Date of Decision : 28-11-2002

Acts Referred:

Citation : 2003 1 CPJ 352

Hon'ble Judges : M.S.Parikh , M.K.Joshi J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal arises from order dated 13th April, 1998 rendered by the learned Surat District Consumer Disputes Redressal Forum in Case No. 255/1996 directing the opponents to pay to the complainant Rs. 3,001/- with compound interest @ 12% p.a. from 16th August, 1997 till payment, compensation in the sum of Rs. 5,000/- and cost quantified at Rs. 1,000/-.

2. WE have heard Mr. J.N. Talpada, learned Advocate appearing for the appellants (original opponents). No one has remained present for the complainant (respondent herein). WE have gone through the impugned order. It would appear from the facts set out in the impugned order that the complainant had booked one shop in the ground floor portion of the Gala No. 9 in the Shivam Chambers Complex being constructed and organized by the opponents. The complainant paid Rs. 3,001/- towards the said booking. The price of the shop was fixed at Rs. 22,000/-. The opponents were to accept the balance consideration as per the condition set out at the back of the receipt issued by the opponents. However, the opponents did not render service of allotting the shop and they gave evasive and irresponsible reply resulting into filing of the complaint in question praying for compensation in the sum of Rs. 75,000/- and cost of the complaint, if possession of the shop is not possible to be given to the complainant by accepting balance consideration of Rs. 19,000/-. The complainant also prayed for refund of the deposited amount of Rs. 3,001/- with compound interest @ 24% p.a.

The opponents resisted the complaint inter alia on the ground that the opponents

did not agree regarding alleged condition written on the back of the receipt. According to the opponent the amount of Rs. 3,001/- was accepted by way of earnest money and as the complainant sat silent for a long period without making payment of the balance consideration the said amount was forfeited and the portion of shop in question was then earmarked as passage for other members of the complex. Accordingly members of the complex have been using the same passage for the last four years. Under such circumstances the opponents also contended that the complaint was barred by limitation. It was also asserted that the complainant's sister Leeliben Nanabhai filed Case No. 351/1996 with regard to the shop in the same complex and the only order that was passed by the learned Forum was for refund of Rs. 3,000/-. Hence the complaint was sought to be dismissed.

3. UPON appreciation of the material placed on the record including rival pleadings the learned Forum came to the conclusion that there was deficiency in service on the part of the opponent in not allotting the shop agreed to be constructed and allotted to the complainant and the amount of Rs. 3,001/- remained with the opponent by way of deposit towards the transactions in question. Since the opponents for the first time refused to allot the shop as also return the deposit amount on 13th February, 1997 the complaint was not barred by limitation. The learned Forum, therefore, passed order as aforesaid which has been subjected to challenge by the opponents in this appeal. It has been submitted that the complaint was clearly barred by limitation. In our considered opinion whether the amount of Rs. 3,001/- was paid by the complainant as deposit or as earnest money there will not be any bar of limitation inasmuch as there was continuous cause of action in favour of the complainant till the opponents informed the complainant that it was not possible for them to allot the shop in question. Admittedly for the first time the opponent gave reply to the complainant's notice on 13th February, 1997. It is not the case of the opponents that they had any occasion to intimate the complainant giving the complainant opportunity to pay the balance amount and take possession of the earmarked shop. In that view of the matter there is no reason why the conclusion of the learned Forum with regard to limitation as also deficiency in service on the part of the opponent be not upheld.

4. HOWEVER, the complainant clearly failed to establish any contract of refund of deposited amount with compound interest. Hence the complainant is apparently not entitled to relief of compound itself. There is no evidence with regard to alleged loss. No compensation can ever be awarded for mental pain and agony in such cases as per the Hon'ble Supreme Court in the case of Ghaziabad Development Authority v. Union of India & Ors., reported in II (2000) Consumer Protection Judgments 1 (SC)=IV (2000) Supreme Law Today 654= (2000) 6 SCC P. 113. Therefore, award of compensation in the sum of Rs. 5,000/- also cannot be sustained. HOWEVER, in such cases the Hon'ble National Commission has recently ruled that ends of justice would be served if interest is awarded @ 18% - See 2002 (1) CPR P. 123 (NC). Insofar as cost is concerned we do not propose

to pass any order of cost. Bearing in mind the facts and circumstances of the case following order is passed : Impugned order dated 13th April, 1998 rendered by the learned Surat District Consumer Disputes Redressal Forum in Case No. 255/1996 is hereby set aside and modified as under : The opponents are directed to pay to the complainant Rs. 3,001/- with running interest @ 18% p.a. from 16th August, 1997 till the amount is paid or deposited by the opponents in the learned Forum in execution proceeding and cost quantified at Rs. 1,000/-. Rest of the impugned order is set aside. If the amount paid by the opponents to the complainant in the execution proceeding is in excess the complainant shall give refund of the balance amount to the opponents. This appeal is accordingly partly allowed with no further order as to cost. Appeal partly allowed.