

(2012) 09 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

ESTATE OFFICER

APPELLANT

Vs

CHIEF ADMINISTRATOR , Naurang Raj Golpuria

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 642

Hon'ble Judges : V.B.GUPTA J.

Advocate : R.S.BADHRAN

Judgement

1. IN this revision petition there is challenge to order dated 10.5.2012, passed by the State Consumer Disputes Redressal Commission, Panchkula (for short, "State Commission ").

2. BRIEF facts of this case are that in complaint case (no.16 of 2002) before the District Forum, Bhiwani, respondent/complainant had alleged deficiency in service on the part of the petitioners/opposite parties for the reasons that he was allotted plot No.124 in the Mandi Township, Bhiwani, vide letter of allotment bearing memo No.1987 dated 17.10.1989. However, even after the receipt of the entire sale price of the said plot as per the schedule of the petitioners, they did not hand over the possession of the plot, rather served the respondent with demand notices of penalty. In the written statement, plea of the petitioners was that offer of possession of the plot was handed over to the respondent vide letter bearing memo No.EO(B) 3303 dated 1.7.1994, but he did not complete the construction work of the site and for that reason he was served with the demand of penalty, as per the rules and regulations of the Department.

3. WHILE disposing of the complaint, the District Forum took into consideration the fact that zonal/demarcation plan of the Mandi Township Bhiwani was approved by the competent authority on 24.6.1997, therefore, there was no justification for the petitioners to have demanded penalty from the respondent. District Forum accepted the complaint and granted the following reliefs to the respondent; "We direct the respondents to issue the fresh offer of possession after completing the development work and also direct to pay interest @ 10%

p.a. on the deposited amount to the complainant after two years from the date of allotment till the date of payment, besides it, cost of litigation is also allowed to the complainant, which we quantify at Rs.2,000.00 Other relief are hereby declined. The order be complied within two months from today. In case of default, the complainant is entitled to get interest @ 12% p.a. on the above said award amount from the date of default till its final realization "

4. AGGRIEVED by the order of the District Forum, petitioner filed an appeal before the State Commission. The appeal of the petitioners was dismissed by the State Commission, vide impugned order observing as under; "It is not disputed by the learned counsel for the petitioners that zoning/demarcation plan of the Mandi Township, Bhiwani was approved by the competent authority on 24.6.1997, therefore plea of the petitioners that possession of the plot has already been offered to the respondent on 1.7.1994 is not acceptable, because without approval of the zoning plan, possession of the sites cannot be given to the allottee. In this view of the matter, we feel that District Forum was justified in accepting the complaint and directing the opposite parties to give fresh possession of the plot to the complainant alongwith the interest @ 10% p.a. on the entire deposited of the complainant, besides the litigation expenses of Rs.2,000.00. As far as the awarding of higher interest at the rate of 12% p.a. in case of default in not complying with the award within two months, is concerned, we have taken strength from the case law titled "National Insurance Company Ltd. Vs. Keshwv Bahadur and others " reported in 2004 ACJ 648, wherein it has been observed in para no.14 of the order as under; "Though section 110-CC of the Act (corresponding to section 171 of the new Act) confers a discretion on the tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from section 110-CC of the Act or section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of compensation together with interest payable thereon virtually amounts to the imposition of penalty which is not statutory envisaged and prescribed. It is therefore, directed that the rate of interest as awarded by the High Court shall along be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal. " The above law settled by the Hon "ble Supreme Court makes it clear that District Forum has no power to grant the interest in the event of default in making compliance of the award in the stipulated time mentioned in the order. In this view of the matter, the higher rate of interest awarded by the District Forum at the rate of 12% per annum, in case the award is not complied within two month, is set aside. With the above modification in the impugned

order, this appeal is disposed off. "

It has been contended by learned counsel for the petitioner that complainant is not entitled for the interest of the deposited amount since he is enjoying the appreciation of the cost of plot. Moreover, petitioners have offered the possession to the respondent, but the respondent instead of depositing the due instalments, had filed the complaint before the District Forum and as such there is no deficiency of service on the part of the petitioners and respondent is not entitled to any compensation and interest.

5. IT is an admitted fact that zonal/demarcation plan of the Mandi Township, Bhiwani was approved by the Competent Authority only on 24.6.1997. Prior to 24.6.1997 when the zonal plan has not been approved by the Competent Authority, how the petitioner could have offered the possession of the plot in question to the allottees i.e., respondent in this case.

6. UNDER these circumstances, the District Forum was justified in allowing the complaint and directing the petitioner to issue the fresh offer of possession after completing the development work. Under Section 21 of the Consumer Protection Act, 1986, this Commission can interfere with the order of the State Commission where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. There is no illegality or material irregularity on the part of the State Commission in this case.

7. IT is well settled that under Section 21(b) of the Act, scope of revisional jurisdiction is very limited.

8. HON "ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed ; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora ".

Thus, no jurisdiction or legal error has been shown to us to call for interference in the exercise of power under section 21 (b) of the Act, since two Fora below have given cogent reasons in their orders, which does not call for any

interference nor they suffer from any infirmity or revisional exercise of jurisdiction.

9. IT is not that every order passed by the Fora below is to be challenged by a litigant even when the same is based on sound reasoning.

10. UNDER these circumstances, the present petition is without any legal basis and same is hereby dismissed with cost of Rs.10,000.00.(Rupees Ten Thousand Only). Petitioners are directed to deposit the cost of Rs.10,000.00 (Rupees Ten Thousand Only) by way of demand draft with Consumer Legal Aid Account of this Commission, within four weeks.

11. IN case, petitioners fail to deposit the said cost within the prescribed period, then petitioners shall also be liable to pay interest @ 9% p.a., till realization.

12. PENDING application also stands disposed of. List on 19.10.2012 for compliance.