

(2011) 09 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Gaziabad Development Authority Through its Vice Chairman,
Vikaspeth, Gaziabad

APPELLANT

Vs

Neelam Yadav

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Citation : 2011 0 NCDRC 760 : 2011 4 CPJ 527

Hon'ble Judges : Suresh Chandra J.

Final Decision : petitions is dismissed

Judgement

1. CHALLENGE in this revision petition is to the order dated 22.7.2010 passed by the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow. At the outset, it is noticed that there is a delay in filing the revision petition. An application for condonation of delay has been filed by the petitioner-authority, although the period of delay is not mentioned therein. Since the impugned order was passed on 22.7.2010 and the date of filing of the revision petition is 22.2.2011, scrutiny sheet put by the Registry indicates that there is a delay of ninety eight (98) days in filing the revision petition. In support of the application for condonation of delay, the petitioner authority has put forth the following reasons:- "4. Thereafter the revisionist authority has sought opinion from their legal department and then finally decided to file a revision petition before this Hon'ble Commission. 5. That since a number of documents were in vernacular, the same had to be translated in English. It is submitted that the vernacular documents were given for translation to the translator in the fourth week of Oct., 2010, who was to translate the same within two weeks. It is further submitted that in the meantime the translator contracted Chicken Guinea and on enquiry it was revealed that he had gone to his hometown in Bihar and no contact could be established with him and the documents given to him for translation were not found. As such the counsel had to again apply for the vernacular documents and the same were received only towards the end of the last week of Jan., 2011. 6. That thereafter the vernacular documents were again given for translation and the same were received on second week of Feb., 2011. 7. That the counsel for

the revisionist prepared this revision petition and without losing any further time is filing the revision petition before this Hon?ble Commission"

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2. IT is well established by law that each day's delay is to be explained in a convincing manner. IT is, however, seen from the application filed by the petitioner-authority that a general and vague explanation has been given without giving any specific dates to justify the period of delay. The same are not at all satisfactory and convincing. Therefore, we are not inclined to condone the delay and revision petition is liable for dismissal on this ground alone. However, we have considered the merits as well. Briefly stated, the petitioner authority floated a housing scheme in Govindpuram comprising of plots/houses, for which applications were called till 31.10.1988. The complainant, who is respondent herein, after depositing the specified reservation amount of Rs 7,200/- applied for a plot measuring 112 sq. mtrs in the said scheme and in the draw held by petitioner-authority, the complainant was allotted a plot measuring 112 sq. mtrs. in Housing Scheme No. 539. Intimation about the allotment was given to the complainant vide OP's letter dated 10.02.1989 in which the payment schedule according to which the cost of the plot was to be deposited was also mentioned. It is the case of the complainant that according to para 15 of brochure of the said scheme, the petitioner-authority had given the assurance of delivering the possession of the plot within a period of two years and the possession was to be delivered by 1991. The complainant had deposited the amount of Rs.81,995/- and delay charges of Rs. 10,231/- thereby a total amount of Rs. 92,226/- on 24.12.1991. But the possession of the plot within the specific time was not delivered by the petitioner-authority to the complainant. The complainant in addition to the aforesaid amount, also had to pay Rs. 12,555/-, which according to the complainant was wrongly calculated on the amount of installments by the petitioner-authority. According to the complainant, she wrote letters dated 16.12.1996 and 8.1.1997 to the petitioner-authority regarding handing over the possession of the plot but the same was not delivered because of which she could not construct her house and was compelled to live in a rented accommodation. On 21.3.1997, the complainant approached the office of the petitioner-authority for immediate delivery of the possession of the allotted plot and making payment of interest @ 24% on the deposited amount, but neither the possession of the plot was delivered nor any interest was paid. Eventually, the complainant knocked the door of the District Consumer Forum alleging deficiency in service and seeking relief of possession of the aforesaid plot alongwith interest @ 24% from 1.1.1992 till the date of possession and a number of other reliefs mentioned in her complaint.

The petitioner-authority resisted the complaint. On appraisal of the issues and evidence adduced by the parties, the District Forum partly accepted the complaint against the OP-authority vide its order dated 4.6.2009 and directed the OP-authority to deliver the possession of plot in question. Apart from this,

simple interest @ 8% p.a. was also directed to be paid by the OP-authority to the complainant on deposited amount of Rs. 81,995/- from 1.10.1999 till the date of payment in addition to Rs. 1,000/- as cost of litigation. Appeal filed by the OP-authority challenging this order of the District Forum was also dismissed by the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow (?State Commission? for short) vide its order dated 22.7.2010 both on the grounds of limitation as well as on merits. It is against this impugned order of the State Commission that the present revision petition has been filed.

3. DURING the course of admission hearing, learned counsel for the petitioner has contended that the Fora below have ignored the fact that the Hon?ble High Court had issued a stay order on the Scheme which was comprising of a large piece of land because of which the development of the Scheme was affected, which was beyond the control of the OP-authority and the delivery of the possession was delayed. She further submitted that the complainant herself was avoiding taking over the possession inspite of two letters having been sent by the petitioner-authority to the complainant for taking over the possession. For below particularly the State Commission has ignored this aspect while passing a non-speaking order in this regard. Another contention raised by learned counsel is in respect of grant of 8% p.a. interest on the amount of deposits, which was erroneous and unjustified in the eye of law, since the complainant herself was avoiding to take the delivery of possession and initially there was a stay of the High Court and hence delay was beyond the control of the petitioner-authority. In support of her contention against the grant of interest, the counsel has relied on the judgment of the Apex Court in the case of Haryana Urban Development Authority Versus Raje Ram, (Manu/SC/8534/2008). It is to be noted that in this case there are concurrent orders of the Fora below accepting the complaint of the respondent/complainant and unsuiting the defence of the petitioner-authority. The District Forum has passed a well reasoned order after considering the evidence adduced by the parties, which is based on finding of facts. In the aforesaid order, the District Forum has observed as under:- "8 It reflects from the letter 19C/02 dated 31.3.03 of the complainant that OP has executed the registry in favour of the complainant of the allotted plot no. 71, Govindpuram but the possession thereof is not given yet. After 30.9.99 when the complainant had deposited the balance amount and after the registry had been executed in her favour, on the perusal of record there seems no reasonable justification of not delivering the possession. It appears in this matter that after 30.9.99 and from 1.10.99 there has been a delay in delivery of possession of the plot to the complainant by the OP. Therefore, this matter comes under the purview of deficiency in service to the extent that OP has not delivered the possession of the plot from 1.10.99 to the complainant/consumer to whom the plot was allotted, as from 1.10.99 for almost nine and a half years even after execution of registry there is no ground on which the possession was not to be given".

4. BASED on its findings, it is to be noted that the District Forum has directed the payment of only simple interest @ 8% p.a. by way of compensation to be paid by

the OP authority to the complainant on the deposited amount and that too from 1.10.1999 till the date of payment. In view of this, the order of the Apex Court in the Case of HUDA Versus Raje Ram (supra) will not be applicable because of the peculiar facts and circumstances of this case. The finding of the District Forum has been upheld by the State Commission while dismissing the appeal of the OP-authority vide its impugned order. It has to be noted that this Commission has limited powers while exercising revisional jurisdiction under Section 21 (b) of the Consumer Protection Act, 1986. In the face of concurrent finding of facts returned by the Fora below against the petitioner-authority and in the absence of any jurisdictional error in the matter, we do not see any justification or ground to interfere with the impugned order. Grant of simple interest @ 8% p.a. for the limited and specific period of delay by way of compensation was fully justified in the given facts and circumstances of this case. The revision petition being devoid of any merits is thus liable for dismissal and the same is hereby dismissed accordingly both on grounds of limitation and on merits.