
(2002) 02 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

G.D.A.

APPELLANT

Vs

CHANDRA TRIPATHI

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Citation : 2007 4 CPJ 272

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal arises out of an order passed by the State Commission allowing the complaint filed by the respondent/complainant.

2. BRIEFLY the facts of the case are that the complainant applied for allotment of 500 metres of land in colonies like Vaishali. Kaushambhi and Indrapuram in January, 1991 for the purpose of construction of a Nursing Home for which he deposited Rs. 50,000 as earnest money in March, 1991. A plot was allotted in July, 1991, under Indrapuram Scheme, total cost of which was Rs. 13.20 lakh. In February, 1992. the complainant was informed that possession can be given after his depositing the full cost of Rs. 13.20 lakh. On inquiries once the complainant came to know that there has been no development of Indirapuram Scheme, he approached the appellant, having earlier failed in his attempt to get allotment of a plot in Kaushambhi/Vaishali now asked for cancellation and refund of amount along with interest @ 24%. Failing to get any response from the GDA the complainant filed a complaint before the State Commission who after hearing both the parties directed the appellant to refund the amount of earnest money of Rs. 50,000, along with interest @ 10% p.a. It is against this order that the appeal has been filed.

It is the case of the appellant that as per request of the complainant, he was allotted a plot in Indirapuram Scheme. He was given notices repeatedly to pay the instalments as per terms indicated in their letter dated 29.4.1992. Since the complainant did not make any payment after the deposit of earnest money, GDA cancelled the allotment vide its order dated 9.12.1992 and communicated the

same to the complainant vide its letter dated 4.1.1993. The order of the State Commission is against the conditions of the Scheme. The amount has been forfeited as per terms of the Scheme. It was obligatory on the complainant to make payment in time - since it was not done, the appellant were well within their right to cancel the allotment. Interest could not be given by the State Commission as the reason for awarding the same has to be made clear which has not been done, hence bad in law. The State Commission had no pecuniary jurisdiction as the amount involved is Rs. 50,000 only. On all these grounds, the appeal be allowed and order of the State Commission be set aside.

3. BEFORE going to the merits of the case we find that against the order of the State Commission dated 16.10.2001 the appeal has been filed on 24.10.2002 i.e. much after the stipulated period of 30 days for filing an appeal as stipulated in the CPA. We see no application for condonation of delay, the delay has not been explained. The appeal is clearly barred by limitation. In the absence of any application for condonation of delay or reasons for the delay in filing the appeal, we are unable to entertain this appeal. Even on merits also, we see no force in the reasons advanced by the appellant. The complainant applies for a plot, he is allotted a plot in Indirapuram. On visit to the site/discussion with the officials, the complainant see no prospect of immediate development of plots in Indirapuram and approaches GDA for allotment of a plot of the same size in Kaushambhi Vaishali. There are two letters of the complainant on record. They are dated 22.4.1992 and 17.9.1992. Both are for change in the location. There is nothing on record to show as to what transpired at the appellant's end? There is no reply to these letters on record. Suddenly there is a letter dated 4.1.1993 cancelling the allotment and forfeiting the earnest money. At the very least, this can be clearly branded as high-handedness of a Public Body. If they were unable to allot plot in the alternate areas as requested by the complainant in his letters on record, instead of apologising for not responding at all to these requests earnest money is forfeited. We have also seen a copy of the Scheme attached by the appellant with the Memo of Appeal and in that we see no provision for forfeiture of earnest money. Be that as it may, only if they had refunded the money as per rules, and that too in time in light of letters written by the complainant, only then the appellant had some case. In the present case the bona fides of the appellant become suspect. Not replying not reacting to the letters of public does not reflect very well in a Public Body dealing with ordinary citizens. In our view the State Commission was quite justified in passing the order on the merit of the case.

4. WE are unable to entertain the appeal both as barred by limitation as also on merits. The appeal is dismissed. No order on costs. Appeal dismissed.