
(2011) 03 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

Govind Prakash Acharya

APPELLANT

Vs

Nagar Sudhar Nyas

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : 2011 0 NCDRC 143 : 2011 2 CPJ 38 : 2011 2 CPR 87

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Advocate : Shiv Swaroop Mathur , Peeyush Nag

Judgement

1. THIS revision petition is filed against the order of Rajasthan State Consumer Disputes Redressal Commission in Appeal No.60/2009. In the impugned order the State Commission has condoned delay of 69 days in filing the appeal and considered the matter on merits. The appeal was filed by the Nagar Sudhar Nyas, Ajmer (hereinafter referred to as NSN Ajmer), against the order of the District Forum, Ajmer. The District Forum had allowed the complaint of the Revision Petitioner, Dr. Govind Prakash Acharya and ordered the OP/NSN Ajmer to refund the amount of Rs.4388/- charged from the Complainant for regularization of the residential plot in his name.

2. WE have perused the records of this case and heard counsels for the parties. From the record of the case, we find that the plot in question, No.C-190, was allotted to the Complainant. In this behalf, a 99 year Lease Deed was signed on 15.02.1999 and the possession was handed over to him on 23.02.1999. It was a condition of the lease that the lessee will construct upon this land within the specified time limit. Later, the lease was converted into a free hold transfer on 23.04.2005. But, RP/Complainant was informed on 27.06.2006 that the allotment had been cancelled on the ground of non-construction within the permissible period. Thereafter, on 07.11.2006 RP/Complainant applied for regularization of the plot in his name. Respondent/OP raised a demand of Rs.4388/- on 12.12.2006 and the RP/Complainant deposited this amount on 13.12.2006. The grievance of the RP/Complainant is that the respondent/OP neither completed the development works nor regularized the plot.

It is argued on behalf of the RP/Complainant that due to non-completion of development works, he could not construct the house. However, his allotment was cancelled for non-construction within five years from the reported completion of the development works i.e. by 30.4.2006. But even thereafter, NSN Ajmer/Respondent, has itself given him extension of time from 1.5.2006 till 30.4.2008 to construct the house. He has also referred to the letter of 13.5.2008 addressed to him by Executive Engineer, NSN Ajmer, in response to his query of 15.4.2008 under the RTI Act. It is stated that the drainage work in front of C-190 was completed in November 2007. Therefore, by implication, it is claimed that cancellation for non construction by 30.4.2006 becomes unjustified. Hence, the RP/Complainant has sought refund of the amount of Rs.4388/- collected from him.

3. THE State Commission has observed that no evidence is adduced on behalf of the Complainant to show that this amount was deposited under protest. THEREfore, the plea of the RP/Complainant, that the amount was paid "under protest", has been rejected by the State Commission. THE State Commission has also observed that after receiving the above payment of Rs.4388/-, the OP/NSN, Ajmer has, through its letter of 28.12.2006, allowed extension of time for construction by two years i.e. from 1.5.2006 to 30.4.2008. From a perusal of this letter, it is also seen that the Respondent/OP has simultaneously restored the cancelled allotment. Thus, having sought restoration of the cancelled allotment and having paid the requisite fee, promptly and without any protest, it is no longer open to the RP/Complainant to seek its refund. More so, as his request, for which the amount was charged, is already allowed by the Respondent/OP. The State Commission has therefore, rightly allowed the appeal of the OP/ NSN Ajmer. The impugned order does not suffer from any illegality, material irregularity or jurisdictional error to justify our intervention U/S 21(b) of the Consumer Protection Act 1986. Accordingly, the Revision Petition is dismissed with no orders as to costs.