
(1995) 11 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

GUJARAT HOUSING BOARD

APPELLANT

Vs

AKHIL BHARTIYA GRAHAK PANCHAYAT

RESPONDENT

Date of Decision : 06-11-1995

Acts Referred:

Citation : 1995 0 NCDRC 44 : 1995 3 CTJ 1004 : 1996 1 CPJ 103 : 1996 1 CPJ 41

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : R.P.BHATT , TANUJA SHEEL

Judgement

1. THIS order will dispose of the above titled appeals which have arisen out of the common order passed by the Consumer Disputes Redressal Commission, Gujarat State at Ahmedabad in Complaint Case Nos. 32,140,147,159 and 171 all of 1990. It may be mentioned here that the Complaint No. 32/92 was filed by Akhil Bhartiya Grahak Panchayat as complainant No. 1 on behalf of Smt. Shantaben Ranchhodlal Patel and other five freedom fighters as complainant No. 2. The names of those five freedom fighters as complainants were not mentioned in the original complaint but later on were disclosed as (1) Shri Chandramukh Jamaitram Vaidya; (2) Shri Manibhai Mohanlal; (3) Shri Anuchandra B. Pandya; (4) Shri Madhusudan Suryakumar; and (5) Shri Rajnikant Natwarlal Mehta. It may also be mentioned that during the pendency of the complaint, Smt. Shantaben Ranchhodlal Patel, complainant No. 2 died and her son Govind Bhai Ranchhodlal Patel filed an application before the State Commission for substituting his name alleging that he was the only legal heir to his mother's property. It is also to be mentioned here that in some complaints only the Gujarat Housing Board (for short the Board) was added as opposite party while in some i.e. complaints Nos. 32 and 159 State of Gujarat was also added as opposite party No. 2. Appeal No. 134/91 has been filed by the Board against complainants in all the complaints while Appeal No. 148 has been filed by the complainants in Complaint No. 171 of 1990, Appeal No. 154 by the complainants in Complaint No. 140/90 and Appeal No. 163/91 by the complainants in

Complaint No. 159/90. Complainants of other complaints have not filed any appeal. All the above complaints filed before the State Commission were in respect of the same scheme floated by the Board in the month of February, 1982 for construction of tenement houses in Ahmedabad for the benefit of eligible freedom fighters. The Board invited applications by issuing a public advertisement to survey the demand. The relevant portion of the said advertisement as translated by the State Commission is as follows: DEMAND SURVEY ".....It is hereby declared that the Gujarat Housing Board has decided to prepare a housing Scheme as shown herein below for the benefit of freedom fighters who are recognised by the Government: It appears that adequate number of applications were received from freedom fighters for the scheme alongwith the initial deposit of Rs. 5,000/-. Ultimately the Board proceeded with the construction of raw houses (duplex). According to the averments in the complaints the construction work was completed or about to be completed and the complainants received a notice on 7th February, 1987 informing one of the complainants that House No. 12 was allotted to her and her Number was included in the final list of allotment. The notice specifically stated that the estimated hire purchase price was about Rs. 1,50,000/- and she was required to pay further payment of Rs. 35,000/-. The said notice in term stated that if the amount was not paid as directed, the application for allotment of the house would be cancelled in accordance with the Rules. It appears that similar notices were also served to the other complainants. Ultimately the Board demanded Rs. 1,85,000/- as final costs of construction. Being aggrieved by the said amount of final cost, the complainants preferred the various complaints.

2. THE Board contested the complaints. The plea advanced by the Board is that the prices shown in the demand notice was estimated prices and was in accordance with the HUDCO requirement and that they have not taken any undue time in completion of this scheme. The Board also stated as to how the price came to be fixed contending that the same has been fixed rightly which the complainants are bound to pay. Before the State Commission the learned Counsel for the complainants in Complaint No. 140 submitted as follows : 1. that the concluded contract came into force between the complainants on one hand and the opposite party Board, on the other, latest, by September, 1983 when the demand survey was completed; or latest, in any case, when the Government accorded sanction and thereafter the tenders were invited; 2. that the terms and conditions of contract are to be gathered from the various advertisements published by the Board upto September, 1993; 3. that the main dispute is as to the price which can be legally demanded by the Board, keeping in mind the estimated price fixed by the Board under the beneficiary scheme for the freedom fighters; and 4. that the letter written by the Assistant Housing Commissioner to one Champaklal clearly shows that the Board had advertised the Scheme which was on "no profit no loss" basis. Learned Counsel for the complainants in Complaint No. 159/92 while adopting the above submissions further urged before the State Commission that the Board had estimated the cost at Rs. 1 lac after

considering all the relevant circumstances including the price rise and therefore the Board was estopped from raising the price to unreasonable level. It was further submitted that when the allotment letter dated 17th February, 1987 in terms specified estimated cost of Rs. 1,60,000/- directing the allotted concerned to deposit a further sum of Rs. 35,000/- that is to say 25% of Rs. 1,60,000/- and the complainants having paid the said amount, the Board is estopped from changing its position. It was also contended that the account given by the Board clearly showed that the price has been fixed without any reasonable or legal basis.

3. THE main submissions made on behalf of the Board before the State Commission were that the price shown in the demand survey was merely the estimated cost which was liable to change at the time of allotment of the houses and the complainants have waived their right to object by signing the acceptance letter and they cannot now come forward and pray for the refund of the purchase price already paid by them.

4. BEFORE we proceed further we may mention here that after signing the acceptance letter the allottees have taken possession of the houses allotted to them. A meeting was also held under the Chairmanship of the Minister concerned, with the Deputy Secretary of the Department, the Housing Commissioner of the Housing Board, Section Officer and Presidents and Secretaries of Freedom Fighters Vasahant Association and Swatantra Senani Nagar etc. The proceedings of the meeting which were produced before the State Commission, show that the Minister after hearing the submissions of the freedom fighters and the Housing Commissioner made a suggestion that the Board may give concession on profit, interest and other miscellaneous expenses and may reduce the amount of Rs. 30 to 35 thousand by way of relief to the freedom fighters and the Board may consider to recover the amount of Rs. 1,50,000/-. The Housing Commissioner in the meeting submitted that the Board will give relief according*to the financial help which will be received from the Government and they have no objection in doing so. The following decisions were arrived at: (1) In case of those fighters who are actually staying in one of the 114 HIG buildings under the scheme, the Board will relinquish its profits, interest and miscellaneous and other establishment costs and will given a concession of Rs. 30,000/- to Rs. 35,000/- in cost price. (2) xxx xxx xxx xxx xxx (3) GHB will fully calculate the amount of relief available and will submit its proposal to Urban Land and Housing Development Department. The Authority shall submit the proposal to the State Government regarding the financial assistance required to be given to the Board and will obtain the Government order thereon.

Taking into consideration the minutes of that meeting and the facts of the cases the State Commission passed the following order : (a) The purchase-price of the suit flat/ house constructed by the Gujarat Housing Board for the Scheme for housing freedom fighters, is determined at Rs. 1,50,000/- per flat/house. (b) Gujarat Housing Board (opposite party No. 1) will fix the amount of instalment on the basis of the purchase price being at Rs. 1,50,000/-and the excess amount

(difference) already recovered (or paid) will be credited in the account of the respective complainant so as to reduce the burden. (c) The opposite party-Gujarat Housing Board shall pay Rs. 1,000/- by way of costs in each complainant and shall bear its own costs. (d) There would be no order as to costs so far as the State Government is concerned. (e) The opposite party, Housing Board shall carry out the above order within a period of two months from today." Feeling aggrieved of that order the Board has filed Appeal No. 134/90. In other appeals filed by the claimants the main reliefs claimed are that the Board should be directed to refund the entire amount of Rs. 85,000/- that it has charged in excess of the prices given in the Survey Demand. Compensation is also claimed for the delay in the completion of the houses and delivery of possession to the complainants.

5. AT the time of arguments before this Commission one more point was raised and it is to the effect that the allotted houses have less area i.e. 95.60 sq. meters the tenements measuring 99.61 sq. meters were to be constructed when Rs. 5000/- was called as deposits while advertising the scheme (This fact of lesser area in the allotment letter is admitted by Raman Lal Jadav, the Service Executive Engineer of the Board who was examined as witness).

6. AS far as the question of pricing of tenements is concerned it is the consistent view of this Commission that For a constituted under the Consumer Protection Act, 1986 have no jurisdiction to go into the question of pricing of houses and plots, sold or allotted on hire purchase system by a Development Authority, a Housing Board or by private builder or promoter. In this respect reference can be made to Gujarat Housing Board v. Datania Amritlal Fulchand and Ors. (First Appeal No. 241 of 1991 decided on 7th October, 1993). Therefore, the appeal filed by the Gujarat Housing Board is liable to be accepted on this short ground. However, the Appeals Nos. 148,154 and 163 are also liable to be partly accepted. Admittedly, in these cases, there has been much delay in the construction of the houses. The scheme was floated in 1982 when the applicants paid Rs. 5,000/- as deposits. Possession delivered to the various allottees mostly in October to December, 1987. As appears from the order of the State Commission after the Board had prepared the scheme the State Commission had approved the Budget in December, 1983. However, construction of the houses was not started soon thereafter. The allottees have been deprived of the possession of the tenements for a long time and they have been allotted lesser area while according to the scheme the area to allotted was 99.61 sq. meters. Thus, the Board is clearly deficient in rendering of service to the complainants. There is no denying the fact that while the Housing and Development Boards are engaged in serving the public in the matter of providing houses by acquisition of land, development of sites, construction of houses thereon and allotment of plots/houses to the public. Thus the opposite party is clearly engaged in rendering service for consideration and therefore those who are allotted houses? are clearly consumers falling within the definition in Section 2(l)(d)(ii) of the Consumer Protection Act, 1986. Reference may also be made to the decision of this Commission in U.P. Avas

Event Vikas Parishad (Housing and Development Board) v. Garima Shukla and Ors., I (1991) CPJ1. The view of this Commission had been upheld by the Supreme Court in Lucknow Development Authority v. M.K. Gupta (Civil Appeal No. 6237/90 decided on 5th November, 1993=111 (1993) CPJ 7 (SC).

7. WE hold that each of the appellants in Appeal Nos. 148,154 and 163/91 is entitled to compensation for the delay in the construction of the tenements and for the lesser area given to them on allotment. We fix the compensation at Rs. 25,000/- in favour of each of the appellants in the above three appeals. This amount appears to be on higher side. It is incorporated in view of the then discussions.

8. FOR the reasons given above, we allow Appeal No. 134 by the Board and set aside the order of the State Commission and dismiss the complaints so far those relate to the price of the allotted houses. However, we partly allow Appeal Nos. 148,154 and 163 all of 1991 and order the Gujarat Housing Board to pay to each of the complainant/appellants in these appeals a sum of Rs. 25,000/ - as compensation. The said amount is to be paid within two months of the receipt of this order. We make no order as to costs in these appeals.