

(2001) 02 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

GUJARAT HOUSING BOARD

APPELLANT

Vs

BHAICHANDBHAI MADHABHAI DATANIYA

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Citation : 2001 2 CPJ 396

Hon'ble Judges : M.S.Parikh , Mahendra K.Joshi J.

Final Decision : Appeal disposed of

Judgement

1. THIS appeal arises from impugned order dated 28.9.1998 rendered by the Consumer Disputes Redressal Forum, Ahmedabad City, Ahmedabad in Complaint No. 578/92 directing the opponents in the complaint (appellant herein) to refund Rs. 2,500/- with interest @ 18% p.a. from 1.4.1992 till payment and to pay Rs. 1,000/- by way of cost. The facts of the complaint as set out in the impugned order by the learned Forum are : The opponent advertised for sale of readymade residential premises on "first come first serve" basis on 9.12.1991 and the price which was offered per unit was Rs. 1,81,000/-. The complainant applied for the premises and paid Rs. 10,000/- by way of deposit on 12.2.1992. The opponent informed the complainant that he was successful for the purpose of allotment of the premises to him and he should pay further sum of Rs. 35,250/- within one month. The complainant thereupon inquired from the opponent as to within what period the construction would be complete and what would be the quality of the construction. The complainant also visited the site and found that the locality was not good and construction was incomplete and on inquiring from the persons present there, the complainant came to know _ that three contractors had already left the work and it was not certain as to when the construction work would be completed. Having come to know about such a situation with regard to allotment of the premises, he decided to withdraw from the membership with regard to the flat/ premises in question. He applied for cancellation of his membership and refund of Rs. 10,000/- from the opponent. When he went to get the refund, the Estate Manager paid him Rs. 7,500/- only deducting Rs. 2,500/- on the ground that the opponent was entitled to deduct 25% of the amount of

deposit in case of withdrawal from membership. According to the complainant such a deduction was illegal, unjust and improper in view of the aforesaid facts. He, therefore, filed complaint for refund of the amount, for Rs. 10,000/- by way of compensation and Rs. 50,000/- by way of price of the premises which the complainant had to pay more while purchasing another house.

2. THE opponent resisted the complaint on the ground that the Forum did not have jurisdiction to entertain the complaint, that it was not maintainable at law, that there was no negligence or deficiency in service on the part of the opponent, that the complainant did not hire the service of the opponent, that as per Clause 7 of the terms and conditions, the opponents were entitled to deduct 25% of the amount of the deposit (Rs. 2,500/-) and that such deduction could not be said to be illegal, and that it was not admitted that the locality was not good. THE opponent has also challenged the quantum of compensation claimed by the complainant. Upon consideration of the contentions of the rival parties and material placed before the learned Forum, it has come to the conclusion that the complainant withdrew from the membership and opted to take back his deposit amount as, although the offer for readymade residential premises was on the basis that the premises was ready for being allotted, in fact, the construction was incomplete and there were disputes with the contractors so that it was not certain when the construction would be completed. Considering such evidence placed on record, the learned Forum has come, to the conclusion that whereas the offer was with regard to readymade premises, the premises was apparently incomplete. The complainant in term withdrew from membership by writing a letter setting out the facts as narrated in the complaint. These facts were supported by his own affidavit and there were no specific assertion on the part of the opponent that at the relevant point of time, construction of the premises was duly and fully completed. As a matter of fact, the complainant did assign reasons for withdrawal of the membership which was, not controverted by opponent by placing appropriate evidence in that regard. Therefore, in our considered opinion, the learned Forum has rightly come to the conclusion that alleged breach of contract on the part of the complainant is not attributable to his fault but to the initial offer as well as subsequent conduct on the part of either the opponent or its contractors.

The learned Advocate appearing for the appellant submitted before us that there was a clear condition of contract between the parties in the form of Condition No. 7 or Rule 7 or Regulation 7. As a matter of fact, such a written condition or contract was not placed on record. Only the Estate Manager was examined but his evidence will not help the opponent. Assuming for the sake of argument that there was such a condition, and we feel that there must be some such condition, the opponent has not placed on record any account showing that the amount equivalent to 25% to be deducted from the deposit amount truly represented the actual loss to the opponent. In fact, the market price of the flats in question was on the rise at the relevant point of time. Besides, from the new allottee the opponent must have obtained not only the deposit amount but prevailing market

price. If all that material was made available before the learned Forum, probably the opponent would appear to have substantially gained on account of the complainant withdrawing out of the scheme. Thus, on the appropriate working of the amount, the deduction of 25% from the deposit would have turned out to be penalty which in law might not be permitted to be deducted as per the alleged term of contract/regulation.

3. IN view of what is stated above, impugned order of the learned Forum cannot be faulted. However, in so far the rate of interest is concerned, the same shall have to be modified and Mr. K.B. Vaghela, learned Advocate appearing for the complainant fairly concedes that interest may be awarded at 12% p.a. IN the result, following order is passed. The impugned order will stand modified only to the extent of rate of interest which shall be modified from 18% to 12%. Rest of the order shall stand confirmed. This appeal is accordingly disposed of with no order as to costs. The deposited amount to be verified in the first instance and payment shall be made by A/c Payee cheque upon joint working given by the parties to this appeal as per the aforesaid order. Appeal disposed of.