

(2015) 11 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

Case No : 3544 of 2009

HOUSING BOARD HARYANA & ANR.

APPELLANT

Vs

NARESH KUMAR

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 2\(1\)\(d\)](#) - Definitions

Citation : 2016 1 CPJ 453

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : Salil Paul, Tenzing Tsering

Judgement

1. This revision is directed against the order of the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, "the State Commission") dated 8.6.2009 in first appeal No. 2018/2007 whereby the State Commission partly accepted the appeal preferred by the petitioner Board and ordered thus: - "Taking into account the above legal position, it cannot be denied that the complainant is a "Consumer" of the opposite parties as he not only hired but availed the facility provided by the opposite parties for consideration.

However, in the instant case, the controversy involved is with respect to the demand raised on account of excess area measuring 9 sq. yards in which the complainant only liable to construct the verandah, which the complainant is bound to pay to the Housing Board. Therefore, the order of the District Forum quashing the demand in respect of 9 sq.

yards is not sustainable in the eyes of law. However, at the same time, it cannot be disputed that the opposite parties cannot charge compound interest from the complainant and, therefore, it is ordered that the opposite parties shall recover the due amount from the complainant by calculating contractual simple rate of interest.

In terms of the modification in the impugned order indicated above, the appeal stands disposed of accordingly.

2. Briefly stated, facts relevant for the disposal of the revision petition are that on 9th October, 2000 the petitioner Housing Board held an open auction for allotment of shopping booth site situated at Housing Board Colony, Sirsa. The Respondent was declared successful in bidding for shopping both site No.24 measuring 27 sq. yards. The total bid amount was Rs.3,31,000/-. The respondent/complainant deposited 25% of the bid amount Rs.82,000/- at the time of acceptance of the bid and paid further 15% of the total price i.e. Rs.49,650/- after the issuance of allotment letter. Balance 60% cost was to be paid in 16 half yearly instalments. The respondent/complainant failed to adhere to the schedule of payment of instalments. Accordingly various demand notices were issued by the petitioner Board. Ultimately, vide letter dated 9 November, 2004 the th petitioner Board made a final demand of Rs.50814/- from the respondent/complainant alongwith interest. The complainant disputed the demand on the plea as to why instead of 27 sq. yard plot he was given possession of plot measuring 18 yards. The basis for the aforesaid plea was that as per the allotment agreement the complainant was required to leave 9 sq. yard space out of plot for a veranda meant for public passage. Thus, the stand of the complainant is that he is not liable to pay the price for 9 sq. yards of land which is meant for construction of veranda. Accordingly, the complainant raised the consumer dispute by filing a consumer complaint before the District Forum, Sirsa.

3. The petitioner Board in the written statement denied the allegations made by the complainant. It was pleaded that the complainant did not avail of departmental remedy before filing the present complaint. According to the opposite party the shopping booth was allotted to the complainant in an open auction and therefore the complainant is not even a "Consumer" as envisaged under Section 2 (1) (d) of the Consumer Protection Act, 1986 and the complaint is not maintainable.

4. On consideration of pleadings of the parties and the evidence, learned District Forum allowed the complaint and directed the petitioner Board to refund the excess price charged towards 9 sq. yard land meant for the construction of veranda with 9% interest thereon from the date of deposit till realization or adjust the same against the interest awarded towards the price of plot. Besides a compensation of Rs.7,500/- was awarded for compensation and mental harassment and Rs.2,500/- were awarded as the cost for litigation.

5. Being aggrieved of the order of the District Forum the petitioner Board preferred an appeal before the State Commission, Haryana and the State Commission vide impugned order disposed of the appeal with above-noted directions.

6. We have heard learned counsel for the parties and perused the record.

7. The main ground taken by the petitioner Board to assail the impugned order is that the State Commission has failed to appreciate that respondent complainant had purchased the subject booth site in an open auction with complete

knowledge of the terms and conditions. It is contended that as per the terms and conditions of the allotment, the respondent complainant was allotted 27 sq. yds of plot on which he was supposed to construct shopping booth with a verandah in front as per the standard building plan to be provided by the Housing Board, Haryana. It is contended that after participating in auction proceedings with full knowledge of terms and conditions, the State Commission is estopped from agitating the issue by raising a consumer dispute.

8. Learned counsel for the respondent complainant on the contrary has argued in support of the impugned order and submitted that the respondent was allotted 27 sq. yds plot for constructing the shopping booth and he was not expected to leave 9 sq. yds. area of the same for the verandah meant for the use of the public as passage.

9. Undisputedly, the complainant was allotted the subject shopping booth plot in an open auction as he was a successful bidder. An allotment letter was admittedly issued to the complainant on 17.10.2000 which contain the terms and conditions of the allotment. The relevant conditions which have bearing on the outcome of this revision petition are reproduced as under: "18. The property has been auctioned on the basis of AS IS WHERE IS basis.

20. The verandah in front of the Shopping Booth will be used only for passage.

21. The purchaser will have to complete the construction on the plot as per building bye laws to the Local Authorities and with the prior approval of the Housing Board Haryana by getting the plan approved within period of 2 (Two) years as per policy of the Board amended time to time. In case of failure to do the same the Chief Administrator, Housing Board Haryana will be competent to resume the plot along with constructed portion on the said plot and to forfeit the entire or part of the amounts deposited. The extension of time for completing the construction on the plot may be granted by the Chief Administrator, Housing Board Haryana as per policy of the Board as amended from time to time."

10. From the conjoint reading of the above condition, it is clear that the subject plot was allotted to the complainant on the condition that complainant shall raise construction on the same as per the standard building plan supplied by the Housing Board and the shopping booth shall have verandah in front meant to be used only for the passage. If at all, the aforesaid conditions of the allotment letter were not acceptable to the complainant, he should not have entered into an agreement of sale dated 14.11.2000 containing the similar conditions.

11. From the above discussion, it is clear that the complainant had participated in the public auction with open eyes and accepted the allotment agreement with full knowledge of terms and conditions. He now cannot be heard to say that he has been over charged by the petitioner Board by requiring him to construct a verandah meant for public passage in front of his booth on the subject plot. The State Commission has ignored the aforesaid material aspect of the case. As such, the impugned order cannot be sustained. We find support in our aforesaid view

from the

judgment of the Supreme Court in the matter of U.T. Chandigarh Administration & Anr. Vs. Amarjeet Singh & Ors. II (2009) CPJ 1 (SC)

12. In view of the discussion above, the impugned order of the foras below are liable to be set aside. We, therefore, allow the revision petition, set aside the impugned order and dismiss the complaint.