

(2012) 01 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

INDIRA PRIYADARSHINI CO -OPERATIVE HOUSING SOCIETY	APPELLANT
Vs	
SUDHA K W/O KAMALANATHAN	RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Citation : 2012 0 NCDRC 266

Hon'ble Judges : V.B.GUPTA , VINAY KUMAR J.

Advocate : H.CHANDRASHEKAR

Judgement

1. VIDE order dated 25.1.2012, all the above mentioned three petitions were consolidated since these revision petitions arise out of common order dated 15.7.2011, passed by Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short as "State Commission") and it involves common question of law and facts.

2. BRIEF facts are that respondents (complainants in the District Forum) became member of petitioner " Society (opposite party in the District Forum) and each of the respondent paid a sum of Rs.1 lakh each for allotment of sites. Respondents demanded registration of the sites but petitioner is avoiding handing over of possession and registering the sites, inspite of several requests and demands. Consequently, respondents sent legal notice to the petitioner but there was no response. Accordingly, respondents filed complaints before District Consumer Disputes Redressal Forum, Bangalore (for short as "District Forum") praying for the following reliefs : (a) "To direct the opposite party to complete the layout work and hand over the sites immediately in Valagerahalli Village, Kegeri Hobli, Bangalore South Taluk, in Sy. No.18/1, Katha No.72/1, Site Nos.195 and 196 after obtaining necessary permission from the competent authorities and also with all civic amenities within reasonable time. (b) In the alternative, to return the entire amount of Rs.1 lakh with interest at the rate of 18% p.a. from the date of payment in case the opposite party failed to deliver the possession. (c) Award compensation of Rs.3 lakhs towards sufferance and loss".

3. PETITIONER filed its version admitting that averments made in para 2 and 3 of

the complaints are true and correct. It is further stated in the written statement that amounts received from the respondents and other members of the Society have been promptly invested in the lands for the purpose of development. PETITIONER had obtained conversion order from the competent authorities. However, Karnataka Housing Board illegally interfered with the possession of the land and destroyed the development work undertaken by the Society. There was civil dispute between society and Karnataka Housing Board and civil cases are pending before the City Civil Court and High Court of Karnataka. Therefore, question of negligence and deficiency does not arise. Moreover, the complaint is time barred.

4. IT is contended by learned counsel for the petitioner that due to certain unfortunate disputes which were beyond the control of the petitioner, respondents could not be handed over the possession. Respondents were aware of all these facts. Thus, there cannot be any negligence or deficiency of service on the part of the petitioner.

5. IT is further contended that civil disputes between petitioner and Karnataka Housing Board are pending therefore, there is delay in executing the sale deed and giving possession of the site which is beyond the control of the petitioner.

6. DISTRICT Forum, vide order dated 10.3.2011, allowed the three complaints and passed the following order : "All the three complaints are allowed. The opposite party is directed to refund Rs.1 lakh to each of the complainants with interest @12% from the date of receipt of the amount till refund/realization. The respective complainants are also entitled for Rs.1,000/- each as costs of the present proceeding from the opposite parties."

7. AGGRIEVED by the order of District Forum, petitioner filed three appeals before the State Commission which dismissed all the appeals.

8. DISTRICT Forum, in its order has observed : "The complainants have produced receipts passed by the opposite party. As per the receipts, it is clear that the complainants have paid Rs.1 lakh to the opposite party in the year 2004 for getting plot. The opposite party has given allotment letter to the respective complainants in the year 2004 itself. The complainants have produced allotment letter. The complainants have served legal notice on the opposite party demanding registration or refund of amount with interest and compensation. The copy of legal notice is also produced along with postal acknowledgement. The fact that complainants have paid Rs.1 lakh to the opposite party for allotment of site is admitted one. The opposite party clearly stated in the version that the facts stated in para 2 and 3 are correct. In para 3, the complainants have stated the payment made by them. Apart from that in para 8 of version the opposite party society has clearly admitted the payment made by the complainants. It is also admitted fact that the opposite party has not executed sale deed of the respective sites as per the allotment letter. The opposite party has given reason that due to several litigations pending before the City Civil Court and Hon'ble

High Court of Karnataka between society and KHB, the layout could not be formed and sites were not registered in favour of the respective members. Therefore, it is clear that the opposite party has failed to fulfill the commitment and obligation, thereby committed deficiency of service. Another defence taken by the opposite party is that complaints are barred by time. In this defence, there is no merit and substance because the complainants are insisting right from payments till filing of complaints for registration of sites. Therefore, these being a case of continuing cause of action, the complaints are not barred by time. The learned advocate for the complainants submitted that since opposite party admitted payments, the opposite party may be directed to refund amount with interest. Taking into consideration of all the facts and circumstances of the case, it is just, fair and reasonable to direct the opposite party to refund the amount received from the complainants with 12% interest p.a. from the respective dates of payment till the date of refund. The question of granting compensation does not arise in these cases since we have granted interest on the refund amount."

9. STATE Commission vide concurring with the findings of the District Forum observed : "There is no dispute with regard to the amount received by the appellant from the respondents in these appeals as well as from the other members. Of -course, it is pleaded that the amount received from the members has been invested for the development of the land. But the development work carried out by the appellant was destroyed by KHB illegally. Therefore, the appellant said to have been filed suits in the Civil Court and Hon'ble High Court against KHB and the said suits are pending. Of -course, the allotment letter said to have been issued in the year 2004. But since, the appellant failed to comply its undertaking by violating the terms and conditions of the agreement and even failed to send any reply to the legal notice issued by respondents, but finally repudiated the claim before the District Forum by filing version. Therefore, in our opinion, cause of action is continuous or recurring one. Therefore, the District Forum is right in allowing the complaint filed by the respondent and directing the appellant to refund Rs.1 lakh to each of the complainants with interest at 12% p.a. from the date of receipt of the amount till refund and cost of Rs.1,000/- . Taking into consideration, the facts and circumstances of the case, we do not find any prima -facie case to admit these appeals."

10. PARAS No. 2,3 and 4 of the complaint read as under : "2. The complainant submits that the opposite party is a co -operative housing society situated in the above mentioned address and are engaged in the business of developing lands, forming sites and allotting the same to the members of the society. 3. The complainant submits that, the opposite party have invited the general public for availing membership and also informed about the formation of the residential sites formed by the opposite party at Sy No.18/1, Khatha No.72/1, Kengeri Hobli, Bangalore South Taluk. The complainant became a member of the society by paying sital value for two sites, totaling a sum of Rs.1 lakh on 20.6.2004. On the receipt of the said amounts the opposite party have allotted two sites in favour of

my client and have issued an allotment letter allotting two sites bearing nos.195 and 196 in the above mentioned layout. 4. The complainant submits that, immediately after the payment of the full site value for two sites, the complainant was ready for registering the sites in her favour by paying necessary stamp duty and registration charges and awaiting the registration of the sites bearing nos.195 and 196 situated at Sy No.18/1, Khatha No.72/1, Kengeri Hobli, Bangalore South Taluk by the society in favour of the complainant, but the society is avoiding handing over of the possession and registering the sites in favour of complainant on one or the other pretext. Thus, the complainant has become a member of the society as per allotment letter dated 18.5.2004. Accordingly, the complainant has paid the entire amount of Rs.1 lakh on 20.6.2004. the application form is produced herewith as per Annexure " A. The copy of the allotment letter of sites in favour of complainant is produced herewith as per Annexure -B."

11. THE corresponding paras of the written statement with regard to above averments made in the complaint read as under : "4. That the averments made in paragraph 2 and 3 of the complaint are true. 5. That the averments made in paragraph 4 of the complaint to the effect that immediately after the payment of the full site value for two sites, the complainant was ready for registering the sites in his favour by paying necessary stamp duty and registration charges and the awaiting the registration of the site bearing no.195 and 196 situated at Sy No.18/1, Khatha No.72/1, Kengeri Hobli, Bangalore South Taluk by society in favour of the complainant is not correct. But the further averments that the society is avoiding handing over of possession and registering the site in favour of the complainant is totally false, baseless and far from truth."

12. THUS, petitioner categorically admits that it has received a sum of Rs.1 lakh each from the respondents for the residential site and respondents have paid the entire amount and respondents are ready for registration by paying registration charges.

13. THIS plea taken by the petitioner that civil disputes are pending between the petitioner and Karnataka Housing Society, is of no help to it in these proceedings, as admittedly, none of the respondents were parties in those proceedings. Thus, deficiency in service is writ large in these cases which have been admitted by petitioner itself, in its written statement.

14. UNDER Section 21 of the Consumer Protection Act, 1986, this Commission can interfere with the order of the State Commission where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. There is no illegality or material irregularity on the part of the State Commission in this case.

15. IT is well settled that under Section 21 (b) of the Act, scope of revisional jurisdiction is very limited.

16. HON"ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed : "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

17. IN view of the concurrent findings of the facts given by foras below, no jurisdiction or legal error has been shown to us to call for interference in the exercise of power under section 21 (b) of the Act.

18. MOREOVER, the foras below have given cogent reasons in their orders which do not call for any interference nor they suffer from any infirmity or revisional exercise of jurisdiction.

19. IT is not that every order passed by the fora below is to be challenged by a litigant even when the same is based on sound reasonings.

20. UNDER these circumstances, present petitions are without any legal basis and are merit -less. Accordingly, the same are hereby dismissed with costs of Rs.10,000/ -, each.

21. PETITIONER is directed to deposit total costs of Rs.30,000/ - in these petitions, by way of cross cheque, in the name of "Consumer Legal Aid Account" of this Commission, within four weeks from today. In case, petitioner fails to deposit the said costs within the prescribed period, then it shall also be liable to pay interest @ 9% p.a., till realization.