

(2017) 08 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Case No : 2005 of 2017

JALANDHAR IMPROVEMENT TRUST THROUGH ITS CHAIRMAN/
EXECUTIVE OFFICER

APPELLANT

Vs

SOHAN LAL KUNDI S/O. SH. JAGAT RAM

RESPONDENT

Date of Decision : 11-08-2017

Acts Referred:

Consumer Protection Act, 1986, Section
21(b) - Jurisdiction of the National Commission

Citation : (2017) 08 NCDRC CK 0014

Hon'ble Judges : B.C. Gupta

Advocate : Prem Kumar

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 19.05.2017, passed by the Punjab State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in FA No. 871/2016, "Jalandhar Improvement Trust vs Sohan Lal Kundi," vide which, while dismissing the appeal, the order dated 20.09.2016, passed in Consumer Complaint No. 435/2015, filed by the present respondent Sohan Lal Kundi, allowing the said complaint, was upheld.

2. Briefly stated, the facts of the case are that the complainant Sohan Lal Kundi made an application for allotment of a flat to the petitioner, Jalandhar Improvement Trust in their 51.5 Acre Development Scheme and deposited a sum of 6 lakh vide draft No. 965297 dated 26.02.2009 drawn on UCO Bank, Jalandhar. Vide allotment letter No. 7004 dated 28.01.2010, Flat No. 7A, 1 st Floor, was allotted to the complainant. It was alleged that the complainant was regularly depositing the instalments for the said flat with the petitioner, following which, an agreement of sale was executed in favour of the complainant, but the possession of the flat was not given to him, despite receipt of full and final payment for the same. In the reply/written statement to the complaint filed by the OP Trust, it was admitted that the construction work was being delayed, due to ongoing litigation for the area covered under the Scheme.

3. The District Forum vide their order dated 20.09.2016, partly allowed the complaint and directed the OP Trust to refund the amount paid by the complainant, i.e., 6,24,800/- alongwith interest @9% p.a. from the date of receipt of amount till payment. Being aggrieved against the said order of the District Forum, the OP Trust challenged the same by way of an appeal before the State Commission. However, the State Commission dismissed the said appeal and affirmed the order of the District Forum. Being aggrieved against the said order, the OP Trust is before this Commission by way of the present revision petition.

4. During admission hearing before us, the learned counsel for the petitioner Trust stated that under the terms and conditions of the allotment, the complainant was required to get the "Agreement to Sell", executed within 30 days from the date of the allotment letter. He had, however, executed the said agreement after a delay of more than 2 years and 10 months. Further, the Trust had offered the complainant an alternative flat of the same size in the same scheme, but he had refused to accept the said alternative flat. Further, it had been laid down that in case of any dispute between the parties, the matter had to be referred to the Secretary, Local Government, Government of Punjab for making reference to an Arbitrator. The orders passed by the consumer fora below were, therefore, not in accordance with law.

5. We have given our thoughtful consideration to the material on record and the arguments advanced before us.

6. It is clearly admitted by the petitioner Trust in their reply before the District Forum and also in the grounds of revision petition filed before us that the construction work of the flat of the complainant was being delayed due to ongoing litigation regarding the area covered under the Scheme. It is evident, therefore, that the complainant has been put to unnecessary harassment after making application for allotment of flat to the petitioner Trust, because he could not get the possession of the flat, despite the deposit of the amount in question. The complainant is not responsible in any manner if the area under the Scheme is under litigation between the Trust and some other parties. The Trust which is a responsible State Agency, should have refrained from making allotment, if they felt that the area under the Scheme was under litigation. In any case, the consumer fora below have simply ordered the refund of the amount deposited by the complainant with the OP Trust, alongwith a reasonable interest of 9% p.a. only. The said order cannot be stated to be harsh or unjust in the eyes of law by any standard.

7. In the revision petition, a plea has been taken that the Trust had decided to offer an alternative plot to the complainant in the same Scheme, but the same was refused by the complainant. In our view, the complainant/consumer enjoys full discretion, whether to accept the alternative flat or not. The OP Trust cannot force him to accept the alternative flat against his wishes. The plea of the OP Trust is not tenable on this ground.

8. The OP Trust have also taken the plea that under the terms and conditions of the allotment, the matter was to be referred to the Secretary, Local Government, Government of Punjab for referring the same for arbitration. The said argument cannot be accepted because the OP Trust cannot force a complainant to go for arbitration and not take recourse to the provisions of the Consumer Protection Act, 1986. This view has recently been taken by a larger Bench of this Commission in "Aftab Singh vs. Emaar MGF Land Limited & Anr." and allied matters [CC No. 701/2015 dated 13.07.2017] ".

9. Based on the foregoing discussion, there is no merit in this revision petition as the orders passed by the consumer fora below do not suffer from any infirmity, illegality, irregularity or jurisdictional error of any kind. The consumer complaint is, therefore, ordered to be dismissed and the orders passed by the consumer fora below are upheld. The petitioner Trust shall take steps to return the money deposited by the complainant in terms of the order of the District Forum within a period of six weeks from today.