(2007) 04 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

K K GUPTA APPELLANT

Vs

H P HOUSING AND URBAN DEVELOPMENT AUTHORITY RESPONDENT

Date of Decision : 09-04-2007

Acts Referred:

Citation : 2008 4 CPJ 570

Hon'ble Judges : Arun Kumar Goel , Narinder Singh Thakur , Saroj Sharma J.

Advocate : G.S.Rathore , S.D.Sharma

Judgement

1. WE have heard learned Counsel for the parties and with their assistance have also examined the record of the complaint. Following reliefs are claimed by the complainants: "1. It is, therefore, prayed that the complainants may be given reliefs as indicated in para-9 above i. e. Rs. 23,37,722 plus interest on this amount falling to the share of each complainant.

2. The interest charged and anticipated under various heads amounting Rs. 3,05,34,570 need to be passed on to the allottees as the cost of raw land has been met out of the deposits made by the allottees. The interest paid on deposits of the allottees may be adjusted from this interest to be just and fair as prayed for in the proceeding paragraph.

3. The profits earned on sale of Utility Centre and Commercial Shops need also to be passed on to the allottees.

4. The expenditure incurred on setting up of electric substation, laying of sewerage line and road amounting to Rs. 11,63,941, Rs. 53,05,535 and Rs. 29,78,401 respectively should be proportionately divided on part-1 and part-2 of phase-III as the benefit this also is being shared by part-2 and proportionate expenditure need to be added to part-2 scheme and the difference given to allottees of part-1.

5. The respondent board may be directed to produce relevant record for scrutiny and verification, the complainants have stated in detail the cost (sale price) worked out by the respondent board and the actual cost incurred by them.

6. It is further prayed that the respondent board may be directed to produce the entire record pertaining to actual expenditure incurred on construction of phase-III, part-1 and the amount charged from the allottees under various heads.

7. The complainant seek the indulgence of this Hon''ble Commission to direct the respondent board to refix the price of flats, etc. after given credit of items indicated in 1 to 6 above and pass on the benefit of the price so worked out to allottees/complainants in proportion to their cost realized from them as indicated in para-9 above.

8. The respondent board may kindly be burdened with expenses for mental torture and harassment to the tune of Rs. 1,00,000 (one lakh) to each complainant. The cost of litigation may also be awarded in favour of the complainants. "

2. FACTS as they emerge from the record of this case are that the then Himachal Pradesh Nagar Vikas Pradhikaran, predecessor of the O. P. floated 9th Partially Self-Financing Scheme vide Annexure A-1. 4 categories of houses were proposed under this scheme, being a, b, c and d were to be provided by the O. P. Tentative cost for each category as per Annexure A-1 was as under: (a) 3,05,000 (b) 6,00,000 (c) 7,40,000 (d) 9,38,000.

For the present complaint we are concerned that, categories b, c and d against the tentative cost of category b Rs. 7,85,750 was claimed; against category c Rs. 10,25,000 was claimed and against category d Rs. 13,07,922 was claimed by the O. P. from the complainants. In this background enhanced amount claimed by the respondent has been challenged by the complainants and they have prayed for grant of the above relief.

At the time of hearing it was not disputed on behalf of the parties that while depositing the money only complainant No. 1 Mr. K. K. Gupta, No. 2 Mr. Rajinder Sharma, No. 4 Smt. Jiwan Lata Sharma and No. 6, Mr. Brij Bhushan Kalra objected to the claim of enhanced cost from what was offered in the brochure complaints applied for such complainants. None other than these complainants objected to the enhancement of cost.

3. WHAT is its effect will be examined in the light of the order passed by a Division Bench of Hon''ble High Court of H. P. in CWP No. 216/2003 and other connected matters. Reason being that the petitioner in that case Mr. Jeta Ukkhal and other allottees approached the Hon''ble High Court of Himachal Pradesh against the charging of escalated cost. Following order was passed on 1. 4. 2003 and this order for ready reference is reproduced hereinbelow: "on going through these writ petitions, we find that the petitioners had not raised any protest with respect to the demand for the additional amount towards the price of the property in question and had quietly paid the price at the enhanced rate. Under such circumstances, therefore, no case is made out for invoking the extra ordinary writ jurisdiction of this Court, as no relief can be granted to the petitioners by this Court. Petitions are dismissed, in limine. "

In the face of the aforesaid order of the Hon''ble High Court, so far as claim of complainants other than four persons named above being identically situated except four objectors is concerned, we need not go into the merits of this case and thus their claim is hereby turned down on the basis of order of the Hon''ble High Court.

4. NOW coming to the case of four complainants who had objected while depositing the enhanced cost. In this behalf Mr. Sharma their learned Counsel laid great emphasis on the pleadings of the parties particularly contents of paragraph 8 filed by the O. P. that upto 12. 2. 2002 total expenditure incurred was Rs. 22. 07 crores, and total costing provision was kept for Rs. 22. 81 crores, therefore, according to him excess amount was being charged from the complainants and other similarly situated persons. Faced with this situation Mr. Rathore, learned Counsel for the respondent stated that, in this very para it is further pleaded by his client that total cost expenditure on the scheme was Rs. 27. 94 crores as per provision in the costing of actual expenditure upto June, 2004 was Rs. 38. 01 crores including interest. In addition to this, there was anticipated expenditure of Rs. 50 lacs of pending liabilities, thus there was in all loss in the scheme to the O. P. We may notice in this behalf that a reference to the complainant shows that the complainants have given detailed figures so as to work out the cost of the flats in question of different categories and their relief is purely based on such calculation of cost as is clear from the averments made in para 7 of the complaint. Though O. P. tried to justify by referring to the different documents particularly the lease agreement of which the allotment letter was to form a part. This position could not be controverted on behalf of the complainants.

5. IN this background, unless we enter into the gamnist of costing as suggested by the complainant on one hand and by the O. P. on the other, the present complaint cannot be decided. In view of the decision of the National Comission in V. K. Nayar v. Ghaziabad Development Authority, III (2003) CPJ 130 (NC), we cannot go in this question. To similar effect is a recent decision of the National Commission in Yash Bir Jaggi v. Unitech Ltd. , IV (2006) CPJ 123 (NC).

6. TO be fair to Mr. Sharma we may notice that he placed reliance on a decision of Maharashtra State Commission in C. Varghese v. Anand Developers, IV (2006) CPJ 59, and urged that by escalation and in the absence of production of such documents it was held to be a case of deficiency in service. By referring to a decision of the Hon''ble Supreme Court in the case of Kanpur Development Authority v. Sheela Devi and Ors. Etc. , I (2004) CPJ 12 (SC)=i (2004) SLT 91, it was held by the Gujarat State Commission that their was deficiency in service. We have no quarrel so far as this aspect of the case is concerned, but unfortunately for the complainant in the present case the tentative cost is depicted in Annexure A-1. Whereas in the allotment letters the firm cost as noted hereinabove, had been claimed. And except four complainants as already noted none other had objected to it. Even these four complainants had executed the

lease deeds hire purchase agrrements with the O. P. , wherein one of the conditions admittedly is that, allotment letter shall form a part of the deed in question. This is an additional ground for not going into the merits of this case. No other point is urged. In view of the aforesaid discussion, it is held that we have no jurisdiction to go into the queston of costing on the above facts and on its merits and accordingly the complaint is liable to be rejected. Ordered accordingly. It is however clarified that the 4 complainants named above, if they have any other remedy available to them in law, will be free to approach the appropriate Forum and in such a situation they will be entitled to claim under Section 14 of the Limitation Act, 1963 for having approached this Commission. Parties are left to bear their own cost. Office will make available a copy of this order to the parties free of costs as per rules. Complaint dismissed.

