(2008) 03 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

KIRAN SURI APPELLANT

Vs

MANAGING DIRECTOR HOUSEFED PUNJAB RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Citation : 2008 2 CPJ 353

Hon'ble Judges : K.C.Gupta , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Final Decision : Appeal dismissed

Judgement

1. -THIS appeal has been directed by the complainant against order dated 16. 11. 2007 passed by Consumer Disputes Redressal Forum-II, U. T. Chandigarh (hereinafter to be referred as District Consumer Forum), vide which his complaint was dismissed as meritless against respondent No. 2-HDFC Ltd. but against respondent No. 1- Housefed it was allowed and respondent No. 1 was directed to modify its impugned order dated 13. 4. 2006 regarding cancellation of the flat of appellant and to intimate liability as on 1. 3. 2006 when appellant had approached respondent No. 1 vide letter dated 28. 2. 2006 Annexure C-2 for acceptance of the amount along with interest that had accrued and resultantly fallen due for payment in respect of the delayed payment and it was further directed to treat the application money of appellant towards part payment of the total liability in respect of the flat allotted and wrongly cancelled and he was further entitled to compensation of Rs. 25,000 besides costs of litigation amounting to Rs. 3,000.

2. BRIEFLY stated the facts are that appellant (complainant) was working as an officer in a nationalized bank. He submitted his application for allotment of a flat on 26. 10. 2005 along with requisite documents with HDFC Ltd. (respondent No. 2). As per the finance scheme of HDFC Ltd. , the appellant was required to deposit Rs. 6,000 being 10% of the application money, while Rs. 54,000 were to be financed by HDFC Ltd. respondent No. 2. Accordingly respondent No. 2 had sent an amount of Rs. 60,000 to respondent No. 1 for allotment of flat under the cooperative Housing scheme of built-up flats at Amritsar. As per terms and

conditions of the scheme for allotment of flats contained in the brochure Annexure C-1 of respondent No. 1, no fixed date was given for draw of lots but it was only stated that draw of lots would took place within a period of 60 days from the closing of the scheme which was to be closed on 31. 10. 2005.

It was next averred that after submission of application to respondent No. 2 who had accepted it for delivery to respondent No. 1, it did not give any intimation regarding the allotment of flat. However, he approached respondent No. 2 on 28. 2. 2006 to enquire about the status of application and he was informed that he was successful in the draw of lots held by respondent No. 1-Housefed, Punjab. It further informed that one allotment letter dated 16. 1. 2006 was lying in its record for the allotment of flat but the said letter was never sent by respondent No. 2 to the appellant. According to allotment letter, the amount was to be deposited in 8 equated quarterly instalments and the first instalment was to be deposited by the appellant on 15. 2. 2006.

3. IT was further averred that the appellant immediately rushed to respondent No. 2 and personally delivered letter on 28. 2. 2006 Annexure C-2 and requested to accept the payment along with interest for the delayed period but it was not accepted and on the other hand vide letter dated 13. 4. 2006 Annexure C-3 it was intimated by respondent No. 1 to respondent No. 2 that the allotment of flat had been cancelled as per terms and conditions and the amount equivalent to 5% of the cost of flat had been forfeited and the remaining amount of Rs. 28,100 had been remitted by respondent No. 1 to respondent No. 2. Alleging deficiency in service, the complaint was filed.

4. RESPONDENTS contested the complaint and filed separate written replies. Respondent No. 1 stated that the allotment letter was issued to appellant at his given correspondence address and liability was discharged as per the conditions, therefore, there was no question of any deficiency in service on its part. It next stated that cancellation of the flat had been done in accordance with terms and conditions mentioned in the allotment letter/brochure and further refund of Rs. 28,100 out of the amount of Rs. 60,000 had been allowed. Respondent No. 2 in its written reply stated that it had only granted loan to the appellant for payment of earnest money and the terms and conditions of the agreement were explained to the appellant at the time of disbursement of loan and being banker it had no role to pay. It next stated that as per Clause 5 of the agreement it was made clear that it would not be liable for any non-payment of instalments called for by Housefed towards price of the flat and copy of the agreement is Annexure OP-2. It next stated that it had no responsibility to inform appellant as per terms and conditions of the agreement and it was for the appellant to follow up with the Housefed as it was through a public notice that allotment was made known and further it (HDFC) informed him through telephone formally. After hearing Counsel for the parties, District Consumer Forum vide order dated 16. 11. 2007 dismissed the complaint against respondent No. 2 but accepted the complaint with costs against respondent No. 1 as stated in the earlier part of the judgment.

5. STILL dissatisfied, complainant has filed the present appeal.

6. THERE is delay of 80 days in filing the appeal. An application under Section 5 of Limitation Act and affidavit of Kiran Suri have been filed. It is not the case that the complainant had not appeared in the District Consumer Forum but he was represented by the Counsel Mr. B. B. Bagga. The copy of the order was prepared on 21. 11. 2007 and was despatched through courier on the same day. It is stated that since he had been transferred from Shimla, so he could not receive courier and was received back in the office of District Consumer Forum. Even if he was transferred, he must have kept the track of the case and must have known through his Counsel that it had been decided on 16. 11. 2007. If in the meantime, he had been transferred to Bilaspur branch where work was heavy and he could not pay any heed to the case, then there is no excuse in not filing the appeal in time. In fact there is no semblance of explanation for not filing the appeal in time and causing delay of 80 days. A perusal of the copy of the order shows which had been sent by courier and had been received by the appellant. It is not known as to when he had received it. The only conclusion is that he must have received it within time. Thus, there is no semblance of explanation for not filing the appeal in time, hence it is time-barred. Otherwise also there is no case against respondent No. 2 There is no evidence that it was respondent No. 2 which had compelled the appellant to mention his address in the address column that of respondent No. 2. The allotment letter OP-1/3 dated 16. 1. 2006 shows that allotment letter was sent to Kiran Suri S/o Sh. Satparkash Suri C/o HDFC Ltd, SCO No. 343-344, Sector-35-B, Chandigarh. Clauses 5 and 8 of annexure OP/2a showed that there was no responsibility of respondent No. 2 to inform appellant (complainant) about the allotment of flat by the Housefed. However, when the appellant visited the office of respondent No. 2 then he was informed about the allotment. It is further stated that appellant was also telephonically informed about the allotment. Even if we presume that there is no evidence that respondent No. 2 had informed appellant on telephone about allotment of plot but the Clauses 5 and 8 clearly prove that it was not the responsibility of respondent No. 2 either to arrange for fund or to inform the appellant about the allotment of flat by Housefed. Clause 8 of the agreement clearly shows that the borrower shall authorize Housefed to send the original allotment letter to HDFC in case of being eligible in the draw of lots held by Housefed and also authorize to refund the earnest money in case of being declared unsuccessful in the draw of lots held by Housefed. The borrower shall follow up with the Housefed regarding allotment or non-allotment of flat under the said scheme and this would be borrower''s sole responsibility. Hence, respondent No. 2 had not committed any deficiency if it had not informed about the allotment of flat to the appellant because it was responsibility of the appellant to follow up with Housefed regarding allotment/non-allotment of flats

Therefore, it has been rightly held by the District Consumer Forum that there is no deficiency in service on the part of respondent No. 2. Consequently, there is no merit in the appeal and as such it is dismissed in limine being time-barred as well as on merits.

7. COPIES of this order be communicated to the parties, free of charge. Appeal dismissed.

