
(2009) 01 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

KUNJ VIHAR CO-OPERATIVE HOUSING SOCIETY LTD ,
PRADEEP MEHTA

APPELLANT

Vs

RANVIR TOOR

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Citation : 2009 0 NCDRC 32 : 2009 1 CPJ 170

Hon'ble Judges : Ashok Bhan , B.K.Taimni J.

Final Decision : Petitions dismissed

Judgement

1. THIS Order shall dispose of Revision Petition No. 3304 of 2007 filed by Kunj Vihar Co-operative Group Housing Society Ltd. (hereinafter referred to as the Society for short) and Revision Petition No. 3139 of 2007 by Pradeep Mehta, formerly Honorary Executive Member of the Society filed against the common Order dated 14.05.2007 of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the State Commission for short) upholding the Order passed by the District Consumer Disputes Redressal Forum, District Forum-III, Janakpuri, New Delhi (hereinafter referred to as the District Forum for short) wherein the District Forum had directed the petitioners to pay a sum of Rs.1,50,000/- which the petitioner had taken from the respondent.

2. COMPLAINT was filed with the allegations that: - In the year 1996, petitioners-opposite parties no. 1 and 2 in District Forum had given an advertisement for booking of luxury apartments to be constructed by them in The PALAZZIO-Residential complex of the Society. It was stated in the advertisement that the luxury apartments will be constructed within two years on 17500 sq. mts. of land to be allotted by Delhi Development Authority-opposite party no.3. Respondent-claimant applied for membership of the Society jointly with his wife. He paid a sum of Rs.50,000/- by cheque no. 547240 dated 25.10.1996 as per receipt no. 141 dated 26.10.1996 issued by the respondent. Simultaneously, on the same day, the respondent-claimant paid a sum of Rs.1,50,000/- in cash for which, petitioners did not issue any receipt. The respondent, thereafter, paid another

sum of Rs.2,50,000/- by way of cheque. In total, the respondent-claimant paid a sum of Rs.4,50,000/-, Rs.3,00,000/- against receipt whereas Rs.1,50,000/- was paid in cash for which no receipt was issued. Since, no construction was made within the stipulated period, the complainant being suspicious, addressed a letter on 14.11.2001 to the Society to cancel his membership of the Society and to refund the money paid by him, i.e., Rs. 4,50,000/- with interest. Through their letter dated 29.01.2004, the petitioners refunded a sum of Rs.2,99,990/- only through cheque No. 350399 dated 29.01.2004, i.e., after more than two years of making the request. Opposite Parties no. 1 and 2-petitioners did not refund the sum of Rs.1,50,000/- which was taken in cash.

Opposite parties no. 1 and 2, the petitioners herein did not put in appearance in spite of service. They were ordered to be proceeded ex-parte. Respondent no. 3-Delhi Development Authority filed its written statement pleading therein that since no relief had been claimed against it, the petition was not maintainable. It was disclosed that the allotment of land was cancelled as the Society failed to deposit requisite 35% of the land premium but subsequently under the Orders of the High Court of Delhi and on payment of the premium, the plot was re-allotted on 02.08.2001. Respondent-claimant, in support of the allegations made in the complaint, filed his own affidavit in evidence and affidavits of two other Members of the Society.

As there was no contest by petitioners, the District Forum, taking the allegations made in the complainant duly supported by the affidavits filed by the complaint and two other Members of the Society held that the petitioners had taken a sum of Rs.1,50,000/- in cash for which no receipt had been issued and, accordingly, the petitioners should refund the sum of Rs.1,50,000/- along with Rs.2,000/- as damages and Rs.1,000/- as costs.

3. AGGRIEVED against the Order passed by the District Forum, petitioners filed appeal before the State Commission. The State Commission founded no infirmity in the Order passed by the District Forum and dismissed the appeal. The finding recorded by the District Forum duly upheld by the State Commission is the finding of fact. The District Forum passed the Order on the basis of the evidence before it. The petitioners did not contest either the allegations made in the complaint or challenged the evidence adduced by the respondent-complainant. Even before the State Commission, the petitioners did not seek an opportunity to file its written version. In the absence of any written version, the District Forum taking the allegations made in the complaint duly supported by the affidavit of the respondent and two other persons, was justified in coming to the conclusion that the petitioners had taken the sum of Rs.1,50,000/- for which no receipt had been issued. Counsel appearing for the petitioners tried to make submission on the basis of the supposed defence, which they could have taken before the District Forum or the State Commission. Their version in defence cannot be taken at this stage. The Order passed by the District Forum and the State Commission cannot be set aside on the basis of the supposed version of the petitioners which

they could take before the District Forum and lead evidence in support thereof.

4. THERE is nothing on record on the basis of which the Order passed by the District Forum or the State Commission can be set aside. Findings recorded by the Fora below are findings of the fact based on the evidence present on record. In exercise of power of Revision vested under Section 21 of the Consumer Protection Act, 1986, this Commission can interfere with the Orders passed by the State Commission only if the 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. No such case is made out. Dismissed with costs which are assessed at Rs.1,000/- in each of the Revision petitions.