

(2008) 05 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

M P RAJYA KARAMCHARI AWAS NIGAM

APPELLANT

Vs

J N SHRIWAS

RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

Citation : 2008 4 CPJ 587

Hon'ble Judges : N.K.Jain , Pramila S.Kumar J.

Advocate : M.K.Tripathi , Mohan Chukshi , Nitin Pandit , S.M.Khirwadkar

Judgement

1. HEARD.

2. BY the order impugned the Forum below has quashed demand notice dated 23. 9. 2006 raised by appellant-Corporation against respondent-allottee. This demand notice, amongst other things included difference amount of lease rent of the house allotted by appellant-Corporation to respondent. In fact, the dispute was mainly with regard to this difference amount of lease rent. At the time of allotment of house to the respondent the lease rent was fixed at the rate of. 5% of the amount of premium. However, the State Government vide its order ("hindi matter omitted") dated 6. 6. 2005 has raised the rate of lease rent from. 5% to 5% of the amount of premium. The question thus arises whether a Forum while exercising its jurisdiction under the provisions of the Consumer Protection Act can decide the legality or otherwise of any such order of the State Government. We are afraid, it is not open for a Forum under the CP Act to go into the legality or otherwise of any such order of the State Government. In fact, there is no privity of contract of any service between the State Government or the respondent-allottee. It is true that any such order of the Government is subject to judicial review, but certainly not by a Forum constituted under the CP Act. Remedy of the respondent-complainant lay elsewhere not under the C. P. Act. Before concluding we may refer to the order of the District Forum which has proceeded altogether on a different premise. In para 11 of the order the Forum has observed that the appellant-Corporation had collected a total sum of Rs. 46,00,000 from its allottees including the respondent, but deposited only a sum

of Rs. 24,43,574 with the State Government. The Forum below was, therefore, of the view that the appellant-Corporation already having a balance sum of Rs. 20,00,000 collected from various allottees cannot now raise any demand against the latter. We are afraid, the approach of the Forum below wholly wrong and not based on any evidence on record. It is true that appellant-Corporation had deposited the sum of Rs. 24,43,574 with the State Government, but that was towards cost/premium of the land. Thereafter, the Corporation was required to get the land developed and construction done by the M. P. Housing Board. Appellant along with the appeal memo has filed a memo dated 24. 4. 1991 addressed by the M. P. Housing Board to the appellant-Corporation clearly indicating that the total cost of land together with development charges would come to Rs. 42. 84 lacs. It was, therefore, wrong on the part of the District Forum to say that the appellant-Corporation has recovered much more amount from its allottees than the one required to be paid to the Government or the Housing Board towards cost or development charges of the land. In fact, that was not the issue before the District Forum. As already pointed out main question before the District Forum was whether the appellant-Corporation was entitled to recover the difference amount of lease rent as per order of the State Government. Needless to say that unless the said order of the State Government is set aside by a Court or other appropriate authority, the appellant-Corporation would have no option but to recover the amount from its allottees. The remedy of the allottees, lay elsewhere not under the provisions of the C. P. Act. They are still free to take recourse to such other remedy as may be available to them in law.

In the result, the appeal is allowed, the order of the District Forum is set aside and the complaint of respondent is dismissed with liberty as aforesaid. We make no order as to costs which the parties are left to bear their own as incurred of both the Fora. Appeal allowed.