

(1999) 07 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

MANAGING DIRECTOR, JAndK COOP. HOUSING FEDERATION
LIMITED

APPELLANT

Vs

TILAK RAJ GUPTA

RESPONDENT

Date of Decision : 19-07-1999

Acts Referred:

Citation : 1999 3 CPJ 214

Hon'ble Judges : T.S.Doabia , Arun Kumar Goel J.

Final Decision : Appeals disposed of

Judgement

1. AN order passed by the J&K State Consumer Protection Commission directing refund of an amount of Rs. 10,000/- alongwith interest at the rate of 18% p.a. and also allowing compensation to the tune of Rs. 15,000/ - by way of loss and injury is subject matter of challenge in this appeal preferred by the J&K Co-operative Housing Federation Limited.

2. THE un-disputed facts are as under : On an assurance that the complainant/ respondent would be allotted a flat under Self- Financing Scheme parted with a sum of Rs. 10,000/- each. THE flats were to be built in the area known as Kunjwani Extension. It is not in dispute that the amount was received by the appellant. Later on the allotments could not be made. THE respondents/ complainants filed complaints. THEse have been allowed in the manner indicated above. At the time of hearing of this appeal an argument was raised that the complaint was not maintainable in view of the provisions contained in Section 63 of the J&K Co-operative Societies Act. It is stated that the appellant is an Apex Co- operative Society. It was not to make the allotments. The allotments were to be made by Jammu Co-operative House Building Society. It is accordingly submitted that the cause of action if any was against the afore-mentioned Co-operative Society. The fact that the appellant Apex Co-operative Society has received the amount is not being disputed. What is urged is that this amount was passed on to the Jammu Co- operative House Building Society. After the parties were heard the learned Counsel for the appellant submitted that the question as

to whether the provisions of Section 63 of the Co- operative Societies Act would bar the filing of the complaint before the Commission be not adjudicated upon in this appeal and the question as to whether the direction could be given to the appellant to refund the amount and that too with interest alongwith a direction to pay compensation is required to be considered. We have, therefore, confined ourselves to this aspect of the matter only.

It is not in dispute that the amount was received by the appellant. If this be the situation then it is bound to return the same. The argument put across that the Apex Society has passed on the amount to Jammu Co-operative House Building Society is an argument which cannot be accepted. That is an arrangement between the Apex Society and the aforementioned Society. It can seek the refund of the amount from the aforementioned Society. Therefore, the direction given by the State Commission in this regard cannot be faulted.

3. THE question arises as to whether the direction given by the Commission for the refund of the amount alongwith interest is justified and if it is justified then what should be the rate of interest. Further question would be as to whether an additional amount of Rs. 15,000/- could be ordered to be paid to the complainant-respondent. There are judicial precedents where refund of the amount has been ordered. While doing so the interest has also been allowed in D.D.A. v. Bhawana Co-op. Society, 1995 Supp. (4) SCC 99. Interest was allowed at the rate of SCC 245, amount of interest at the rate of 15% was allowed on the refund.

4. THE aforementioned decisions do support the proposition that whenever order for refund is passed interest can be allowed. THEREfore, the discretion exercised by the Commission in allowing interest cannot be said to be wrong. However, taking into consideration all the facts and circumstances of the case and also one of the decisions referred to hereinabove, we reduce the rate of interest from 18% to 15%. This would be payable one year after the deposit was made by the respondent-complainant. As interest is being allowed this should take care of the question of compensating the complainants, who blocked their money by depositing the same with the appellant Society. Therefore, the complainant/respondent would not be entitled to a sum of Rs. 15,000/-which has been allowed by the State Commission. They are however, held entitled to interest. Costs would be Rs. 1,000/- in all. Learned Counsel appearing for the appellant submitted that there are large number of such cases where the amounts have been deposited but allotments could not be made. It would be apt for the appellant to see to it that the refund of the amount lying with it is made at the earliest. It is also made clear that if the Apex Society had passed on the money to the Jammu Co-operative House Building Society nothing could debar it from recovering the amount from the said Society. In this view of the matter the appeal is disposed of with the variations mentioned above. This would also dispose of C.I.M.A. 56/99. Appeals disposed of.