(2003) 02 NCDRC CK 0080

In the National Consumer Disputes Redressal Commission

NAMRATA CHAWLA-/ APPELLANT

Vs

RAJ SUDHA TOWER PVT. LTD. RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Citation : 2003 1 CPJ 139

Hon'ble Judges : C.M.Nayar , Moksh Mahajan J.

Final Decision : Application dismissed

Judgement

1. THE Applicant/complainant Ms. Namrata Chawla, through her legal Guardian Shri M.L. Chawla, has filed an application under the provisions (without citation of specific sections/regulations) of the Monopolies and Restrictive Trade Practices Act, 1969 [hereinafter referred to as the Act] asking for recall and review of the order dated 17th May, 2001 whereby the Commission has directed the respondent to pay a sum of Rs. 82,050.94 to the applicant/complainant in four instalments.To be precise and exact, the order reads as under : "THE learned Counsel for the respondent has offered a proposal for compromise. THE amount which is agreed to be payable to the applicant/complainant by the respondent is Rs. 82,050.94. It is, however, stated on behalf of the respondent that the amount may be permitted to be paid by eight monthly instalments. In the facts and circumstances of the present case, the amount shall be paid to the applicant by four instalments of Rs. 20,510/- each. THE post-dated cheques for the amounts dated 5.6.2001, 6.7.2001, 6.8.2001 and 6.9.2001 respectively shall be made in the name of the applicant and handed over to her within two weeks from today. THE present compensation application is disposed of. In view of above, R.T.P.E. No. 63/89 and U.P.T.E. No. 44/89 are also disposed of."

2. THE above order was passed in application/complaint in C.A. No. 22/93; R.T.P.E. No. 63/89 and U.T.P.E. No. 44/89. In order to appreciate the facts in right perspective (not stated in the order), it is necessary to state them in brief :

The applicant/complainant took office-cum-shop space No. RJT-30B in the basement comprising an area of 104/82 sq. feet at the rate of Rs. 400/- per sq.

feet in Rajindera Tower, Community Centre, Wazirpur Industrial Area, Delhi. The total deposit as per the allotment agreement was at Rs. 41,928/-. The applicant/ complainant deposited the booking amount of Rs. 8,385/- on 1.10.1982. This was as per the schedule given in the allotment agreement dated 22.9.1982 entered into between the parties. The possession of the office-cum-shop space in question was promised to be given by June, 1984 (Annexure-I). The applicant/ complainant paid a sum of Rs. 37,735/- out of the total price of Rs. 41,928/-. The applicant/complainant however found that the carpet area of the shop in question was 59.34 sq. feet as against the promised area of 122.54 sq. feet. As the construction was delayed and the possession of the shop was not handed over within the period of two years, it was alleged that the respondent had made false promises to the applicant/complainant and others in terms of Section 36-A(1)(v)(ix) of the Act. For imposition of unjustified cost in respect of maintenance charges, sinking fund, security deposit, house tax etc., the case was stated to be covered within the provisions of Section 2(o)(ii) of the Act. For loss and harassment suffered at the end of the respondent, the applicant demanded suitable compensation in addition to the directions for cease and desist order to be issued against the respondent.

3. BOTH the parties were heard at length and to render speedy justice as well to avoid further inconvenience and harassment to the applicant/complainant, the respondent was persuaded to settle the case. The respondent agreed to settle the matter and pursuant thereto the Commision vide its order dated 17th May, 2001, directed the respondent to pay a sum of Rs. 82,050.94 to the applicant/ complainant. The said order was passed under Regulation 71 of the M.R.T.P.C. Regulations, 1991. The said order was passed in the presence of Mr. R.S. Chawla (brother of Mr. M.L. Chawla) authorised representative of the applicant/ complainant.

4. SUBSEQUENTLY, on an application filed by the applicant/complainant, the order dated 17.5.2001 was reviewed and the respondent was directed to pay the amount of Rs. 82,050.94 to the applicant/complainant within a period of one week. The respondent paid the said amount to the applicant/complainant through post-dated cheques dated 5.6.2001, 6.7.2001, 6.8.2001 and 6.9.2001 for an amount of Rs. 20,510/- each. The said cheques were received by Mr. M.L. Chawla and were encashed. After encashing all the cheques, the applicant/ complainant has come up with another application for review and recall of the earlier orders. Apart from emphasizing the delay which occurred in passing the order, the applicant/complainant has raised certain legal issues in the application. While the former is explainable from the docket orders passed from time to time, the latter cannot fall under the purview of Section 13(2) of the Act. Suffice to say that for payment of Rs. 37,000/- by the applicant/complainant, he has received an amount of Rs. 82,050.94 within the shortest possible time. The amount includes interest at the rate which has also been considered reasonable in the light of the various judgments passed by the Hon''ble Supreme Court from time to time and on the facts and circumstances of the case. Adverting to certain

issues raised, while no compensation is payable for mental torture and harassment in terms of the order passed by the Hon''ble Supreme Court in the case of Ghaziabad Development Authority etc. v. Union of India & Anr., (Civil Appeal No. 5329/96), reported in II (2000) CPJ 1 (SC)=IV (2000) SLT 654, the amount received and encashed by the applicant/complainant is justifiable in the circumstances explained. It would be pertinent to mention that as contended by the respondent, the compensation application filed is beyond time.

5. ON merits, we find that the review application is not maintainable as there is no error apparent on the face of the order passed by the Commission on 17.5.2001. The Commission has been more than indulgent in awarding compensation to the applicant/complainant both on merits as well on compassionate ground. There are no new facts brought on record which would justify the review of the order. As held by their Lordships of the Hon''ble Supreme Court in case of Mahindra & Mahindra Limited v. Union of India, reported in AIR 1979 Supreme Court 798, the power under Section 13(2) of the Act is a "curial power intended to ensure that the order passed by the Commission is and continues to be in conformity with the requirements of the Act and the trade practice condemned by the order is really and truly a restrictive trade practice and it must, therefore, be construed in a wide sense so as to effectuate the object and purpose of the grant of the power. But howsoever large may be the amplitude of this power, it must be pointed out that it cannot be construed to be so wide as to permit re-hearing on the same material without anything more, with a view to showing that the order is wrong on facts. This is the only limitation we would read in Section 13(2)". What the applicant wants from us is to rehear the matter on the basis of the same material brought on record.

6. IT may not be out of place to mention that the applicant/complainant has so far not filed the written submissions despite a period of one month, as stated, which expired on 3.1.2003. Thus in view of the above, the order dated 17.5.2001 need no review and the review application, therefore, stands rejected. Application dismissed.

