(2001) 06 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

ORISSA COOPERATIVE HOUSING CORPORATION LTD. APPELLANT

Vs

KUM KUM PRAVA DASH RESPONDENT

Date of Decision : 19-06-2001

Acts Referred:

Citation : 2001 3 CPJ 326 : 2002 1 CPC 464 : 2002 1 CPR 239

Hon'ble Judges : D.M.Patnaik , Arati Mohanty , Pramodnath Das J.

Final Decision : Appeal partly allowed

Judgement

1. THIS is an appeal by the Co-op. Housing Corpn. Ltd., Bhubaneswar and others against the order dated 23.10.1998 by the District Consumer Forum, Khurda in C.D. Case No. 43/97.

2. THE fact of the case stated in brief are that the complainant/respondent applied to the opposite parties for purchase of a classic category of plot in Dhaulinagar, Bhubaneswar under Badaraghunathpur Plotted Scheme on payment of Rs. 53,057/-. As per the terms and conditions in the broucher the opposite parties/appellants agreed to handover possession of the plot within 2 months of last payment i.e. 30.10.1995. THE brochure provides for payment of interest in case of delayed payment and other penalties like surrender on cancellation of the allotment. But opposite party No. 2/appellant in response to the letter dated 4.1.1997 of the complainant/respondent informed the complainant to take refund of the deposited amount (Rs. 53,057/-) and refunded the same on 22.1.1997 deducting a sum of Rs. 880/- without interest. Hence this case. The learned District Forum decreed the claim of the complainant/respondent and made the opposite party/appellant jointly and severally to pay a sum of Rs. 880/- alongwith interest @ 12% per annum on the entire deposited amount from the date of deposit till realisation and litigation cost of Rs. 500/- and compensation of Rs. 2,000/- within a period of two months.

Aggrieved against the order of the District Forum, the opposite party have come up in appeal and has challenged the correctness of the order.

3. WE have heard the learned Counsel for the parties who have extensively argued their respective cases by filing written version and affidavits etc. There is no dispute with regard to the fact that an advertisement was made in the local newspaper for the above housing project and the complainant had paid Rs. 53,057/- for the said purpose. No material has been placed to hold as to why and how the complainant is not a consumer, when it is the case of the Orissa Co-op. Housing Corporation Ltd., that the Dhaulinagar Plotted Scheme did not materialise. In our opinion the complainant/respondent is a consumer under C.P. Act having depositged the entire consideration money of Rs. 53,057/- under the scheme hired the services. From all these facts, it is apparent that there was no laches or inaction on the part of the complainant in depositing the entire amount towards the cost of the plot on 30.10.1995. To be more precise from 30.10.1995 to 22.1.1997, the Urban Co-op. Housing Corpn. Ltd. had with them the complainant''s money for more than one year. Facts are crystal clear that he did not default in the manner whatsoever. Although the complainant has already taken refund of Rs. 52,217/- in the meanwhile i.e. 22.1.1997 but deducting a sum of Rs. 880/- out of the total deposited amount of Rs. 53,057/- without interest. A reasonable amount of delay could have been excusable. We are, therefore, compelled to hold that, in view of such evidence which is very much available on record, the inordinate delay in refunding the money with interest is due to the fault of the appellant and to that extent clear deficiency in service stand fully proved. Hence in the present case, both in facts and law the Orissa Co-op. Housing Corpn. Ltd. does not stand anywhere.

4. HOWEVER in the case before us, the parties have not tendered any evidence enabling to form an opinion in regard to the rate of interest which can be considered just to be adopted. The rate of interest awarded in equity should neither be too high nor too low. In our opinion awarding interest @ 12% per annum by the learned District Forum is just and proper in the cases under consideration. The provision contained in the brochure issued by the Authority that it shall not be liable to pay any interest in the event of an occasion arising from the return of the amount should be held to be applicable only to such cases in which the claimant is itself responsible for creating circumstances inviting occasion for refund. In the case, under appeal the fault has been found with the Authority. The Authority have not therefore, any jurisdiction for resisting refund of the claimants'' amount with interest. Considering all the above facts, we find that the award of compensation of Rs. 2,000/- decreed by the learned District Forum in the present circumstances of the case is excessive. Ends of justice would meet if the same is limited to Rs. 500/-. Thus with this modification, the appeal is allowed in part and direct the appellant to pay jointly and severally a sum of Rs. 880/- which was deducted by the Authorities out of the deposited amount from the date of deposit till realisation and further ordered the organisation to pay a sum of Rs. 500/- as compensation and a sum of Rs. 500/- as cost of litigation. The rest part of the impugned order of the learned District Forum is confirmed and does not call for any interference by this Commission.

Let compliance of this order be made within a period of two months from the date of order. Mr. Justice D.M. Patnaik, President-I agree. Dr. Arati Mohanty, Member-I agree. Appeal partly allowed.

