
(2016) 09 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

Case No : 2931 of 2008

PIONEER CO-OPERATIVE HOUSING SOCIETY LTD.

APPELLANT

Vs

WAMAN ZIBAL KALODE THROUGH LRs

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Citation : (2016) 09 NCDRC CK 0044

Hon'ble Judges : B.C. Gupta

Advocate : A.P. Girhe, B.Z. Kalode

Judgement

1. This revision petition has been filed by the opposite party (OP) Pioneer Cooperative Housing Society, challenging the impugned order dated 18.6.2008, passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (hereinafter referred as "State Commission"), in Appeal No.443/2007, vide which, while dismissing Appeal, the order passed by the District Consumer Disputes Redressal Forum, Nagpur on 26.2.2007 was confirmed.

2. The factual matrix of the case says that the complainant/respondent who is now being represented by his legal representatives, filed consumer complaint no.367/2003 before the District Forum, Nagpur, in which he stated that he became a member of the petitioner Society during the year 1978-79 and paid a sum of Rs.5454/- to them from time to time for full cost of the plot, measuring 2400 sq. ft.. However, on failure of the said Society to provide him the plot, he filed the consumer complaint in question, seeking directions to the Society to allot a plot to him, or to refund the amount of Rs.5454/- with interest @ 16% per annum from 17.9.1977 till realization and also to grant him compensation of Rs.1 lakh for mental harassment and Rs.5,000/- as cost of litigation. In their reply filed by the Society, it was stated that despite sending him written notices for payment of balance amount, time and again, the complainant failed to pay the balance amount of the plot, following which the said plot was cancelled.

3. The District Forum after considering the averments of the parties, directed the OP Society, vide impugned order dated 12.7.2004, as follows:

1. The non-applicant be directed to give plot of his Kakde Layout of 2400 Sq. Feet and execute the sale Deed and hand over the possession;

OR

The non-applicant is directed to refund the amount of Rs.5454/- taken from the complainant and on the said amount, from 17.9.1977, pay interest at the rate of 9% per annum by the non-applicant to the complainant till compliance of the order."

4. It is the case of the OP Society that since no plot was available for allotment to the complainant and also, since he had not paid the dues to them, the Society complied with the latter part of the order of the District Forum and refunded the amount, as directed by them to the complainant on 16.9.2004. Since the complainant did not accept the said amount, the same was deposited with the District Forum, Nagpur and hence, the OP had fully complied with the order of the District Forum. On the other hand, the complainant filed a miscellaneous application No.2641/2006 before the State Commission for amendment, which was rejected vide order of the State Commission dated 20.11.2006, stating that the complainant could file execution petition in the order passed by the District Forum. The complainant then filed execution application no.164/2006, which was decided by the District Forum, vide order dated 28.2.2007, in which it was stated as follows:

1) The non-applicant/org. opposite party is hereby directed to execute the sale deed of plot admeasuring 2400 sq. ft. situated in Kukde lay out and hand over its possession to the appellant.

2) The non-applicant/org. opposite party is hereby directed also to pay an amount of Rs.1,000/- towards cost of this execution proceeding to the applicant.

3) The non-applicant/org. opposite party shall comply the above order within 30 days from the date of receipt of this order"

5. Being aggrieved against the said order of the District Forum, the OP Society challenged the same by way of Appeal No.443/2007 before the State Commission and the said appeal having been dismissed, vide impugned order dated 18.6.2008, the OP Society is before this Commission by way of the present revision petition. It was stated by the learned counsel for the petitioner during arguments that the plot in question had been cancelled, because of non-payment of the balance amount on the part of the complainant. The learned counsel also stated that the complainant had submitted an affidavit dated 6.5.1979 before them, stating that if he failed to pay the amount or if he prolonged the payment as asked for by the Society, the Society was free to allot the same to any other member. The learned counsel for the respondent, however, stated that the orders passed the fora below were in accordance with law and should be upheld.

6. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

7. It is clear from record that while passing the order dated 12.7.2004 in C.C. No.367/2003, the District Forum had given two options - either to deliver the plot to the complainant, or to refund the money with interest. The basic point for consideration in the matter is that when two alternatives are given in the order passed by any authority, is it the discretion of the OP to choose one of the alternatives, OR is it the sweet-will of the complainant to get enforced any of such alternatives. At the time of execution, the learned consumer fora below held that it was the right of the consumer to choose from the alternatives given, as to which course of action was beneficial to him. I, however, do not find any justification to agree with the contention of the consumer fora below in this regard. A plain perusal of the order dated 12.7.2004, passed by the District Forum reveals that they directed the OP to give a plot of 2400 sq. ft. and execute the sale deed, OR to refund the amount taken from the complainant alongwith interest. In such a situation, it is a matter of common prudence that the discretion lies with the OP to choose any of the alternatives. In case, it is so stated in the order that OP shall proceed as per alternative no.1 and on his failure, to do so, he shall follow alternative no.2, the situation would be totally different. In the present case, no such conditions was there and hence, it is clear that it was within the discretion of the OP to choose any of the alternatives. The case of the OP /petitioner Society is that since they had no plot available with them, they decided to refund the amount in question and they sent the requisite amount to the complainant. However, on his failure to accept the said amount, the money was deposited with the District Forum. It is very clear, therefore, that the petitioner Society have ensured compliance of the order, passed by the District Forum. The impugned orders passed by the State Commission and the District Forum in the execution petition are therefore, perverse in the eyes of law and the same are ordered to be set aside. It is held, that there is no deficiency in service on the part of petitioner, since they have already complied with order dated 12.7.2004. In case, the said amount is still lying deposited with the District Forum, the same be sent to the complainant after taking proper receipt. It is made clear that the complainant would not be entitled to get any further interest from the date of payment. This revision petition is therefore, allowed and the orders passed by the consumer fora below are set aside. There shall be no order as to costs.