

(2008) 02 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

PRAVEEN BALWADA

APPELLANT

Vs

CHAIRMAN STATE BANK OF INDIA

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Citation : 2008 2 CPJ 82

Hon'ble Judges : G.D.Sharma , Khalid Hussain J.

Advocate : N.A.Chaudhary

Judgement

1. -THE complainant in this case is a Doctor by profession and is a public servant serving in the Jandk Animal Husbandry Department. The OP had advertised the allotment of Housing plots in Housing Colony Channi Rama, Jammu. The complainant accordingly applied after obtaining application form No. 630 which was accompanied by a deposit of Rs. 36,000. Thereafter, a lucky draw was drawn in favour of the applicants and the complainant's name figured in the said draw under the "lucky Draw Scheme" and vide their office communication No. HB-CR-4707-08 dated 7. 2. 2000 he was informed that plot No. 187 measuring 30 ft x 60 ft in Housing Colony Pragati Vihar, Channi Rama, Jammu, was allotted in his favour. In pursuance of the terms and conditions of the offer he deposited a total amount of Rs. 2. 40 lakh as per the prescribed mode within the stipulated time but was denied the handing over the possession of the plot. The last instalment of Rs. 18,000 towards the final payment was paid by him on 10. 2. 2004. He personally visited the office of the OP many a times and made fervent requests which were followed by entreaties but all had been falling flat into deaf ears of the concerned officials with the result that he was left high and dry. Faced by such a non-cooperative attitude shown by the OP, finally on 23. 2. 2006, he filed the complaint herein and claimed the following reliefs: (i) handing over the vacant possession of the allotted plot in his favour, (ii) interest at the rate of 36% per annum which he had calculated upto Rs. 1. 92 lakh till February 2006. (iii) Rs. 3 lakh were claimed as escalation charges on the cost of the construction. (iv) Compensation in the sum of Rs. 2 lakh for physical and mental torture.

2. IN the written version, the OP has taken the preliminary objection regarding the maintainability of the complaint on the plea that allegations made therein are false and frivolous. It is also pleaded that officials of the OP have been working in the interest of the public in a public office and in the discharge of these functions on personal interest is involved and as such no question of any deficiency in service could arise. It is also pleaded that the possession of the plot could not be given to the complainant due to some unavoidable circumstances regarding which status report on priority basis had been called from the concerned Deputy General Manager. That as soon as that report could be received the possession would be handed over to the complainant. The delay which was caused in handing over the possession was due to unavoidable circumstances beyond the control of the OP. On facts, the above stated pleas were reiterated with an additional plea that the complainant could claim only possession which would be handed over after receiving the status report from the concerned Deputy General Manager. In support of the complaint, the complainant has appeared as his own witness and the OP has examined Mrs. Frahat Qureshi, Secretary Jandk Housing Board. The complainant in his deposition given on affidavit has corroborated the allegations made in the complaint. In his cross-examination, nothing could be elicited by the OP to discredit his deposition. Mrs. Frahat Qureshi in her deposition made on affidavit has pleaded that while seeking the status report from the concerned Deputy General Manager some time was consumed and that as soon as that report was received from the Deputy General Manager it was found that a small portion from the location of the allotted plot had become disputed and again the report was sought from the concerned Deputy General Manager along with the original record and layout plan to verify the status on the spot. For this reason, the possession could not be handed over to the complainant and the matter would be settled at the earliest after receiving the required papers from the concerned Deputy General Manager. The witness had appeared in the Commission to depose in the case on 8. 11. 2006 and on that day in her cross-examination had admitted that matter was still under process.

Heard the arguments.

3. THE complainant has urged that after getting all the formalities fulfilled on 10. 2. 2004 from him, the OP owed him a legal duty to hand over the vacant possession of the vacant plot but he failed to discharge that responsibility as no plot was given within a reasonable time till date. The learned Counsel appearing for the OP has admitted the receipt of the required amount from the complainant but has pleaded that the possession could not be given to him because of some dispute which had arisen on spot which has to be verified and thereafter possession shall be handed over. He seeks further time to do the needful. His further contention is that when the complainant has claimed for the possession of the plot, he cannot claim the interest on the deposited amount as well as the escalation cost of the construction. There was no contract or understanding with the complainant regarding the construction and in case he is satisfied to get the deposited amount back then the OP is ready to pay him the interest and the

Hon"ble Commission is within Power to consider whether any escalation in the price of construction can be given or not. That the claim of compensation is highly exaggerated which cannot be given in the circumstances of the case. Concluding his arguments, he contended that delay in handing over the possession has been willful actuated with mala fide intention but beyond the control of the OP. In rebuttal, the complainant has not agreed for the refund of the deposited amount along with the interest accrued thereon but insists that he may be given the possession of the plot in the same locality of the same size which had been allotted to him in case there is some real practical difficulty in handing over the possession of the allotted plot in his favour.

4. WE have considered the respective contentions of the complainant and the Counsel of the OP as well as gone through the record. The only dispute in this case is regarding the handing over of the possession of the allotted plot to the complainant and the plea raised by the OP is that it was not within their control to hand over the possession within a reasonable time after the fulfillment of all the required formalities due to circumstances which were beyond their control. From the perusal of the record, it has transpired that as per the version of Mrs. Frahat Qureshi, Secretary of the OP, the matter was in the process of handing over to him the possession even at the time when she gave her testimony on 18. 11. 2006. We have failed to understand why the possession has not been given to the complainant till today, when the intervening gap has elapsed for more than one year. This shows that it is a case of gross negligence on the part of the OP to provide the complainant the service of handing over the possession of the plot and because of this conduct he has to face in future the escalation in the cost of construction. He has become a victim of the indolent behavior of the concerned officials of the OP to undergo the miseries which could be avoided had those officers discharged their duties faithfully and diligently. Taking stock of all the facts and the attending circumstances of the case, We allow the complaint and direct the OP to hand over the vacant possession of the Plot No. 187 measuring 30 ft x 60 ft in Housing Colony Pragati Vihar Channi Rama, Jammu, to the complainant within two months from today failing which they shall be liable to pay compensation for physical, mental and financial injuries caused to him in the past to the tune of Rs. 50,000 which amount shall increase at the rate of Rs. ten thousands per month for future negligence till the compliance of the order is shown. Litigation charges of the complaint are awarded in favour of the complainant to the tune of Rs. 4,000. File after due completion be consigned to the records. Complaint allowed.