
(2001) 03 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

PUNJAB STATE, MINISTRY OF URBAN DEVELOPMENT
DEPARTMENT

APPELLANT

Vs

KRISHAN JOSHI

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Citation : 2001 1 CPC 569 : 2001 2 CPJ 519

Hon'ble Judges : H.S.Brar , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal dismissed

Judgement

1. BRIEF facts as stated in the complaint are that the complainant had applied for an allotment of a plot in Urban Estate, Jalandhar in the year 1971. In pursuance of an advertisement made by the opposite parties, the complainant had deposited earnest money of 1,500/- on 15.11.1971 and was allotted registration number. However, the plot was not allotted to him. On 5.3.1974, the opposite party No. 2 had asked for the option of the complainant to give plot on priority basis, if he could make lump-sum payment of the balance price. The complainant gave his option and informed the opposite parties that he was willing to pay the balance price in lump-sum, but no plot was allotted to him. On 15.8.1983 again the opposite parties offered to allot a plot at Jalandhar to those, who had not been allotted any plot at any place and accordingly the complainant applied for the allotment of plot measuring 400 sq. yards and deposited a sum of Rs. 6,500/- as earnest money and also completed all the formalities for allotment. It is further stated in the complaint that the complainant was assured that the opposite party was going to make some residential colony at Jalandhar. But according to the complainant no such plot had been allotted to him. According to the complainant he was refunded a sum of Rs. 8,000/- which was sent to him vide cheque dated 28.8.1996 by a covering letter dated 27.1.1997; but this act of the opposite parties was highly belated and it had caused great mental torture and had completely upset the planning of the complainant for future settlement in the life. It was prayed in the complaint that direction be issued to the opposite parties to allot him one canal plot in the area of Urban

Estate, Jalandhar and to pay damages to the tune of Rs. 5 lacs, besides interest @ 24% per annum on Rs. 8,000/- from the year 1971.

2. ON notice being served on the opposite parties, they have taken a preliminary objection wherein it has been stated that mere registration of the application for allotment of a plot did not bring the complainant within the ambit of the definition of a consumer as he was merely an applicant and could not invoke the jurisdiction of the Consumer Protection Act. ON merits, it was admitted that the complainant had applied for plot along with earnest money of Rs. 1,500/- in the year 1971 and that vide letter dated 5.3.1974, the applicant was informed about the policy of allotment in the year 1974 and was asked to give his option; but he failed to give his option for the category in which he would like his application to be considered. It was denied that the complainant had given any option for the allotment of plot on lump-sum payment. It was then stated in the reply that in the year 1981 vide letter dated 10.4.1981 the complainant was informed to give his option regarding the size of the plot as per income criteria; but he again failed to reply and again in the year 1983 the Government revised its policy of allotment, which was published in the newspaper and all the pending applicants were asked to deposit enhanced earnest money as per the size of the plot, which they had opted and the complainant had opted for allotment of plot measuring 400 sq. yards and deposited Rs. 6,500/- on 20.9.1983 through the demand draft. The name of the complainant was put in the draw held on 19.4.1985 for 400 sq. yards in Government Employees" Category; but he was unsuccessful to get the plot. Then the earnest money was refunded to him vide cheque dated 28.8.1996 for Rs. 8,000/- vide letter dated 28.1.1997. It was stated in the reply that the claim of the complainant was absolutely wrong, illegal and unwarranted and there was no deficiency on the part of the opposite parties. Ultimately, a prayer for dismissal of the complaint was made. After hearing the Counsel for the parties and after having gone through the record, the District Forum allowed the complaint partly and directed the opposite parties to pay interest @ 18% per annum on Rs. 8,000/- from 19.8.1985, i.e. after one month of the draw upto 28.8.1996, i.e. when the amount was sent to him by bank draft. Rs. 1,000/- was awarded as cost of the complaint.

It is against this order of the District Forum that an appeal has been filed by the opposite parties.

3. THE main dispute raised by the appellants before us is that the complainant was not entitled to any interest as there was no clause in the advertisement or anywhere else to pay interest to the complainant for the amount deposited by him as earnest money for getting the plot allotted. Learned Counsel has cited II (1997) CPJ 8 (SC)=1997 (2) Apex Court Journal 64 (SC), Haryana Urban Development Authority v. Smt. Nalini Aggarwal. On the other hand, the learned Counsel for the respondent has relied upon I (1994) CPJ 273=1994 (3) CPR 304, Haryana Urban Development Authority v. Bhagwan Dass; I (1997) CPJ 424=1997 (1) CPR 365, Ghaziabad Development Authority v. Dr. C.M. Pathak and Miss

Sudha Pathak; 1994 (3) CPR 690, Rajasthan Housing Board & Anr. v. Smt. Vajpayee; III (1996) CPJ 197=1996 (2) CPR 375, The Secretary, Pondicherry Housing Board v. D. Paneers R. Paneerselvam; III (1997) CPJ 51 (NC)=1997 (2) CPC 414 (National Commission), C, which have been mentioned by the District Forum in its order also to substantiate his argument that when once the complainant was unsuccessful in the draw of lots, it was then the duty of the opposite parties to return the earnest money to the complainant immediately or within a reasonable period of time.

4. HEARD. Admitted position in the case is that the draw of lots was held on 19.4.1985 in which the complainant remained unsuccessful. The opposite parties had sent the earnest money to the complainant through cheque dated 28.8.1996, which was sent to the complainant vide letter dated 28.1.1997. The complainant was entitled to refund of his earnest money on 19.4.1985 when he remained unsuccessful in the draw. This long delay of about 12 years in sending earnest money to the complainant is certainly a deficiency in service on the part of the opposite parties. It has been so held in a catena of authorities mentioned in the order of the District Forum itself. The other relevant authority of the Hon"ble National Commission is II (1997) CPJ 91 (NC)=1997 (2) CPC 80, The Estate Officer, PUDA v. Jaspal Singh Dara, wherein it is ruled that if the earnest money is not refunded immediately or within a reasonable time then there was deficiency in service and compensation for the loss or injury suffered by the complainant could be granted by the Consumer FORA. The authority (Smt. Nalini's case, supra) cited by the learned Counsel for the appellants is not applicable to the facts of this case. In that case, the respondents were unsuccessful in the lots drawn on June 7, 1994 and earnest money deposited by them was refunded on July 20, 1994, i.e. within one month. It was in these circumstances, it was held that the respondents in that case were not entitled to the payment of interest for the period during which the deposit was lying with the Authority. No rule was made by the Hon"ble Supreme Court that in any case the complainant shall not be entitled to interest or compensation even if there was a long delay of 12 years in this case for refunding the earnest money by the opposite parties. The following observations of the Hon"ble Supreme Court in Nalini's case (supra), need attention : "It is true that there was an interlude of around one year between the date of calling applications and the date of draw of lots. It is obvious that the draw of lots was delayed due to administrative exigencies and not on account of any mala fide action of any individual; nor is there any absolute indifference on the part of the appellant in not drawing the lots. However, it is made clear that the appellant being a statutory authority is expected to perform its duties as expeditiously as possible and have the actions taken quickly."

In the case in hand, the opposite parties have not performed their duties as expeditiously as possible and their actions were also not quick. They had taken more than 12 years in refunding the earnest money to the complainant.

5. THE Consumer FORA did not modify the terms of the contract between the parties that no interest was payable on the earnest money deposited; but awarded compensation in the form of interest for the deficiency in service and it is established in the case in hand that the opposite parties were deficient in service in not refunding the earnest money back to the complainant within a reasonable time. In these circumstances, we are reluctant to upset the order of the District Forum. Consequently, this appeal is dismissed and the order of the District Forum is affirmed. Appeal dismissed.