

(2009) 02 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

Punjab Urban Planning And Development Authority And Anr.	APPELLANT
Vs	
Shyam Sunder Tiwari And Ors.	RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Citation : 2009 2 CPJ 276

Hon'ble Judges : ASHOK BHAN , B.K.TAIMNI J.

Advocate : NIDHI TIWARI , RACHNA JOSHI ISSAR

Judgement

1. THESE 16 revision petitions arise from an order dated 15.2.2005 passed by the State Commission dismissing the appeals filed by the petitioner who was the opposite party before the District Forum where the respondents/complainants had filed separate complaints alleging deficiency in service on the part of the petitioner.

2. UNDISPUTED facts of the case are that in response to an advertisement floated by the petitioner, the respondents/complainants applied for allotment of 500 sq. yards plots in SAS Nagar, Mohali. The price fixed was Rs. 3,744 per sq. yard. The complainants deposited the earnest money for allotment of the plot in early 2002. As per the regulation of Punjab Urban Planning and Development Authority (PUDA), if the applications were more than the number of the plots available then the allotment was to be made on the basis of draw of lots, which in this case was not done on administrative grounds and ultimately the scheme was withdrawn on 28.8.2002. The earnest money was refunded to the complainant on 3.10.2002 or throughout. But no interest was paid on the earnest money. It is in these circumstances, alleging deficiency in service on the part of the petitioner, the respondents/complainants filed separate complaints before the District Forum, where matter was contested by the petitioner. The District Forum allowed the complaints and directed the petitioner to pay interest in terms of the amount mentioned in their order to the respondent / complainant. Aggrieved by this order, the petitioner filed an appeal before the State Commission, which was dismissed hence these revision petitions before us.

3. NOTICE was issued to the respondents / complainants but none appeared, hence the case is proceeded ex parte against them. . We heard the learned Counsel for the petitioner and perused the material on record. The learned Counsel for the petitioner also filed a copy of the interim order passed by the Hon"ble Supreme Court of India, in Special Leave Petition (Civil) No. 10581/2003 arising from a order dated 18.2.2003 passed by the High Court of Punjab and Haryana. The order passed by the Hon"ble Supreme Court reads as under: "Heard learned Senior Counsel for the petitioners. Leave granted. In the meantime, the operation of the impugned order of the High Court shall remain stayed on the condition that the petitioners shall refund the earnest money in accordance with the scheme as provided under the heading Refund of Earnest Money" with interest at the rate of 10% per annum w.e.f., 181st day of the deposit if not already paid. This direction is subject to the final decision of the case."

4. THIS order becomes germane for the simple reason that the District Forum has relied upon the judgment of the High Court of Punjab and Haryana, which is the subject matter of the challenge before the Hon"ble Supreme Court of India.

5. LEARNED Counsel for the petitioner also wishes to rely upon the conditions of the scheme with regard to refund of earnest money, which reads as follows: "REFUND OF EARNEST MONEY - 1. In case an applicant asks for refund before draw of lots, refund shall be allowed after deducting the processing fee of 500. A successful applicant may also apply for and obtain refund by applying to Estate Officer, PUDA, SAS Nagar within four weeks of the. draw, subject to deduction of 10% of the application/earnest money.

2. The unsuccessful applicants shall be refunded their earnest money after 90 days from date of draw. However, interest @ 10% p.a. shall be allowed for the period beyond 181st day in case refund is made after 180 days."

6. IT cannot be disputed that when the respondents/complainants applied for allotment of plot it was, in terms" of the scheme, floated by the petitioner (PUDA) and it is not in dispute that the terms and conditions of allotment contained provision with regard to the refund of earnest money, which would be deemed to be within the knowledge of the respondents/complainants. Two points are important in this regard, firstly, that the respondent would be entitled to refund the earnest money along with interest @ 10% p.a. and secondly, interest would start accruing from the expiry of 180 days. In our view, the State Commission has not properly appreciated the terms and conditions of the refund of earnest money. It is also an admitted position of law that the Courts cannot add anything or improve upon the terms of contract between the parties, which in this case was the terms outlined in the brochure, in view of the we are unable to sustain the order passed by the State Commission, which is modified to the extent that the petitioner shall be liable to pay interest @10% p.a. from the 181st day of the respective date(s) of deposit, along with cost as imposed by the District Forum.

7. SINCE none is present on behalf of the respondents /complainants, no order as to costs.

8. ALL the revision petitions stand disposed of in above terms. R.P. disposed of.