

(2015) 07 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

Case No : 4338 of 2014

RAJASTHAN HOUSING BOARD & ANR

APPELLANT

Vs

GYAN SINGH; RAJASTHAN HOUSING BOARD

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Citation : (2015) 07 NCDRC CK 0064

Hon'ble Judges : K S Chaudhari

Advocate : V K Garg, Milind Kumar, Noopur Dubey, Harsha Vinoy, S N Bohra, Ashwani Bohra

Final Decision : Petition allowed

Judgement

K.S. Chaudhari, Presiding Member

[1] This revision petition has been filed by the petitioners against the order dated 23.9.2014 passed by the Rajasthan State Consumer Disputes Redressal Commission, Bench No. 1, Jaipur (in short, "the State Commission") in Appeal No. 32/2013 Rajasthan Housing Board Vs. Gyan Singh by which, while dismissing appeal, order of District Forum allowing complaint was upheld.

[2] Brief facts of the case are that Complainant/respondent submitted application along with draft of Rs.1,80,000/- with OP/petitioner for allotment of flat in higher income group, 2nd category in Mewar Apartment, Haldi Ghati Marg, Pratap Nagar, Jaipur scheme. Approximate cost of the flat was Rs.17,90,000/-. In the draw, complainant was declared successful and OP issued allotment letter dated 22.10.2008 and in pursuance to allotment letter, complainant deposited total amount of Rs.17,90,000/- including interest on delayed payment. As per allotment letter, possession was to be given within a period of 30 months, but construction was not completed in 30 months. It was further submitted that possession letter was given to complainant on 30.6.2011 and by that letter OP demanded Rs. 1,96,215/- which was also deposited under protest, though, at the time of issuing letter, OP had not carried out work of electricity, road, park,

parking, etc. It was further submitted that OP also demanded additional charge of Rs.97,225/- for parking, though, it was included in the construction cost of flat. Alleging deficiency on the part of OP, complainant filed complaint before District forum. OP resisted complaint and admitted issuance of allotment letter, possession letter and depositing amount by complainant. It was further submitted that delay of 2 months and 8 days was unavoidable, but as per terms of the booklet 6% interest has already been paid to the complainant. It was further submitted that in application booklet only estimated cost of flat has been mentioned and it was further mentioned that final cost of flat shall be ascertained later on and no dispute regarding it will be considered. It was further submitted that parking charges were taken as per Board's Cost Rule 2010. It was further submitted that other necessary facilities have been provided and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP to pay interest @ 15% p.a. on Rs.17,90,000/- from 30.3.2011 to 30.6.2011 and further directed to refund Rs.97,225/- along with 15% p.a. interest and further directed to pay interest @ 10% p.a. on Rs.19,86,215/- from 30.6.2011 till providing all the facilities and further awarded compensation of Rs.50,000/- and litigation cost of Rs.3,000/-. Appeal filed by OP was dismissed by learned State Commission against which, revision petition was filed before this Commission and this Commission vide order dated 7.8.2013 remanded back the matter to learned State Commission. Learned State Commission again vide order dated 16.9.2013 dismissed appeal. This Commission vide order dated 26.5.2014 again remanded matter back to learned State Commission and learned State Commission vide impugned order again dismissed appeal against which, this revision petition has been filed.

[3] Heard learned Counsel for the parties and perused record.

[4] Learned Counsel for the petitioner submitted that inspite of no liability to pay interest @ 15% per month on account of delayed delivery of possession and inspite of charging cost of parking space as per rules and providing all the formalities, learned District forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside. On the other hand learned Counsel for the respondent submitted that till now facilities mentioned in the booklet have not been provided and cost of parking space was already included in the cost of construction, order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

[5] Learned District Forum allowed interest @ 15% p.a. on Rs.17,90,000/- from 30.3.2011 to 30.6.2011 on account of delayed delivery of possession. Admittedly, possession was to be given by 22.4.2011 and possession was given on 30.6.2011 meaning thereby, there was delay of 2 months 8 days instead of 3 months in giving possession. It is not disputed that OP has already made payment of interest @ 6% p.a. for a period of 2 months 8 days as per terms and conditions of application booklet, Complainant was not entitled to interest @

15% p.a. on account of delayed delivery of possession merely on the ground that OP was charging this rate of interest on delayed payment. Once parties have agreed to terms and conditions of booklet they are bound by that and OP rightly allowed 6% p.a. interest for delayed delivery of possession and learned District forum has committed error in allowing 15% p.a. interest for a period of 3 months whereas there was delay of only 2 months 8 days. Learned State Commission further committed error in upholding this finding and in such circumstances, this direction is liable to set aside.

[6] Learned Counsel for the petitioner submitted that Rs.97,225/- was rightly collected by petitioner on account of stilt parking as per Principles of Costing-2010 issued by petitioner which are applicable from 1.6.2010 on all pending cases as on 1.6.2010 and new cases received after this date. Admittedly, possession was given on 30.6.2011 and in such circumstances; these principles were applicable for ascertaining cost of the flat. As per clause 12.5 of these principles, 5% of the cost of flat for stilt parking was to be charged and OP has charged 5% of the cost for stilt parking provided by OP to the complainant. Learned Counsel for the respondent submitted that as per booklet, parking was to be provided and as per RTI information, cost of parking was included in construction cost. Perusal of booklet reveals that in this scheme, proper parking facility was to be provided. Nowhere it has been mentioned that free of charge parking was to be provided and as per Principles of Costing-2010, 5% of the cost of flat is to be charged for stilt parking and 2.5% of the cost of flat for temporary structure. When there was no provision for providing free stilt parking, OP had every right to collect cost of stilt parking which has been fixed 5% of the cost of flat. In allotment letter dated 30.6.2011 it has also specifically been pointed out that parking shall be charged @ 5% for stilt parking and 2.5% for outer parking of cost of flat at the time of possession and in such circumstances, demand of amount for parking facility cannot be said to be unreasonable. Learned Counsel for respondent has drawn my attention towards RTI information dated 12.8.2011 in which in reply to Question No. 7 it was stated that cost of basement parking, guard, society room and common hall is included in structure and finishing of Block-B. Merely on the basis of reply to Question No. 7 under RTI Act, it cannot be held that no separate charges were to be collected for parking whereas, as per Principles of Costing-2010 different rate of cost of the flat was to be charged for different type of parking. In such circumstances, learned District forum committed error in allowing refund of parking charges with interest and learned State commission also committed error in upholding this order.

[7] As far refund of Rs.1,96,215/- as demanded by allotment letter dated 30.6.2011 is concerned, learned District Forum has held that this demand is not unreasonable and has declined prayer of the complainant and no appeal has been filed against rejecting this relief which has attained finality.

[8] Learned District Forum directed OP to pay interest @ 10% p.a. on Rs.19,86,215/- from 30.6.2011 till providing all amenities and facilities and

further directed to pay Rs.50,000/- on account of mental agony. Learned Counsel for the petitioner submitted that most of the facilities have already been provided at the time of handing over possession and some facilities have been provided later on whereas learned Counsel for the respondent submitted that till so far most of the facilities have not been provided. Learned Counsel for the respondent has drawn my attention towards many RTI information from 9.9.2011 to 11.2.2015 in which it has been mentioned that in that scheme work is in progress regarding electricity, road, drainage, etc. Perusal of these information also reveals that allottees have already been provided temporary electricity connection and tenders have been invited for street light and power back up facility. It also further reveals that construction of GSS for supply of electricity had already been completed by 12.9.2012 which is in operation from 31.10.2012. It appears that there was delay in completing roads and providing street light, though, electricity had already been supplied by temporary connection. As per booklet for registration this scheme was to provide shopping centre and other commercial facilities, land scapping and jogging track which have not been completed so far. When these facilities were part of this scheme on the basis of which applicants applied for allotment of flat it was obligatory on the part of OP to provide all these facilities at the time of handing over possession of flat. When these facilities have not been provided complainants are required to be compensated by suitable compensation, but certainly not by directing OP to pay interest @ 10% p.a. on deposited amount.

[9] Hon"ble Apex Court in Bangalore Development Authority Vs. Syndicate Bank, 2007 6 SCC 711 has observed that compensation can be granted where complainant has alleged and proved that there has been any negligence, shortcoming or inadequacy on the part of the developing authority in the performance of the functions or obligations in regard to delivery and when the allottee has been subjected to avoidable harassment and mental agony. Admittedly, so far as there is no shopping centre or commercial facilities in the scheme and learned Counsel for the petitioner could not place any document on record to substantiate that there was land scapping and Jogging track as promised in the booklet of the society even after lapse of 4 years from the date of handing over possession, I deem it appropriate to allow compensation of Rs.1,00,000/- to the respondent instead of order allowing 10% compensation from 30.6.2011 on deposited amount till providing all facilities along with Rs.50,000/- for mental agony and to this extent aforesaid direction of District Forum is to be modified. Learned District forum committed error in allowing interest as well compensation and learned State Commission further committed error in upholding order of District forum.

[10] Learned Counsel for the respondent has placed reliance On (NC) Emaar MGF Land Pvt. Ltd. & Anr. Vs. Krishan Chander Chandna, 2004 4 CPJ 589 in which damages @ Rs.5,00,000/- were awarded as builders inspite of receiving full consideration had not delivered possession of the property to the allottee. This citation is not applicable to the facts and circumstances of the present case as in

the present case possession has already been delivered after 2 months 8 days for which interest has been paid to the complainant as agreed. He also placed reliance on judgment of this Commission in (NC) George Thomas & Ors. Vs. Ghaziabad Development Authority & Ors., 1999 1 CPJ 18 in which amount was refunded with 18% p.a. interest as possession was not given as per scheme as scheme was given up. This judgment is not applicable in the case in hand because possession had already been handed over after 2 months 8 days. He also placed reliance on judgment of this Commission in (NC) Anoop K. Joshi Vs. Ansal Properties & Industries Ltd., 2007 4 CPJ 79 in which on account of failure in providing lift upto 6th floor complainant was held not liable to pay interest for delayed depositing amount. In the case in hand as OP has not provided facilities as projected in the brochure he is entitled to some compensation. He also placed reliance on judgment of Hon"ble Apex Court in (SC) Haryana Urban Development Authority Vs. Rajnish Chander Sharde, 2000 3 CPJ 8 in which award of 18% interest till delivery of possession of plot was upheld but this case is of no help to complainant as interest has been paid by OP as per agreement.

[11] In the light of aforesaid discussion, it becomes clear that complainant is entitled to Rs.1,00,000/- as compensation from OP for not providing facilities as projected in the booklet and other reliefs granted by District forum are liable to set aside.

[12] Consequently, revision petition filed by the petitioner is partly allowed and impugned order dated 23.9.2014 passed by learned State commission in Appeal No. 32 of 2013 - Rajasthan Housing Board Vs. Gyan Singh and order dated 5.12.2012 passed by District Forum in Complaint No.787 of 2012 Gyan Singh Vs. Rajasthan Housing Board & Anr. is partly modified and OP is directed to pay Rs.1,00,000/- to the complainant as compensation within a period of 30 days failing which OP will be liable to pay 12% p.a. interest till payment along with cost of Rs.3,000/- awarded by District forum and rest of the directions regarding refund of Rs.97,225/- and interest on different amounts is set aside. Parties to bear their own costs.