(2001) 02 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

RAKESH KUMAR APPELLANT

Vs

HOUSING COMMISSIONER, U.P. HOUSING AND DEVELOPMENT BOARD RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Citation : 2001 3 CPJ 35

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Complaint allowed

Judgement

1. THIS complaint has been filed for directing the opposite party, U.P. Housing and Development Board for giving physical possession of allotted Plot No. B-536/2, situated in Kamla Nagar, Agra and a sum of Rs. 50,000/- has been prayed on account of mental torture. It has also been prayed that if the possession of the above mentioned plot cannot be delivered then a similar plot be allotted in the same locality of the same area and the possession of it be given immediately. It is further prayed that if the above mentioned reliefs are not granted then the complainant should be awarded a sum of Rs. 2,04,000/- as loss on account of business, damages of Rs. 72,000/- on account of present cost of the plot and for interest at the rate of 10% per annum compoundable with quarterly rest.

2. THE facts of the case stated in brief are that on 11/12.8.1978 the opposite party, Awas Vikas Parishad, Agra auctioned a commercial plot in the residential colony, Kamla Nagar, Agra. By letter dated 14.9.1978 the complainant was informed that he has been allotted a commercial plot No. B-536/2, on account of highest bid of Rs. 281/- per square metre and the same has been accepted. THE area of the plot was 60 square metres. THE copy of letter is on record as Annexure-1. It has further been mentioned that the entire amount of Rs. 16,807/- was to be paid out of which 20% of the same amounting to Rs. 3,428/- was paid at the time of auction and rest of the 50% amount was to be deposited in 48 equal instalments with 15% per annum interest, the copy of which is

Annexure-2. THE complainant had paid the amount but inspite of lapse of 9 years the possession has not been delivered so far. The complainant was also asked to submit a site plan for construction in the land in dispute which he submitted on 3.9.1984. The site plan has not been returned so far after approval. The complainant has been writing consistantly to the opposite party for delivery of the possession of the plot in dispute but the same has not been done. The site plan has also not been approved so far. The copy of letter is Annexure-3. By letter dated 13.6.1985 the complainant was informed by the opposite party that an area of 9 square metres has been encroached upon and if the complainant wants to take the possession of 51 square metres of plot then the same can be given to him and the site plan will be amended accordingly. It was further informed that the proceedings for getting encroachment removed are pending. A letter was also written to the Senior Superintendent of Police for getting the encroachment removed but nothing has been done so far. The complainant wrote several letters and met the officers concerned but to no effect and the possession has not been delivered so far.

A preliminary objection/written statement was filed by the opposite party alleging therein that the complainant is not a consumer, hence he cannot file the present complaint. The State Commission is not competent to hear this complaint which can only be filed before the Civil Court because the provisions of specific performance of contract are involved. It is further alleged that the case relates to immovable property, therefore, the case can be proceeded in the Civil Court.

3. IT has further been alleged that on account of the negligence of the complainant, 9 square metres of land has been encroached upon because the complainant did not take possession of the plot in dispute. If the area of the plot is less, then he can take back the amount along with 6% per annum interest. The parties filed evidence in support of their respective contentions. We have heard the learned Counsels for the parties and have perused the papers on record.

4. A perusal of the file will go to show that the allotment in the present case of the plot was made in the year 1978. The complainant had deposited all the amounts which were due to him. According to the complainant, the plot was sold in auction for a sum of Rs. 16,807/-. When the entire amount had been deposited by the complainant by 10.7.1982, it was the duty of the Avas Vikas Parishad to handover the possession of the plot in dispute immediately after completion of the formalities. There is no paper on record to suggest that the Awas Vikas Parishad ever issued any letter to the complainant for taking the possession of the plot. Therefore, the contention of the opposite party that the complainant was at fault in not taking possession of the plot in dispute cannot be accepted. It is not possible to believe that a person who had invested the amount for commercial activity in a residential area will not take possession of the plot and will not construct the building for earning his livelihood. The false plea has

been taken by the Avas Vikas Parishad in order to defeat the just claim of the complainant. It was not necessary that the site plan should also be furnished by the complainant for taking possession of the property. Once the possession of the property is taken and the construction is sought to be made only then the site plan is required for submission but here the Avas Vikas Parishad in order to cover up the deficiency, asked for a site plan and in the mean time illegal encroachment of 9 square metres of land was done by a police personnel. He has not been evicted so far. It has been alleged that the proceedings for eviction are being taken but there is no document on record to show as to what proceedings for removal of encroachment of 9 square metres land have been taken by the opposite party. It appears that the officials of the opposite party in collusion with the police officer have given possession to the police officials in an illegal manner in order to deprive the just claim of the complainant. The cost of construction in the mean time has arisen and the complainant has been put to mental tension and torture by the Avas Vikas Parishad since 1978 when the plot was allotted to him and the possession has not been delivered even upto 2001. This shows the carelessness on the part of the opposite party in not handing over of the property to the complainant even after 22 years. The complainant is also entitled for compensation on this account which we assess at Rs. 1,50,000/- for the period for which the complainant has been deprived of the possession and the amount retained by the Avas Vikas Parishad. Interest will have to be paid by the Avas Vikas Parishad till the possession of the remaining of the area of the plot is delivered. The learned Counsel for the appellant has argued that interest at the rate of 6% per annum should only be awarded while the learned Counsel for the complainant has argued that interest at the rate of 18% per annum be awarded. Learned Counsel for the complainant/respondent has placed reliance on the case of Dr. Ramesh Chandra Ramaniklal Shah & Ors. v. Lata Construction Company & Ors., I (1996) CPJ 81 (NC), decided by the National Commission. In that case the possession was not delivered within the time given in the agreement. When the house was not delivered in time the National Commission found that there was a deficiency in service on behalf of M/s. Lata Construction Company and awarded interest at the rate of 18% per annum. Similarly the National Commission in the case of George Thomas & Ors. v. Ghaziabad Development Authority, I (1999) CPJ 18 (NC), has held that the possession was not given to the allottee as per the scheme. The option was given by the Ghaziabad Development Authority to the complainant for taking another plot but the complainant did not agree to this proposition. On the basis of these facts, the National Commission held that there was deficiency in service on behalf of the Ghaziabad Development Authority and allowed interest at the rate of 18% per annum because Ghaziabad Development Authority recovers interest at the rate of 18% per annum on defaults on the amounts payable to it. Thus this case law also shows that the interest at the rate of 18% per annum is payable by the Development Authorities. The learned Counsel for the opposite party has also placed reliance on the case of Surendra Kaur v. Government of Punjab & Ors., (1998) 9 Supreme Court Cases 592. The Hon''ble Supreme Court has allowed interest at the rate of 18% per annum.

5. WHEN the delay is on the part of the Housing Board, it is liable to pay interest to the complainant for the period during which the amount remained deposited with it. Learned Counsel for the appellant has argued that the interest awarded at the rate of 18% per annum is on the higher side and has placed reliance on the case of Ghaziabad Development Authority v. Union of India & Ors., II (2000) CPJ 1 (SC)= IV (2000) SLT 654=2000 CTJ 205. In this case the Hon''ble Supreme Court has held as under : "WHEN a Development Authority announces a scheme for allotment of plots, the brochure issued by it for public information is an invitation to offer. Several members of public may make applications for availing benefit of the scheme. Such applications are offers. Some of the offers having been accepted subject to rules of priority or preferences laid down by the Authority result into a contract between the applicant and the Authority. The legal relationship governing the performance and consequences flowing from breach would be worked out under the provisions of the Contract Act and the Specific Relief Act except to the extent governed by the law applicable to the Authority floating the scheme. In case of breach of contract, damages may be claimed by one party from the other who had broken its contract obligation in some way or the other. The damages may be liquidated or unliquidated. Liquidated damages are such damages as have been agreed upon and fixed by the parties in anticipation of the breach. Unliquidated damages are such damages as are required to be assessed. Broadly the principle underlying assessment of damages is to put the aggrieved party monetarily in the same position as far as possible in which it would have been if the contract would have been performed. Here the rule as to remoteness of damages comes into play. Such loss may be compensated as the parties would have been contemplated at the time of entering into the contract. The party held liable to compensation shall be obliged to compensate for such losses as directly flow its breach."

6. THE Supreme Court goes to say that "the ordinary heads of damages allowable in contracts for sale of land are settled. A vendor who breaks the contract by failing to convey the land to the purchaser is liable to damages for the purchaser''s loss of bargain by paying the market value of the property at the fixed time for completion less the contract price. THE purchaser may claim the loss of profit he intended to make from a particular use of the land if the vendor had actual or imputed knowledge thereof. For delay in performance the normal nature of damages is the value of the use of the land for the period of delay, viz. usually its rental value". On the question of interest which is to be awarded, the Hon''ble Supreme Court has held that the terms of the brochure issued by the Authority are relevant in a particular case. The Hon''ble Supreme Court has distinguished the case of Sovintorg (India) Limited v. State Bank of India, New Delhi, II (1999) CPJ 4 (SC)=VI (1999) SLT 545=(1999) 6 SCC 406, in which the rate of interest was enhanced to 15% per annum. It was observed as under : "However, in the case before us, the parties have not tendered any evidence enabling formation of opinion on the rate of interest which can be considered ideal to be adopted. The rate of interest awarded in equity should neither be too

high or too low. In our opinion awarding interest at the rate of 12 per cent per annum would be just and proper and meet the ends of justice in the cases under consideration. The provision contained in the brochure issued by the Development Authority that it shall not be liable to pay any interest in the event of an occasion arising for return of the amount should be held to be applicable only to such cases in which the claimant is itself responsible for creating circumstances providing occasion for the refund. In the cases under appeal the fault has been found with the Authority. The Authority does not, therefore, have any justification for resisting refund of the claimants'' amount with interest."

The rate of interest allowed by the Hon''ble Supreme Court was only 12% per annum. That was the interest on the basis of the facts which were placed before the Hon''ble Supreme Court. The Court itself has observed that in that case which was before it, the parties have not tendered any evidence enabling formation of any opinion on the rate of interest which can be considered ideal to be adopted. Thus the case which was decided by the Hon''ble Supreme Court was on facts of that particular case in which the parties did not lead any evidence. The Hon''ble Supreme Court observed that it may come to a definite conclusion on the rate of interest on the basis of peculiar facts of the case.

7. THE facts of the present case are different from the facts of the case decided by Hon''ble Supreme Court. Herein the brochure issued by the Housing Board, provision is there that if the amount is not paid in accordance with the schedule mentioned in the brochure, then the interest for the delayed period shall be charged at the rate of 18% per annum. Thus when the Housing Board is charging interest at the rate of 18% per annum if any delay is made in the payment of instalments, then the same applies to it also. When the Housing Board has made provision for charging penal interest at the rate of 18% per annum on delayed payments, then on principles of equity and law, it is bound to pay interest at the same rate. In case of George Thomas & Ors. v. Ghaziabad Development Authority (supra), the National Commission has held that the interest payable shall be 18% per annum because the development authority is charging the same rate of interest from the allottees in case they fail to pay instalment in time. THE rate of interest payable to the allottees who had deposited the amount for taking the flat from the development authority came before a full bench of Allahabad High Court in the case of Smt. Vrinda Gujrati & Ors. v. Bareilly Development Authority & Ors., 1996 (II) Allahabad Rent Cases 383. In pages 22 and 23 of the judgment, the Hon''ble High Court has held that the persons who have applied for taking a flat, there is a statutory obligation cast upon the Authorities to complete the same within the time schedule mentioned in the offer and if they fail to discharge the same, the affected allottees are entitled for the interest for the delayed delivery of possession, as the allottees have parties with the money which was earning interest. It was also held that the petitioners are entitled to get interest at the rate of 18% per annum for the delayed delivery of possession on the amount deposited by him till the actual date of delivery of possession. THErefore, keeping in view the facts of the case and law applicable

to it as laid down by Hon''ble Supreme Court, it is held that in the present case the rate of interest payable shall be at the rate of 18% per annum. Recently the Hon''ble Supreme Court had an occasion to consider the question of interest in the case of Haryana Urban Development Authority v. Rajnish Chander Sharde, III (2000) CPJ 8 (SC)=VII (2000) SLT 142=JT 2000 (8) SC 154. The short order of the Hon''ble Supreme Court is being reproduced below : "There is no merit in this appeal considering what has been stated by the appellant in its own written statement fixed before the National Consumer Disputes Redressal Commission, we express our surprise that it should have filed this appeal at all. Learned Counsel for the appellant now desires to confine the appeal only to the interest that has accumulated because of the stay order that was passed at the appellant''s instance by this Court. In the order of the National Commission it is stated that the respondent had claimed compensation for having being compelled to live in rented accommodation from 1982 till 1994 at the rate of Rs. 1,600/- per month. Instead of making that award, the National Commission directed the appellant to pay interest at the rate of 18% per annum on the amounts that had been deposited by the respondent from time to time from 1979 onwards till a new plot could be allotted to him and possession thereof could be delivered. Given the facts, we see no justification in interfering with that direction and, consequent upon the dismissal of the appeal and the vacation of the stay order, that direction must now be fully complied with."

Thus, we find that the complainant is entitled for possession of the remaining area of the plot. The complainant is also entitled to refund the cost of an area of 9 sq. mtrs. which has been illegally encroached upon. The complainant is also entitled for a compensation of Rs. 1,50,000/- and this amount is to be paid within a period to be fixed by this Court failing which the interest at the rate of 18% per annum will also be paid on this amount. The complainant is also entitled for the interest at the rate of 18% per annum on the amount deposited by it. The complainant has prayed for interest at quarterly rest which cannot be allowed in the present case, therefore, the simple interest at the rate of 18% per annum is being allowed. The complaint is liable to be allowed. Unpaid cost of Rs. 2,000/- shall also be payable by the opposite party to the complainant. ORDER The complaint is allowed and the opposite party is directed to handover the possession of the 51 sq. mtrs. of commercial plot No. B-536/2, situated at Kamla Nagar, Agra which has been allotted to the complainant and for refund of price of 9 sq. mtrs. area. The complainant shall get interest at the rate of 18% per annum on the amount deposited by him from the date of deposit till the date of handing over of the possession of the plot and refund of 9 sq. mtrs. area. The complainant will also get a compensation of Rs. 1,50,000/-. Let compliance of this order be made within a period of two months failing which the interest at the rate of 18% per annum shall also be payable on the compensation amount of Rs. 1,50,000/- also till the date of possession of the plot. Unpaid cost of Rs. 2,000/- shall also be payable by the opposite party. Let a copy of this order be made available to the parties as per rules. Complaint allowed.

