(1999) 11 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

RAM CHANDRA GUPTA — APPELLANT

Vs

Ghaziabad Development Authority — RESPONDENT

Date of Decision : 18-11-1999

Acts Referred:

Citation : 2000 1 CPJ 387

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

Final Decision : Appeal partly allowed

Judgement

1. BOTH these appeals have been filed by the parties against common judgment and order passed by District Consumer Forum, Ghaziabad in the Complaint Case No. 667/1993. The facts of the case are as under.

2. THAT the complainant/respondent applied for allotment in the Indirapuram Scheme of Ghaziabad Development Authority. The plot of size of 250/- sq. mt. was reserved for the complainant. The complainant deposited the entire price of Rs. 4,20,000/- for the plot alongwith interest on 1.10.1991. Vide letter of allotment dated 19.12.1992 plot No. 1/153 was allotted to the complainant. When the complainant went to the site, it was found that the plots have not even been demarcated and no development work was done at site, such as laying of roads, sewer and water line. Even the layout plan was not given by the appellant to the opposite party. Hence there has been deficiency in service on part of the appellant. Interest @ 18% per annum from the date of deposit till possession of the plot has been charged. An amount of Rs. 1,00,000/- has also been demanded as compensation. Complainant has further alleged that had the plot been allotted, he would not have to pay income tax to Income Tax Department as capital gains taxes. The opposite party has alleged that in the brochure it was mentioned that possession would be given in two years'' time and the price indicated was only estimated one. As the development work could not be completed in time, therefore, the possession will be given only after completion of development and there is no deficiency of service on the part of the appellant.

After considering the evidence on record, the learned District Forum decreed the claim of the complainant and allowed interest on Rs. 4,20,000/- from 1.1.1992 till the date of possession. Interest upto 31.3.1994 was to be paid within one month from the date of allotment. A sum of Rs. 5,000/-was also awarded as damages on account of income tax paid by the complainant. An amount of Rs. 500/- was also awarded as cost of the appeal to the complainant.

3. AGGRIEVED against this order both the parties have come in appeal and have challenged the correctness of the order passed by the District Consumer Forum, Ghaziabad. We have heard the learned Counsel for the parties and have perused the records on file.

4. LEARNED Counsel for the complainant has argued that interest at the rate of 15% has only been allowed by the learned District Forum while interest awarded should have been 18% per annum from the date of deposit of the amount till the date of delivery of possession. There is no scope for deviation in the rate of interest which is to be awarded at the rate of 18% per annum. This question has been decided by the National Commission by the judgment in the case of George Thomas & Ors. v. Ghaziabad Development Authority & Ors., I (1999) CPJ 18 (NC). It was held by the National Commission that the complainants have to be compensated for the loss suffered by them on account of negligence and deficiency in service on the part of the Authority. The negligence on the part of the Authority is very apparent inasmuch as after collecting the required consideration, it neglected the construction of the flats. ...The Authority recovers interest at the rate of 18% per annum on defaults on the amounts payable to it. Therefore, the rate of interest that should be allowed to the complainant must be the same. Thus we find that the National Commission has taken into consideration the rate of penal interest charged by the Ghaziabad Development Authority from the allottee if the amount is not deposited within the time. On the same analogy the National Commission has awarded interest at the rate of 18% per annum. Therefore, the District Forum has committed an error in the awarding interest at the rate of 18% per annum. Learned Counsel for the complainant has further argued that the Ghaziabad Development Authority has deducted a sum of Rs. 33,898/- from the interest payable by the Development Authority on account of income tax. According to learned Counsel for the Ghaziabad Development Authority this plea should be taken in the execution case as the matter has already been taken into consideration by the District Forum in the execution case. On this question we have already held in our order dated 5.7.1999 in the Execution Case No. 4/1998, Sri Bhanu Prakash Dubey v. Ghaziabad Development Authority, that Ghaziabad Development Authority is not entitled to deduct income tax from the interest. Reliance was placed on the case of Delhi Development Authority v. Income Tax Officer, (1995) Taxman Magazine, page 340. In this case it was held that the Authority is not entitled to deduct any amount of income tax. Moreover it may be said that the interest which is awarded by the District Forums and State Commission is in the nature of damages which the party has suffered for deficiency of service on the part of the Development Authority. Therefore, no income tax can be deducted by the

Ghaziabad Development Authority from the interest which is awarded as damages.

5. THE next question raised by the learned Counsel for the complainant is that the complainant had sold his property previously and the sale proceeds were lying with him. THE applicant, according to learned Counsel, has deposited the entire amount of Rs. 4,20,000/- by October 1, 1990. If the possession would have been given as promised in September, 1993, the complainant would not have to pay any amount as capital gains tax to the Income Tax Department, but as the possession was not given as promised in the brochure in 1991, therefore, the complainant had to pay this extra amount of Rs. 95,222/-. According to learned Counsel, this delay is deliberate on the part of Ghaziabad Development Authority and amounts to deficiency in service. Learned Counsel for the complainant could not point to any paper on record to show that this fact was communicated to Ghaziabad Development Authority that if the possession is not delivered within the specified time, then the complainant would have to pay a sum of Rs. 95,222/- as capital gains tax and the liability will be of Ghaziabad Development Authority. Unless this fact is communicated to the Ghaziabad Development Authority, it cannot be said that the Ghaziabad Development Authority is liable to pay this amount on account of deficiency on the part of the Ghaziabad Development Authority in not giving the possession in time. No doubt it is true that the complainant had to pay this amount to the Income Tax Department but unless Ghaziabad Development Authority was intimated of this fact, no liability can be fastened on it.

6. LEARNED Counsel for the Ghaziabad Development Authority has argued that the possession of the plot could not be delivered on account of non-cooperation of the complainant. There is no evidence on record to suggest this inference. As has been seen in the earlier part of the judgment, the complainant had to pay huge amount to the Income Tax Department as capital gains tax as the possession could not be given of the plot in dispute in time. Therefore, it cannot be believed that the complainant would have been guilty of not taking possession within the time as argued by the learned Counsel for the Ghaziabad Development Authority. The possession letter dated 17.5.1997 has been filed but there is no evidence on record to show that the same was served on the complainant. It has further been argued that the possession could not be given in time on account of non-completion of work by the contractor. We are not concerned as to what happened for late handing over of the plot because the contractor is the agent of the Authority and if the contractor has committed any delay in completion of the project, then the Ghaziabad Development Authority cannot take shelter behind it.

Thus we find that the judgment and order of the learned District Forum is correct and requires minor modification in the rate of interest as mentioned in the earlier part of the judgment. Order The appeal is partly allowed.

7. THE complainant will get interest at the rate of 18% per annum instead of 15% per annum as awarded by the learned District Consumer Forum. THE

amount awarded of Rs. 5,000/- as damages on account of payment to the Income Tax Department is set aside. With this modification the judgment and order of the learned District Forum is confirmed. THE cost of Rs. 2,000/- of this appeal shall be payable to the complainant by the appellant, Ghaziabad Development Authority. Let compliance of this order be made within two months from the date of this order. A copy of this judgment shall be placed on records of Appeal No. 1448/SC/1994 and a certified copy of it shall be placed on the records of Appeal No. 1461/SC/1994 which shall also be governed by this judgment. Let copy of this order be made available to the parties as per rules. Appeal partly allowed.