(1992) 11 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

REWA TOWN IMPROVEMENT TRUST APPELLANT

Vs

DILIP ANAND RESPONDENT

Date of Decision : 28-11-1992

Acts Referred:

Citation : 1993 1 CPJ 394

Hon'ble Judges : V.S.Kokje , M.L.Tiwari J.

Final Decision : Appeal allowed with costs

Judgement

1. THIS is an appeal against the decision of the District Forum, Rewa directing refund of an amount of Rs. 3,662/- with interest at the rate of 10% per annum as also expenses incurred in conducting the case before the Forum.

2. THE complainant had registered for allot-ment of a house by Rewa Town Improvement Trust. He deposited a sum of Rs. 50,000/- and thereafter Rs. 1,16,162/-. After some time the complainant withdrew from the scheme and asked for refund of the amount deposited by him. A sum of Rs. 1,57,500/- was refunded to him. According to the complainant a sum of Rs. 3,662/- had been deducted in excess from his amount as according to him only 10% of the amount of Rs. 50,000/- could be deducted. The Rewa Town Improvement Trust in its reply has stated that the sum of Rs. 1,16,162/- deposited by the complainant included Rs. 3,662/- as interest on the defaulted instalment. According to the Town Improvement Trust the amount paid as penal interest could not be included in the amount deposited and, therefore, no part of it could be refunded.

The District Forum has without any plausible reason, ordered the refund of Rs. 3,662/-. The order does not contain any reason for refund of the amount. Only observing that since the amount of instalment has been refunded the interest should also have been refunded does not amount to giving a cogent reason for the decision.

3. THE refund of the amount deposited was under Rule 8 contained in a booklet entitled Self Financing Scheme for Shop and Building, Rewa Improvement Trust.

THE rule provides that if any person withdraws his proposal after the application was accepted, the allotment shall be deemed to be cancelled and amount deposited by the allottee shall be refundable after deduction of 10% of the amount deposited till the date of cancellation. THE question is whether interest paid on a defaulted instalment can be said to be amount deposited for the purposes of Rule 8? Amount to be deposited under a particular scheme is a fixed amount to be deposited in instalments. THE instalments are also fixed. If anyone makes default in payment of instalments, his allotment is liable to be cancelled. THE Town Improvement Trust by charging penal interest waives the right of cancellation of allotment. Thus, penal interest is deposited as a condition of continuation of allotment. This is not the money recovered towards the price of the house or plot. It is a fine imposed on delayed payment of instalment. THE consideration of the amount is continuation of the allotment or waiver of the right to cancel the allotment. Once the amount of fine or penal interest is deposited and the right of cancellation of allotment is waived, the amount becomes irrevocably of the Town Improvement Trust. It is not an amount lying in deposit with the Town Improvement Trust towards the purchase of a building or plot. Thus, it cannot be counted as money deposited towards a building or plot .It is, therefore, not refundable at all. Under Rule 8 deduction of 10% could only be made from the amount deposited towards the purchase of plot or building. THE complainant is, therefore, not entitled to refund of the amount of penal interest deposited in default of an instalment. THE complaint, therefore, deserves to be dismissed and the decision of the District Forum deserves to be setaside. The complainant has unnecessarily dragged the Town Improvement Trust before the District Forum. According to the rule, the Town Improvement Trust was entitled to deduct 10% of the total amount deposited by the complainant. The total amount deposited was Rs. 1,62,500/-. If the amount of penal interest of Rs. 3,662/- is added to this, the total amount deposited becomes Rs. 1,66,162/-. If Rule 8 on which the claim of the complainant is based is to be applied, the Town Improvement Trust was entitled to deduct Rs. 16,616.20 paise or atleast Rs. 16,250/- from the complainant. Instead, they have only deducted Rs. 5,000/-. The complainant instead of being grateful to the Town Improvement Trust has dragged it into this litigation. We, there- fore, impose a consolidated costs of Rs. 500/- towards expenses of Town Improvement Trust before the Forum as well as this Commission. Thus, the appeal is allowed. The order of the District Forum is set-aside and instead order in the aforesaid terms is passed. Appeal allowed with costs.

