
(2016) 02 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

Case No : 1521 of 2015

RITU DUGGAL & ANR.

APPELLANT

Vs

UNITECH RELIABLE PROJECTS PVT. LTD.

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Citation : 2016 2 CPR 115

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : Dr. (Mr.) Harish Uppal, T. Prasad

Judgement

1. Ms. Ritu Duggal and Ms. Saloni Duggal, complainant Nos. 1 & 2 have applied for a flat in the project of Unitech Reliable Projects Pvt. Ltd., the OP, known as Unitech Verme, Greater Noida, Uttar Pradesh, in the year 2006-07. They made a payment of Rs.4,61,117.50 in August, 2007. They further paid a sum of Rs.41,90,000/- on 27.10.2007 and Rs.25,347/- on 21.11.2007. The complainants also paid interest @ 18% p.a., for delayed payment, in the sum of Rs.19,800/-, on 07.01.2008. The possession has not yet been handed over to them, though the flat is ready and the prescribed period of 36 months have already elapsed. The complainants have filed the present complaint with the prayer that they should be granted a sum of Rs.46,96,264/-, the amount already deposited along with interest @ 18% p.a., which comes to Rs. 69,31,686/-, totaling to Rs.1,16,27,949/-.

2. Counsel for the complainants has cited an authority in support of his case, titled Charan Singh Vs. Healing Touch Hospital & Ors., AIR 2000 SC 3138. The said case was a case of medical negligence and a complaint was filed before the National Commission. This Commission did not proceed with the said case for six years. After the lapse of six years, they contended that this Commission had no jurisdiction. He has cited para Nos. 14 & 15 of the said judgment. In para No.15, it was held as under :-

"15. complaint filed by the appellant for compensation was pending before the National Consumer Forum for six long years. The pleadings had been

completed. The National Consumer Forum should have taken the complaint to its logical conclusion by asking the parties to adduce evidence and rendered its findings on merits.".

3. We are of the considered view that this authority is not applicable to the present case. firstly, the order was passed after the expiry of six years. In the instant case, we are considering the question of pecuniary jurisdiction at the time of admission of this case. Notice to the OP is yet to be issued. Again, the question of interest was not decided in this case. Only the question of compensation was decided. In the instant case, the complainants have not demanded any fixed amount of compensation. Moreover, in such like cases, much compensation cannot be granted. It depends on the fact, how much compensation is to be given, after directing to pay interest. There lies no rub if the complainants are granted interest @ 18% p.a., on the principal amount and it may exceed Rs.1.00 crore, by the State Commission. The interest is not to be counted in that event, and the State Commission is very well in its jurisdiction to pass the order on interest. It is the discretion of the Court/Commission or Tribunal to grant interest as per the facts and circumstances of each case. Again, there is no rule of thumb.

4. The counsel for the complainants has cited a case under the Civil Law, reported in Smt. Tara Devi Vs. Sri Thakur Radha Krishna Maharaj & Anr., AIR 1987 SC 2085 , wherein it was held :-

" In a suit for declaration with consequential relief falling under S.7 (iv) (c), the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court-fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the court can examine the valuation and can revise the same. AIR 1958 SC 245 and AIR 1979 SC 989, Reel. On".

5. In this case, it was not a matter of interest. It was a matter of " mesne" profits . The counsel for the complainants has cited a number of authorities of this Bench and Bench No.6 of this Commission, where interest @ 18% p.a., was granted. Those authorities are not applicable to this case. Those were the final orders passed by this Commission. The Hon"ble Supreme Court in the case of Ganesh Polytechs Ltd. Vs. Transport Corporation of India, 2000 (10) SCC 418, has already held that at the fag-end of the case, the case must be decided by the National Commission even if it has not got the pecuniary jurisdiction. The above said cases were decided by this Commission, finally. This is the preliminary initial stage.

6. As a matter of fact, this Bench, consisting of two-Members as well as other Benches consisting of 2-Members are bound by a 3-Member judgment, reported in Shahbad Co-operative Sugar Mills Vs. National Insurance Co. Ltd., II (2003)

CPJ 81 (NC) , wherein it was clearly, specifically and unequivocally laid down that interest is not to be counted at this stage.

7. This fact is further supported by two authorities of the Hon"ble Supreme Court, reported in Manjul Srivastava Vs. Government of U.P. & Ors., Civil Appeal Nos. 1758-1759 of 2002, JT 2008 (9) SC 584 while relying upon the judgment of the Hon"ble Supreme Court in the case of Alok Shanker Pandey Vs. Union of India & Ors., JT 2007 (4) SC 248, it was observed that "it was clear that the amount of interest to be awarded for refund of any amount deposited by the candidate would depend upon the facts and circumstances of each case". If the complainants have waddled out of the commitments, made in the agreement, or there is some other default, or reason, the interest can be reduced. All these facts are to be considered when the defence story comes to the fore.

8. Consequently, we hold that this Commission has no pecuniary jurisdiction to try this case.

The State Commission has the pecuniary jurisdiction. We, therefore, dismiss this complaint, but grant liberty to the complainants, to approach the State Commission for redressal of their grievances, within the parameters of law.