(2012) 05 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

Shri Rishabh Enterprises APPELLANT

Vs

Neetu Dutta RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 279 : 2012 3 CPJ 146

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : petitions allowed

Judgement

1. THESE two revision petitions have been filed by Shri Rishabh Enterprises, Petitioner herein, being aggrieved by the order of the State Consumer Disputes Redressal Commission, Rajasthan (hereinafter referred to as the ''State Commission '') in Appeal Nos.275/2007 and 276/2007 decided in favour of Smt.Neetu Dutta and Km.Abhijeeta Dutta respectively, Respondents herein, who were the original complainants before the District Forum. Since the parties and the facts are similar in both revision petitions, we propose to dispose these of by a single order by taking the facts from R.P.No.4264/2007.

2. IN her complaint before the District Forum, Respondent had stated that Petitioner had reserved a plot for her in a Scheme known as "Harsh Nagar Scheme ", the total cost of which was Rs.12,000/-, by charging her Rs.1,000/- as advance. The balance amount was to be paid in 32 monthly installments of Rs.350/- each. Respondent deposited a total sum of Rs.4,850/- upto 10th February, 2004 i.e. Rs.1,000/- as advance and Rs.350/- per month for 11 months. Thereafter, since no information was received from Petitioner regarding the remaining installments, Respondent did not make any further payment. Respondent, however, contacted Petitioner regarding further payments who told her that after expiry of the period of the Scheme, she could deposit the remaining amount in lump sum for which an agreement would be executed in her favour after charging her expenses of registry. However, even after the expiry of the Scheme, Petitioner did not send any communication to the Respondent nor did it execute any agreement in her favour by receiving the balance amount from

her. Respondent, therefore, sent registered notices to Petitioner to which there was no response. Being aggrieved, Respondent filed a complaint before the District Forum on grounds of deficiency in service and requested that the Petitioner be directed to give details of the remaining balance amount against the plot reserved in Respondent ''s name to enable her to make payment of the balance amount and get the registry executed in her name. Rs.10,000/- were sought as compensation and litigation costs. Petitioner in its response submitted fact that a plot had been reserved for the Respondent, the value of which was Rs.12,000/- Respondent had deposited Rs.1,000/- against the booking amount for which she was issued necessary receipt. Thereafter, Respondent deposited a total amount of Rs.3,400/- in 11 installments in 17 months from 07.10.2002 to 10.02.2004 against which also receipts were issued. However, thereafter Respondent stopped paying the monthly installments even though Petitioner had reminded her over telephone every month for depositing the remaining installments and had also sent a postcard in this connection. Petitioner denied that it had told Respondent that she could deposit the remaining amount in lump sum after the Scheme was over and Registry will be executed in her favour after paying registration expenses. As per the terms and conditions of the Scheme, it was mandatory to deposit the required amounts every month and in case the installments were due for 6 months or more, there was a provision for cancellation of allotment of the plot. Respondent was bound by the terms and conditions of this contract. Petitioner further stated since the Respondent had not deposited the remaining amount in monthly installments, allotment of the plot was cancelled in August, 2004 as per the terms and conditions of the Scheme. There was no deficiency in service on Petitioner ''s part and it was Respondent who did not comply with the terms and conditions which resulted in cancellation of the plot.

3. THE District Forum after hearing the parties and on the basis of evidence before it allowed the complaint and directed the Respondent to pay the remaining balance installments to the Petitioner along with interest @ 18% per annum from the date when the amounts became due till realization within a period of 15 day of the order. Thereafter within a period 15 days of the receipt of payment of the balance amount, Petitioner was directed to execute Registry of the plot in favour of the Respondent in the said Scheme or if the said plot is not vacant, any other plot of same dimensions. In case, no plot is available, an amount equivalent to cost of a similar plot in Harsh Nagar as on the date of the order be paid to the Respondent along with compensation of Rs.7,000/- and Rs.1,500/- as litigation costs. Aggrieved by this order, Petitioner filed an appeal before the State Commission which dismissed the same by inter alia observing that prior to cancellation of the plot, it was the duty of the Petitioner to inform the Respondent about payment of the remaining installments and after due notice, if Respondent had not paid the amount, then action for cancellation of the allotment of the plot could have been taken. State Commission, therefore, upheld the order of the District Forum but modified the same in respect of the

compensation of Rs.7,000/- awarded by the District Forum by setting aside the same on the grounds that the Respondent also was responsible for non-payment of the installments and therefore, it would not be proper to award this compensation to Respondent.

4. HENCE , the present revision petition. Counsel for both parties made oral submissions. Counsel for Petitioner stated that learned Fora below erred in not appreciating the fact that the Respondent was bound by the terms and conditions of the Harsh Nagar Scheme. It was made clear at the time of allotment of plot to Respondent that an advance of Rs.1,000/- would be payable in the first instance and thereafter, the remaining amount of Rs.11,000/- would be payable in equated monthly installments of Rs.350/- each. There was no provision in the Scheme that any lump sum payment could be made after expiry of the Scheme and there is nothing on record to prove the contention of the Respondent that Petitioner had made any such assurance. Further, it is also clearly stated in the Scheme that if 6 or more installments are due and not paid, the allotment of the plot would be cancelled. In the instant case, it is not disputed that the Respondent paid 11 installments over a period of 17 months and thereafter unilaterally ceased to pay further installments without any reason. The plea taken that no demand notice for the same was issued by the Petitioner is not tenable because there was no provision for the same and the terms and conditions of the Scheme regarding payment of monthly installments and circumstances under which the allotment could be cancelled were clearly spelt out in writing. Despite this, Petitioner did sent written as well as oral communication to the Respondent reminding her that installments were due but Respondent still remained a defaulter. Under these circumstances, Petitioner was well within its right to cancel the allotment and dispose of the plot. To a query by us, Counsel for Petitioner further stated that no plot under the Scheme is presently available for allotment to the Respondent. Counsel for Respondent on the other hand while admitting that Respondent had paid 11 installments and an amount of Rs.7,150/- was still due, stated that since no communication was received regarding further installments, the remaining EMIs were not paid. Counsel for Respondent further contended that the Respondent did try to make payments subsequently but the Petitioner refused to take the same because of which they were helpless. On a query by us, as to why this amount was not deposited through cheques in the account of the Petitioner by the Respondent, Counsel for Respondent was unable to give any satisfactory explanation. Counsel for Respondent, however, stated that the terms and conditions regarding cancellation of the plot were not made available to the Respondent and further as observed by the State Commission in the interest of justice a notice prior to the cancellation should have been issued.

5. WE have heard learned Counsel for both parties and have carefully gone through the evidence on record. It is not in dispute that the Respondent had been allotted a plot by the Petitioner. It is also not disputed that Respondent paid 11 installments which included Rs.1,000/- as advance and remaining amounts in

11 monthly installments of Rs.350/- each. Under the circumstances, we are not convinced with the contention of the Respondent that after 11 months, she ceased to pay any further amount because no notice regarding the payment due was sent to her by Petitioner. The State Commission erred in not appreciating the fact that the Respondent who was made aware of the terms and conditions of the allotment was obliged to adhere to the schedule of monthly payments. We have also gone through Annexure P-I which includes the terms and conditions of the agreement handed over to the Respondent in which it is clearly stated that in case installments are not paid for 6 months or more, the plot will be cancelled and after deducting 10% from the total amount of the plot, the remaining money would be returned to the Respondent. Since, Respondent did not pay monthly installments after February, 2004 in terms of this agreement we agree that the Petitioner was justified in cancelling the plot. Respondent cannot take the plea of ignorance since these terms and conditions were specifically given to her along with the receipts in her favour. In view of these facts, we are unable to uphold the order of the State Commission and the same is set aside.

6. BOTH revision petitions are, therefore, allowed and the complaints dismissed. Petitioner is directed to refund the balance amounts to the Respondents after deducting 10% of the total amount of the plot from the same as per the terms and conditions of the Scheme, within six week from the date of receipt of this order. No costs.