

(2014) 01 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

Surender Rohilla

APPELLANT

Vs

Inderprastha Cooperative House Building Society Ltd.

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Citation : 2014 0 NCDRC 493 : 2014 2 CPJ 272

Hon'ble Judges : AJIT BHARIHOKE J.

Final Decision : Petition allowed

Judgement

1. THIS revision is directed against the order of the Haryana State Consumer Disputes Redressal Commission, Panchkula dated 3.8.2012 whereby the State Commission accepted the appeal preferred by the respondent -Society, set aside the order of the District Forum and dismissed the complaint. Briefly put, facts relevant for the disposal of this revision petition are that the petitioner - complainant became member of the respondent Housing Building Society in the year 2006. His membership number was 534 and he was allotted membership card on 23.12.2006. The petitioner -complainant was allotted plot No. 105, Block -D, Anantpuram Colony and its possession was delivered to him vide possession certificate dated 23.12.1006. It is the case of the complainant that unexpectedly petitioner received a letter dated 7.3.2009 from the respondent -opposite party calling upon him to show cause as to why his allotment may not be cancelled per Clause -11(i) of the bye -laws of the Society for the reason that he had obtained the possession of the plot by practising misrepresentation and giving wrong address of Village Rurki, Tehsil and District Rohtak as his permanent abode. Thereafter another letter dated 10.1.2009 was received from the opposite party under the head "Notice for Consideration" calling upon the complainant petitioner to construct at least one room set and boundary wall within six weeks. The petitioner complainant after the receipt of said two notices approached the opposite party and showed them the proof of his permanent residence of Village Rurki, Tehsil and District Rohtak and also requested the opposite party to supply him the copy of the bye -laws mentioned in the show cause notice. The opposite party failed to comply with his request and cancelled his membership vide letter

dated 2.4.2009 which was received by the complainant. Though there was a mention of cheque No. 907686 drawn on Punjab National Bank dated 2.4.2009 in the said letter but no such cheque was annexed to the letter. According to the petitioner he is permanent resident of Rohtak having voter card issued by the Office of the Election Commission dated 21.12.1995. It is alleged that the cancellation of plot by the opposite party amounts to deficiency in service which has led to filing of the complaint.

2. UPON notice, opposite parties put in appearance and contested the complaint by filing the written statement wherein they justified the cancellation of the plot allotted to the complainant on the ground that he had obtained the allotment of plot by giving false information to the effect that he was permanent resident of Village Rurki, Tehsil and District Rohtak. Learned District Forum on consideration of pleadings and evidence of the parties came to the conclusion that cancellation of allotment of the plot by the opposite parties was unjustified and directed the opposite parties to re-allot the plot in question and hand over possession of plot No. 534 to the complainant as per Rules. The opposite parties were also directed to pay a sum of Rs. 15,000 to the complainant -petitioner on account of compensation and litigation expenses.

3. FEELING aggrieved by the order of the District Forum, the opposite parties preferred an appeal before the State Commission, Haryana. The State Commission on perusal of record and hearing the parties accepted the appeal, set aside the impugned order and dismissed the complaint. Relevant portion of the order of the State Commission dealing with the issue is reproduced thus: On behalf of the appellants it is contended that the allotment of the plot of the complainant was rightly cancelled as per the provisions of bye-laws of the Society and the Haryana Cooperative Societies Act because the complainant was not residing within the area of the Society and for that reason a cheque bearing No. 907586 dated 2.4.2009 of Rs. 1,20,000 drawn at P.N.B. Tilak Nagar, Rohtak was sent to the complainant with respect to the refund of the deposited amount. Learned Counsel for the appellants has further argued that after receiving the refund of the deposited amount through cheque, the complainant is no more the "consumer" of the opposite parties and his plot was rightly cancelled as per the provisions of bye-laws of the Society.

We find force in the contention raised on behalf of the appellants. From the record it is established that the letters which were sent to the complainant through post at the address given in his application form and affidavit, were received back. Meaning thereby, the complainant was not residing at the given address whereas as per the provisions of Clause 11(a)(ii) of the bye-laws of the Society it was a condition for the allottee to be a resident within the operation area of the Society. Hence, the complainant was returned a cheque bearing No. 907586 dated 2.4.2009 of Rs. 1,20,000 drawn at P.N.B. Tilak Nagar, Rohtak and thereafter, the complainant is no more the consumer of the opposite parties. It is well settled law that the parties are governed by the terms and conditions of the

agreement executed between the parties. The observation made by the District Forum that the other plot holders were allowed to retain their plots despite the fact that they were not residing within the operation area of the Society, is not sustainable in the eyes of law because the opposite parties had taken action in each case as per the facts of the said case after following due process of law. Thus, the impugned order passed by the District Forum is not sustainable in the eyes of law.

4. LEARNED Mr. B.S. Dhull, Advocate for the petitioner has contended that the impugned order of the State Commission is based upon incorrect appreciation of facts and law. Expanding on the arguments, learned Counsel for the petitioner has taken us through Rule 11(b) of the bye -laws of the respondent Society which provides that no member shall be expelled except by a resolution passed by 2/3rd majority in the general body meeting at which not less than half of the members are present and the member shall have right to appeal to the Registrar against the decision of the general body within one month of the date of such decision. Learned Counsel for the petitioner has contended that the State Commission has ignored the aforesaid provision and failed to appreciate that the respondent Society has not placed on record the minutes of general body meeting in which the resolution to expel the petitioner from the membership of the Society was passed. In absence of any such resolution the expulsion notice dated 10.3.2009 has no meaning. It is further contended by learned Counsel for the petitioner that the State Commission has wrongly concluded that the petitioner has received a sum of Rs. 1,20,000 towards refund of his deposit without there being any evidence to this effect. Thus, it is contended that the impugned order suffers from material irregularity and cannot be sustained.

5. LEARNED Mr. B.S. Sharma, Advocate for the respondent -opposite parties on the contrary has argued in support of the order of the State Commission. He has drawn our attention to Clause 11(a)(i) of the bye -laws of the Society which provides that a member may be expelled from the Society if he ceases to reside in the area of operation of the Society. It is argued that since the petitioner complainant had ceased to reside within the area of operation of the Society he was rightly expelled from the Society and even his contribution of Rs. 1,20,000 was refunded to him by sending a cheque along with the expulsion letter dated 2.4.2009.

6. WE have considered the rival contentions and perused the material on record. In order to prove the expulsion of the petitioner -respondent is relying upon its letter dated 2.4.2009 which reads thus: Subject: Cancellation of Re -allotment of Plot No. D -105

Dear Sir,

Please refer to our office letter No. ICH/I.P./09/16 -17 dated 7.3.2009 vide which Show Cause Notice was issued to you for explaining why your allotment of Plot No. D -105 should not be cancelled under Society Bye -Laws No. 11a(i) as you

ceased to reside in the area of operation of the Society because the Postal Department has conveyed this fact and the registered letter sent to you on the above address has been returned and undelivered due to the said fact.

The Society has not received any representation/explanation from you for ascertaining your permanent contact address. Hence it is evident that you fail to reside in the area of operation of the Society i.e. on the permanent address given by you. Therefore, the Society is left with no other option than to cancel your membership and Re -allotment of Plot No. D -105 with immediate effect and your deposits with the Society are being refunded to you vide Ch. No. 907586 drawn on P.N.B. Bank dated 2.4.2009 as per the details given below:

Share Money 100.00

Plot Deposits 120000.00

Total 120100.00

As such you are no more member of the Society and after cancellation of the Plot No. D -105, the Society is in Owner -in -Possession of Plot No. D -105 and the letter No. ICH/ANT/2006 dated 23.12.2006 issued to you for ownership and possession of Plot No. D -105 stands withdrawn.

Now, the question is whether the aforesaid expulsion is legal or not? Rule 11(a) (i) of the bye -laws of the Society provides that a member can be expelled from the Society if he ceases to reside in the area of the operation of the Society. As per Rule 3 of the bye -laws area of operation of Society is Rohtak Sub -Davison (Tehsil). According to the opposite parties the petitioner has been expelled as he ceased to reside within the Rohtak Sub -Division (Tehsil). Rule 11(b) of the bye -laws provides for the procedure for expulsion of a member. According to this Rule no member can be expelled except by a resolution passed by 2/3rd majority in the general body meeting at which not less than half the members are present and vote. In order to justify the expulsion as per the bye -laws the respondents opposite parties were required to prove the resolution of general body of the Society to expel the petitioner from the Society. No such resolution has been placed on record. It is not even pleaded in the written statement filed before the District Forum that the expulsion of the petitioner was done by the resolution passed by the general body of the Society in accordance with Rule 11(b) of the bye -laws. That being the case in our considered view the State Commission has committed an error in holding that the petitioner has been rightly expelled from the Society.

7. NEXT question which needs determination is whether or not the petitioner has received refund of Rs. 1,20,000 paid to the Society towards the consideration amount of the plot. No doubt in letter dated 2.4.2009 the Society has mentioned that they are refunding the deposit of Rs. 1,20,000 made by the petitioner vide cheque No. 907586 drawn on Punjab National Bank dated 2.4.2009 but there is no evidence on record that aforesaid cheque was encashed by the petitioner.

Case of the petitioner is that no cheque was annexed along with the letter and he has not received the refund. The question whether the cheque was annexed along with the letter or not is difficult to determine because it is the case of the word of the petitioner against the word of the respondent. However, the respondent Society could easily have proved that the petitioner has received the refund by producing the evidence from their Bank to show that the amount of said cheque has been encashed by the petitioner. In absence of any evidence in this regard it is difficult to sustain the finding of the State Commission that the petitioner has received there fund. On this count also the order of the State Commission is not sustainable. In view of the discussion above, we are of the view that the impugned order has been passed by the State Commission on incorrect appreciation of fact and ignoring the provision of bye -law 11(b) of the Society which provides for the procedure for expulsion of a member. Thus, the impugned order is not sustainable. It is accordingly set aside and the order of the District Forum is restored. No order as to costs.