

(2002) 05 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

VINOD VASHISHT

APPELLANT

Vs

PUNJAB SMALL INDUSTRIES AND EXPORT CORPO. LTD.

RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Citation : 2007 4 CPJ 308

Hon'ble Judges : J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. ALTHOUGH there is no appearance on behalf of the appellant, we have proceeded to consider the facts at our own with the assistance of the Counsel for the respondent.

2. IN this case the appellant had applied for allotment of a plot measuring 7500 sq. yards in Focal Point, Mandi Gobindgarh, Punjab for establishing Oxygen Gas Plant. Along with his application he had deposited a sum of Rs. 2,25,000 by demand draft. This was the amount of earnest money. However, after two years from the date of advertisement, a plot was allotted at tentative price of Rs. 300 sq. yards. The plot was allotted on leasehold basis for 99 years. There were certain other requirements which were to be fulfilled by the appellant and by various instalments, the appellant had deposited a sum of Rs. 14,05,444. It is also to be noted that the appellant did not adhere to schedule of instalments which was one of the conditions of allotment. Ultimately, the appellant on the alleged deficiency and non-development of area decided to surrender the plot and consequently it called upon the respondent to take back the plot and refund his money. Respondent accepted his request and refunded a sum of Rs. 11,54,974 after deducting/ forfeiting a sum equal to Rs. 2,50,470 the 10% of the total cost of the plot which was to be treated as earnest money.

The State Commission on going into the details had held the respondent to be entitled to forfeit the earnest money and has also found that the appellant committed a breach of terms by committing defaults in the payment of the instalments. Since, there was some delay in refunding the amount of Rs.

11,54,974. the State Commission awarded interest on that @ 12% per annum for the period from 1.6.1998 to 10.9.1998. Counsel for the appellant has relied upon the two authorities - Smt. Kamal Rani v. Smt. Chand Rani, AIR 1980 Del. 188, and Ram Rati v. Fakira, AIR 1988 All. 75. We have gone through these and have found that none of these rulings of any avail to the appellant. The question for consideration in these rulings was about the specific performance and the Delhi High Court had come to the conclusion that if the vendee had not made the payment within the stipulated time vendor could treat it as breach committed by the vendee and no specific performance should be granted. However, there the vender had really made profit out of the breach of the contract therefore, he was not allowed to forfeit the amount. Similar was the situation and ratio of Ram Rati case.

3. IN the present case, the forfeiture could be avoided only if the respondent had been responsible for non-delivery of the possession or its failure to deliver the possession. It was the case where the respondent had fulfilled its part of contract by handing over the possession and allowing the deferred payment but it is the appellant who went on committing defaults in payment of instalments and is, in our opinion, disentitled to seek any relief because of his conduct. The authority has to take back the plot and look for any purchaser after due advertisement expenses. Therefore, in our opinion, it was he, the appellant, whose conduct delayed the project which did not come up at the site which resulted in absence of production of oxygen. We do not find any infirmity in the order of the State Commission and we consequently uphold the order of the State Commission and dismissed the appeal but in the circumstances of the case, parties are left to bear their respective costs. Appeal dismissed.