(2005) 10 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

YOGESH KUMAR GOLCHA — APPELLANT

Vs

U.T.I.MUTUAL FUND — RESPONDENT

Date of Decision : 14-10-2005

Acts Referred:

Citation : 2006 1 CPJ 421 : 2006 1 CPR 115

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal under Section 15 of the Consumer Protection Act, 1986 (''the Act'') directed against the order passed by the District Consumer Disputes Redressal Forum, Rajnandgaon (hereinafter referred to as the ''District Forum'') in omplaint Case No. 10-7/2003 on 8.3.2004 dismissing the complaint.

2. GIST of the complaint is that the complainant applied for allotment of GSF services units floated by the O.P. Unit Trust of India and submitted a demand draft for Rs. 5,00,000 on 2.2.2000 to the local representative of the O.P. of Rajnandgaon. He was allotted 15,693.660 units at the rate of Rs. 31.86 per unit. Several other investors also applied for allotment of the said units the same day at Rajnandgaon and were allotted units at Rs. 27.44 per unit, that is at a lesser rate. Subsequently after long correspondence the O.P. vide letter dated 19.6.2001 had revised the rate of allotment to Rs. 28.68 per unit and allotted 1740-092 units adjusting the difference in the rates. In reply the O.P. has simply stated that the folio no. quoted in the complaint does not relate to the complainant and prayed for dismissal of the complaint. However a copy of letter No. UTIISL/GSF/Sales/2001-2002-0736160 dated 10.6.2001 is on record. The O.P. vide the said letter intimated that the rate of allotment per unit has revised as per T+5 to Rs. 28/68. Admittedly the units for the difference in the rate have been allotted to the complainant and a revised statement furnished.

During the appeal the O.P./respondent prayed for permission to file certain documents under Order 41 Rule 27 of the CPC. In view of the fact that the documents appear necessary for disposal of the appeal permission was granted.

3. COMPLAINANT has submitted that on the same day the units were allotted to several other persons at the rate of Rs. 27.44 per unit. Thus despite the allotment of units for the difference in the prevailing rate of 2.2.2000 the complainant has suffered a loss. Questions for consideration before us are- (i) What were the terms of offer on the date of application and whether they were followed? As per the instruction 9 contained in the letter of Memorandum containing information and the application form, the rates of allotment will be the one which is valid for the day on which the application form is received at the Registrar''s office or on the 5th working day of submission, whichever is earlier. Undisputedly application was submitted on 2.2.2000 and, therefore, the complainant was entitled to allotment at the rates prevailing on 7.2.2000. As per the statement of NAV (net asset value) on 7.2.2000 was quoted at Rs. 28.68. Thus the O.P. was entitled for allotment of units at Rs. 28.68 but was allotted at higher rate, i.e., at Rs. 31.80. Thus the O.P. itself violated the terms of offer so far as they relate to the rates. However the mistake was rectified by the O.P. on 19.6.2001 by allotment of additional units equivalent to the amount for difference in rates.

(ii) Whether the complainant can demand allotment of units at the rates lower to NAV similar to other investors. In our opinion the complainant once having accepted the terms of offer is bound by them and cannot escape the same. The contentions regarding preferential allotment of units to certain investors at rates lower than the NAV the grievance cannot be agitated before the consumer Fora. Therefore, the complaint on this count cannot be considered.

4. IT is, therefore, clear that O.P. has committed deficiency in service in allotting the units on higher rates of Rs. 31.86 instead of @ Rs. 28.68. From the material on record it is clear that O.P. took a period of about 15 months in rectifying the mistake as above and in allotting additional 1740.092 units later, on 19.6.2001. Thus the complainant''s grievance was not only vindicated with delay which certainly put him to loss and inconvenience, regarding additional units as above, which were worth about Rs. 50,000. In the circumstances we consider that O.P. is liable to pay compensation of Rs. 10,000 for inconvenience, harassment and expenses incurred by the complainant, in ultimately getting his right vindicated. In view of above, the appeal is allowed. Impugned order dismissing the complaint is set aside. O.P./respondent herein is directed to pay to the complainant compensation of Rs. 10,000 (Rupees ten thousand) as well as Rs. 1,000 (Rupees one thousand) as cost of this litigation including this appeal and that of the complaint. The amount of compensation and cost is payable within one month from the date of this order, failing which the said amount of compensation shall carry interest @ 9% p.a. from the date of default. Appeal allowed.