

STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW

APPEAL NO. 434 OF 1993

(Against the judgment and order dated 11.02.1993 in complaint case no. 458/1992 passed by the District Consumer Forum, Ghaziabad)

Shri Sita Ram Pandey Appellant

Versus

Suresh Chandra Rana Respondent

APPEAL NO. 435 OF 1993

(Against the judgment and order dated 11.02.1993 in complaint case no. 458/1992 passed by the District Consumer Forum, Ghaziabad)

Jagriti Sahkari Avas Samiti Appellant

Versus

Suresh Chandra Rana Respondent

APPEAL NO. 2263 OF 1993

(Against the judgment and order dated 11.02.1993 in complaint case no. 458/1992 passed by the District Consumer Forum, Ghaziabad)

Kamal Nain Gandhi Appellant

Versus

Suresh Chandra Rana Respondent

BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER

For the Appellant : Sri Rajesh Chadha, Advocate
(Shri Sita Ram Pandey)

For the Respondents : None is present.

DATED: 23.11.2009





JUDGMENT

MR.JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

These three appeals arise out of a common judgment of Feb. 11, 1993 passed by the District Consumer Forum, Ghaziabad whereby the complaint of Suresh Chandra Rana was allowed with a direction to all the three appellants to complete the house allotted to the respondent in all respect and hand over its possession to him within forty days from the date of the judgment. However, the respondent was held liable to pay the balance amount of Rs.20,685/- so as to discharge his total liability for payment of the price of the house amounting to Rs.90,000/- besides miscellaneous charges. But, since there was a deficiency in service on the part of the appellants, they were held liable to pay interest @ 18% p.a. on the amount of Rs.69,315/- w.e.f. 01.4.1990 until the possession was delivered. This amount of interest was directed to be adjusted against the payment to be due from the respondent.

Before we proceed to discuss the merit of this case we take note of the fact as pointed by Sri Rajesh Chadha learned counsel for the appellant that Sri Kamal Nain Gandhi who was the employee of Sriram Housing Finance and Investment of India Limited (to be referred as "Housing Finance Company"), died during the pendency of his appeal. Although in the title and heading of the complaint, a copy whereof has been filed before us, the position of Sri Kamal Nain Gandhi vis a vis the above Finance Company has been described to be as Director cum Treasurer, yet since there is no documentary evidence on record to support the nomenclature as described by the complainant we are not in a position to make a valid declaration on this score.

Learned counsel for the appellant has drawn our attention towards Sri Gandhi's resignation acceptance order dated 20.02.1992 of Sri Sita Ram Pandey the Managing Director and this order appears to indicate that Sri Gandhi who was the Chief Accountant in the Finance Company had resigned and his resignation was accepted. Be that as it may,

B Singh

PS

following the death of Sri Kamal Nain Gandhi the appeal filed by him stands abated.

The other two appeals have been filed by M/s Jagriti Sahkari Avas Samiti (to be referred as "Avas Samiti") and Sri Sita Ram Pandey, Director of Housing Finance Company. Whereas the Avas Samiti had provided the land to the Housing Finance Company for construction of residential apartments, the Housing Finance Company had undertaken the task of raising the apartments.

It is not disputed that the respondent was allotted a two room apartment in the Jagriti Vihar colony, Ghaziabad, on payment of Rs.90,000/-. As stated above a sum of Rs.69,315/- had been paid but since the construction work of the apartment had run into rough weather on account of there being a litigation between these two appellants on one side and the GDA on the other, the complainant did not pay the balance sum of Rs.20,685/-. The fact, that the construction of the houses including the one allotted to the respondent could not be completed in time, has not been denied by the appellants, although an explanation has been offered that the construction activities were held up on account of the litigation following the acquisition proceedings of their land. The latest position of the litigation or the status of the house is not before us on record. Neither the respondent has appeared nor Sri Chadha has any instructions. The finding of the Forum below that the house of the respondent was incomplete at the time of the complaint being filed, has not been disputed. The fact remains that the possession of the house had to be handed over within five years i.e. upto 1992 and since the litigation intervened, the complainant after expiry of five years was obliged to file his complaint which was finally heard and decided on 11.2.1993 and till then the construction of the house had not been completed. It was perhaps in these circumstances that the District Consumer Forum had directed the appellants to affix the doors, windows, electrical and sanitary fittings etc so as to hand over the possession of the house within forty days.

In our considered opinion the direction was just and reasonable. The contention of the learned counsel for the appellant that the builders

Begin



cannot be held liable to pay interest as they were helpless on account of the litigation following acquisition proceedings particularly when the complainant himself did not claim the payment of interest seems to be sustainable. Learned counsel for the appellant has taken us through the entire complaint of Suresh Chandra Rana and indeed he has not claimed any interest on the amount deposited by him.

We therefore, hold that the operative part of the judgment awarding 18% p.a. interest deserves to be deleted and accordingly, it is set aside.

Having regard to the litigation having been initiated after the acquisition proceedings of the land it was not within the control of the appellants to help the situation and for this reason alone the construction activity was hampered with. We are therefore, not inclined to accede the prayer of the complainant as recited in the complaint about award of the damages.

In the result appeal of Sri Kamal Nain Gandhi is hereby dismissed as abated. The other two appeals filed by M/s Jagriti Sahkari Avas Samiti and Sri Sita Ram Pandey, Director of Housing Finance Company are partly allowed and the impugned judgment is slightly modified to the effect that the appellant shall hand over the possession of the house to the complainant as early as possible, if not already delivered, on payment of the balance price of Rs.20,685/- and other necessary charges.

Sri Rajesh Chadha conveys to us that on account of several contentious issues still subsisting between the parties and the litigation pending before the High Court, it seems to be next to impossible to complete the construction of the house and hand over its possession to the respondent. Although we maintain the District Consumer Forum's verdict of a mandate issued to the appellants to hand over possession of the house after its construction is complete, yet we provide that in case it is not possible then money deposited by the complainant may be refunded alongwith interest @ 08% p.a. (looking to the facts and circumstances of the case particularly the awkward situation in which the

Bep's

→

builders have been placed following the acquisition proceedings) w.e.f. the date of the complaint until the payment is made. If this clause comes into operation and the payment is not made within three months from the date of the judgment is received by the appellant, the rate of interest will stand enhanced from 08% to 12% p.a.

The judgment shall be placed on the record of Appeal no. 434/1993 while its copy will be laid on the record of the Appeals nos. 435/1993 and 2263/93.

Bhanwar Singh
(JUSTICE BHANWAR SINGH)
PRESIDENT

SA
(SYED ALI AZHAR RIZVI)
MEMBER

Asif