

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW.

APPEAL NO.2723 OF 2002

(Against the judgment/order dated 26.9.2002 in Complaint Case
No.375/98 of the District Consumer Forum, Varanasi)

Varanasi Development Authority ...Appellant
Versus
Smt. Kusum Bajpai Respondent

BEFORE:-

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT.
HON'BLE MR. CHANDRA BHAL SRIVASTAVA, MEMBER.

For the Appellant : None.
For the Respondent : Sri N.K. Bajpai
Dated : 3.5.2011

JUDGMENT

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

The case called out. None is present on behalf of the Varanasi Development Authority nor his counsel Sri Rakesh Prasad is available. On the other hand, Sri N.K. Bajpai husband of the respondent Smt. Kusum Bajpai is present and he has personally put up his arguments on behalf of the respondent.

According to the majority judgment of the two members of the District Consumer Forum, Varanasi the Varanasi Development Authority had to refund the excess amount paid by the complainant while getting the sale-deed in her name executed. The relevant column of the complaint appears to indicate that the complainant was aggrieved of the appellant's demand of Rs.69,249.30 but since she had to get the sale-deed executed, she deposited the said money and obtained the sale-deed in her favour, transferred the house to Sri Arun Agarwal and eventually filed her complaint for recovery of the aforesaid amount.

By virtue of the majority decision the two members directed the Development Authority to deduct its outstanding dues out of the alleged excess money deposited by the complainant and then refund the balance alongwith 12% interest. In case of there being a default the interest at the higher rate of 15% per annum was payable.

Bajpai

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It is borne out from the record that the complainant got the flat No.H-1/6 of Nariya Residential Scheme, Varanasi allotted in her name. As informed vide allotment letter, she had to deposit half of the money in one lumpsum and the balance in 120 monthly instalments. She complied with the allotment letter, deposited Rs.61,700.00 and then started depositing monthly instalments of Rs.871.00 per month. After she had deposited 57 instalments she moved an application to the prescribed authority of the Development Authority seeking information about the outstanding balance so that the same could be cleared in one lumpsum. Her letter dated 8.9.1988 was responded to and the Development Authority informed her that a sum of Rs.37,844.00 was the outstanding sum. She paid the said money on 12.10.1988 but "no dues certificate" was not issued to her. The repeated requests of the respondent fell on the deaf ears of the officials of the Varanasi Development Authority. Days by days, months by months and years after years had gone, the tug of war continued upto the year 1997 when the harassed respondent asked for a final calculation of the money she was to pay so as to satisfy the ego of the officials. She was then asked to pay Rs.69,249.30.

Being compelled with the prolonged harassment, the respondent had no option but to pay the said money and eventually succeeded in obtaining the sale-deed executed in her favour. It is different that subsequently she transferred the house to a third person. However, the said transfer had no adverse bearing upon her right to claim the excess money, she had paid.

We are convinced that the complainant was under no obligation to pay any sum after she had deposited Rs.37,844.00 which was paid by her vide cheque dated 12.10.1988. The fact regarding receipt of this cheque was not denied by the Varanasi Development Authority. There was absolutely no justification for the Development Authority to ask for payment of any interest after the aforesaid deposit, as the entire liability for payment of the price of the house stood terminated with the said

By *Bap*

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demand. This is fortified by the calculations of Sri Manoj Srivastava, the Chartered Accountant of the Varanasi Development Authority. A chart was submitted by him on 7.7.1997 under his signatures and this had indicated that after deposit of Rs.37,844.00 on 12.10.1988 only a sum of Rs.976.71 was outstanding against the respondent as principal amount. An interest @ 24% was calculated for a period of about 9 and half years and in all a sum of Rs.3,019.61 was calculated to be as outstanding upto June, 1997. On the face of this the various demands pressed into service on behalf of the Varanasi Development Authority after irregular intervals were totally misconceived. As a matter of fact, the Development Authority had wrongly calculated interest and started demanding exorbitant sums by casting a stigma on the respondent that she was a defaulter.

Having examined all the relevant aspects of the matter, we do not find any merit in the plea of the Development Authority that the respondent committed default in payment of the instalments after depositing 57 instalments. As a matter of fact, she wanted to discharge her liability of remaining 63 instalments by depositing the entire outstanding sum in one lumpsum. It was with this intention that she had moved a letter seeking the accurate details of her liability and it appears that till then the officials of the Development Authority extended their cooperation to her, calculated the demand to be at Rs.37,844.00 which she immediately paid vide cheque dated 12.10.1988. If a sum of Rs.976.71 was due to be paid by her as stated in Sri Manoj Srivastava's chart she could be asked to pay the said sum and that too without interest because she was not to blame for the lapse on the part of the Varanasi Development Authority. They should have been careful enough to ask for the entire outstanding sum. Even then the complainant was ready and willing to pay the said sum but since usury and exorbitant demands were made by the Varanasi Development Authority, the complainant not only felt harassed but resisted their illegal demands of Rs.95,049.86 vide letter dated 22.6.1991, Rs.1,31,168.81 vide letter

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dated 3.1.1994, Rs.73,012.00 vide letter dated 1.6.1994, Rs.32,000.00 vide letter dated 21.1.1995, Rs.32,000.00 vide letter dated 15.2.1995 and eventually Rs.48,000.00 vide letter dated 22.1.1997. All these demand notices are self-contradictory and demolished each others veracity. A period of 10 years commencing from 12.10.1988 until the last letter of demand was more than enough for demoralization of the complainant. However, there was no alternative except to surrender to the unwarranted demand of Rs.69,249.30 vide the Development Authority's letter dated 6.3.1998. There is no dispute that she deposited the said sum and got the sale-deed of the house executed in her name. This was the first termination of her harassment and after she was relieved of the said round of termination with execution of the sale-deed and then subsequent transfer of the house she entered into the second round of her battle for her cause. By filing her complaint she claimed recovery of Rs.69,249.30. Her prayer has been rightly granted by the majority decision dated 26.9.2002 of the two members. As the operative part of the majority judgment is little bit confusing, we clarify it to the effect that the Varanasi Development Authority shall be under an obligation to refund the entire sum of Rs.69,249.30 after deducting ofcourse a sum of Rs.976.71 the balance of the principal price of the house as recited in the chart of the Chartered Accountant of the Varanasi Development Authority Sri Manoj Srivastava but his calculations bringing out a liability of interest of Rs.2,042.61 is absolutely unjustified.

We, therefore, hold that there was serious deficiency in service on the part of the Varanasi Development Authority. She was harassed by the officials of the Authority for a period of 10 years i.e. from 12.10.1988 to 1998 and upto the time she surrendered by making a payment of Rs.69,249.30. She is indeed entitled for a compensation of Rs.20,000.00 as awarded by the majority judgment for mental and physical inconvenience during all these years. The award of interest in the above circumstances seems to be sustainable.

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In the result, this appeal being devoid of merit is dismissed with costs of Rs.5,000.00.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(CHANDRA BIHAL SRIVASTAVA)
MEMBER

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