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STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

APPEAL NO. 1795 OF 2008

(Against the judgment/order dated 05-05-2008 in Complaint
Case No. 617/2002 of the District Consumer Forum, Ghaziabad)

Sri Vijay Gautam

.....Appellant

Vs.

Ghaziabad Development Authority

.....Respondent

BEFORE:

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

For the Appellant : Sri Sushil Kumar Sharma, Advocate.

For the Respondent : Sri Satya Prakash Pandey holding brief for
Sri Arvind Kumar, Advocate.

Dated : 25.2.2011

JUDGMENT

PER MR. JUSTICE BHANWAR SINGH, PRESIDENT

This appeal is directed against the judgment and order dated 05-05-2008 passed by the District Consumer Forum, Ghaziabad. By means of the impugned judgment the complaint of the appellant Sri Vijay Gautam, Advocate was partly allowed with a direction to the respondent Ghaziabad Development Authority to refund the appellant/complainant's money amounting to Rs.5,000/- with interest @ 9% per annum. The appellant felt aggrieved of the said judgment as the main relief he has sought for by filing his complaint was for cancellation of the allotment order issued earlier in his name in respect of Plot No. 4/242-B, Vaishali, Ghaziabad and for revival of the allotment with delivery of possession of course on his willingness to pay its price.

Briefly stated, the complainant initially applied for allotment of a house in the Vaishali Residential Scheme of Ghaziabad Development Authority but submitted his revised request for allotment of a plot in place of the house and the same was granted with allotment of Plot No.

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4/242-B in the same residential scheme. The complainant was asked to pay the conversion charges but he could not comply with the requisite direction. However, it appears that the delay in making payment of the conversion charges was waived by the Development Authority and it had issued a payment schedule vide its letter of 12-03-1996. In this letter the claim for conversion charges was also reiterated. The appellant, in order to avoid payment of interest by opting for the payment schedule of instalments preferred to pay the entire amount in one lump-sum and submitted his request vide his letter dated 02-06-1997 and asked for the details of the amount he was to deposit in one lump-sum. However, as pleaded by him in his complaint he did not receive any reply of his said letter. Since he was a practicing Advocate in Ghaziabad itself, he kept on requesting the authorities time and again for the details of the entire price in one lump-sum but the authorities of the Ghaziabad Development Authority did not oblige him; rather straightaway issued a cancellation order dated 18-03-2002. Feeling aggrieved of the cancellation letter Sri Vijay Gautam filed his complaint.

The Development Authority contested the complaint merely on the ground that Sri Vijay Gautam himself was to blame for the delay in payment of the instalments as scheduled in its letter dated 12-03-1996. The complainant was warned of cancellation of his allotment order in case default persisted but he did not bother either to come forward and ask for any help or make the payment. It was in these circumstances that the cancellation order dated 18-03-2002 was issued.

The District Consumer Forum as mentioned above approved of the cancellation order as the complainant failed to pay the conversion charges or any part of the price.

The crucial question to be determined by this Commission is as to whether the Development Authority responded to the complainant's letter dated 02-06-1997 or not? We find from record that this letter of 02-06-1997 was personally handed over by Sri Vijay Gautam to the Officer on Special Duty on 06-06-1997 and the officer made the following endorsement on his letter:—

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“HC/DC - एकमुश्त भुगतान करना चाहते हैं। देखें तथा रिपोर्ट दें।
CATP से स्थल चित्र हेतु भी लिखें।

हस्ताक्षरित
06.6.97”

The complainant kept on waiting to receive a reply of his letter but he was never obliged. The respondent neither before this Commission, nor before the District Consumer Forum submitted a copy of any reply letter that could have been sent to him. In other words the Ghaziabad Development Authority committed a deficiency in service by not responding to the complainant's letter dated 02-06-1997 and in this way the complainant was never informed about the price of the plot to be paid in one lump-sum. If the aforesaid letter would have been replied or some exercise undertaken on the complainant's file, maintained in the Ghaziabad Development Authority, the copies of the relevant orders and reply letters could have been filed for our perusal but not only no such copies were adduced in evidence but also it was not disclosed that an effort was made or not to calculate the outstanding liability of the complainant. It may, therefore, be inferred that the Development Authority allowed the deficiency in service to continue for long and the authorities kept quiet upto the year 2002 by neither asking the complainant to move forward nor taking any decision in the matter.

The learned Counsel for the respondent made an effort to submit with reference to the affidavit filed in support of the written objections against the memorandum of appeal that show cause notice dated 18-05-1998 was issued to the complainant whereby he was warned either to pay the instalments as scheduled in the letter dated 12-03-1996 and obtain possession of the house by 15-06-1998 or otherwise, in case of default allotment order in his name would be cancelled. The appellant has denied that he ever received this letter. Besides his denial there are two more aspects of the matter – the first of them being that vide this letter dated 18-05-1998 the Ghaziabad Development Authority did not consider it proper to reply to the complainant's letter dated 02-06-1997 on the margin of which the Officer on Special Duty had issued necessary

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instructions so as to respond to the complainant's request; and, secondly the authorities still insisted for payment by way of instalments and that too alongwith interest. In this context, it is noteworthy that by the time this letter would have been issued the period of instalments was over and obviously the Development Authority could ask the complainant to pay in one lump-sum a particular amount including the interest and the penal interest, if any. But the Development Authority did not sincerely discharge its commitment of service and can thus be held guilty of deficiency on its part.

There is yet one more implication of the alleged notice and it is that though this notice was allegedly sent in May, 1998 but was not acted upon for long four years. The cancellation was issued on 18-03-2002 i.e. about four years after the alleged notice of May, 1998 had been despatched. As a matter of fact, the complainant who was always ready and willing to pay the stipulated price in one lump-sum should have been given a fresh show cause notice before the cancellation order in 2002 was issued. Admittedly no fresh notice either for demanding the upto date price of the plot was sent to the complainant in 2002, nor a fresh show cause notice issued even though the complainant who despite suffering from heart problem has always been ready and willing to pay the price in one lump-sum. He wanted to avoid payment of interest but it appears that the authorities of the Ghaziabad Development Authority did not cooperate with him. The fact that there was very little communication between the Authority and the complainant clearly shows deficiency on its part. The cancellation without a notice muchless a fresh notice in 2002 cannot be justified nor approved of. The sincere request of the complainant submitted by him vide his letter dated 02-06-1997 though seriously taken note of by the Officer on Special Duty was never acceded to. In these circumstances, we are of the decisive opinion that the respondent Ghaziabad Development Authority committed a serious deficiency in service. The complainant was entitled for the main relief he has prayed for in his complaint.

In the result, this appeal is allowed and the main relief of the

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complainant as pleaded by him in his complaint is granted. He would get possession of the plot after he pays the entire price of the plot allotted to him in accordance with the terms and conditions of the allotment. He has to meet his liability as regards payment of interest in accordance with the terms and conditions enumerated in the allotment letter. Since the plot is still lying vacant, there would be no impediment in reviving its allotment in the name of the complainant. The appellant shall deposit the entire outstanding sum with the District Consumer Forum within one month from the date a statement of accounts is submitted by the Ghaziabad Development Authority before the District Consumer Forum. In case the Ghaziabad Development Authority fails to submit a statement of accounts the appellant shall calculate the price including interest in terms of the allotment letter and deposit the same. In case the deposit is made the Ghaziabad Development Authority shall execute the sale deed within 30 days from the date of deposit and delivery of possession shall follow the course. The impugned judgment is modified accordingly.


(JUSTICE BHANWAR SINGH)
PRESIDENT 2-11


(SYED ALI AZHAR RIZVI)
MEMBER


(RAMPAL SINGH)
MEMBER

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