

RESERVED

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

APPEAL NO. 343 OF 2006

(Against the judgment/order dated 09-11-2005 in Complaint
Case No.840/2002 of the District Consumer Forum-II, Lucknow)

Virendra Sahai Bisaria
S/o Late Dr Raghuvir Sahai
33, Panchwati Colony, Kamta
Faizabad Road, Lucknow

...Appellant/Complainant

Vs.

Aporva Sahkari Avas Samiti
2/500, Vijay Khand, Gomti Nagar
Lucknow
Through its Secretary Jitendra Verma

...Respondent/Opposite Party

AND

APPEAL NO. 102 OF 2007

Aporva Sahkari Avas Samiti
2/500, Vijay Khand, Gomti Nagar
Lucknow
Through its Secretary Jitendra Verma

...Appellant/Opposite Party

Vs.

Virendra Sahai Bisaria
S/o Late Dr Raghuvir Sahai
33, Panchwati Colony, Kamta
Faizabad Road, Lucknow.

...Respondent/Complainant

BEFORE:

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT
HON'BLE MR. A K BOSE, MEMBER

For the Appellant/Complainant : Sri V S Bisaria, Advocate.

For the Respondent/Opposite Party : Sri Anurag Srivastava, Advocate.

Dated : 08.10.13



JUDGMENT

PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT

Both the aforesaid appeals have been filed by both the parties separately against the judgment and order dated 09-11-2005 passed by the learned District Consumer Forum-II, Lucknow in Complaint Case No. 840/2002 Sri Virendra Sahai Bisaria V/s Aporva Sahkari Avas Samiti in which the learned District Consumer Forum directed to the opposite party/Aporva Sahkari Avas Samiti to construct the metallic road in the colony and to extend the electricity line to facilitate the electricity supply to the complainant. A sum of Rs.50,000/- is also awarded as compensation to the complainant alongwith a sum of Rs.1,000/- towards litigation charges.

Since both the aforesaid appeals have been preferred against the common judgment and order, therefore, both the aforesaid appeals have been taken for decision conjointly.

We have heard Sri V S Bisaria, learned Counsel for himself the complainant and Sri Anurag Srivastava, learned Counsel for the opposite party.

Briefly stated the facts in dispute in between the parties are that the complainant was allotted a corner Plot No. 33 by the opposite party. The main grievance of the complainant was that the opposite party had not provided electricity so as to facilitate the complainant during the course of construction and in the absence of the Electricity L.T. Line, the complainant had to hire the services of a generator and paid its rent @ Rs.500/- per day from May 4, 2001 to September 30, 2001. The opposite party had not constructed roads in the colony is also remained the



grievance of the complainant before the District Consumer Forum against the opposite party.

The opposite party thereby contesting the complaint before the District Consumer Forum filed the written statement stating therein that it was the responsibility of either the Government or the local authority to construct the road and so far as the provision for streetlight is concerned, the opposite party had provided the electricity as per its commitment.

The District Consumer Forum found the opposite party deficient in service to the complainant stating that the opposite party did not construct the roads in the colony and failed to erect electricity line to provide the electricity to the complainant and thus the District Consumer Forum allowed the complaint with this direction to the opposite party to construct the metallic road in the colony and to extend the electricity line to facilitate the electricity supply to the complainant. A sum of Rs.50,000/- is also awarded as compensation to the complainant from the opposite party and a sum of Rs.1,000/- towards the litigation charges are also allowed to the complainant to be paid by the opposite party.

Both the parties feeling aggrieved came before this Commission against the judgment of the District Consumer Forum by way of Appeal No. 343/2006 filed by the complainant and by way of Appeal No. 102/2007 filed by the opposite party. The complainant by way of this appeal demanded a sum of Rs.75,000/- instead of Rs.50,000/- as compensation towards the expenses incurred by him on electricity charges. The opposite party by way of its appeal assailed the entire award of compensation to the complainant.

Regarding above dispute the complainant contended that the



electric poles, blacktop roads and water system were assured through the pamphlet and through the advertisement by the opposite party and when the complainant had gone to visit the site, he had found that all the streetlights were burning(lightening) and the water was available through submersible pump installed by the opposite party. Merely in one lane where the Plot No.33 was situated the electric poles were not installed but it was assured by the opposite party that the electric poles will also be installed and three phase wire and street line wires will also be laid down very shortly on the road where the Plot No.33 was situated. At the time of purchase of Plot No.33 by the complainant, the opposite party had clearly mentioned that the development charges have been included in the cost of land which have been received. When the complainant started construction of his house on Plot No.33, the Hydel Department disconnected the electricity of the colony on the ground that it was illegally got energized. Due to disconnection of the electricity, the complainant had to hire the generator set to get the water from the submersible pump and for all other works of the construction costing to him to the tune of Rs.75,000/- due to @ Rs.500/- per day for hiring the generator set. The opposite party neither erected the electric poles; nor any street line wires and three phase wires were spread over on the road of the corner Plot No.33 sold to the complainant and these facts have already been well proved on record showing the deficiency in service of the opposite party to the complainant and, therefore, the appeal filed by the opposite party is liable to be dismissed while the appeal filed by the complainant is worth allowed for the entire relief prayed in the complaint with an interest @ 24% from the date of the complaint till its recovery.



The learned Counsel for the opposite party contended that the opposite party although doing the job on a small scale, but it was doing a very good job as all the roads of the colony were provided to be of 26 feet wide and the opposite party never remained deficient in service to inhabitants of the colony as is certified on the request of the opposite party by Sri Madhusudan Singh one of its oldest resident and the President of its Residents Welfare Association who had certified that he never had any problem in constructing his house and the opposite party fulfilled his promises and he was satisfied with the development work done by the opposite party. The proper road with coaltar constructed, agreed that blacktop would again be done after houses in the colony were constructed and the government now has already constructed the blacktop. The complainant bought the plot in November, 2000 and every facility was made available to him by September, 2001 including the electricity i.e. within a period of less than a year while it may take some time for a real estate developer to provide infrastructure. The streetlights were to be provided on the major roads of the colony which was done and the erection was found to be as per norms by Vidyut Suraksha. Some members took advantage of the electric pole being it per chance near their plots, others were to bear the cost demanded for erecting extra poles etc. The opposite party was doing the development work as per its promise and in order to fulfill the same, it purchased the requisite equipments, electric items for the purpose including the electric poles, pump set, control panel, cable wires, tube lights, streetlights, main switch etc. The complainant's case pertaining to the generator charges is totally misconceived and false as the opposite party had already provided



a generator in terms of the compromise in between the opposite party and residents of the Society one of whom signatory was the complainant also that the opposite party shall provide a generator and the cost of the diesel was to be shared by the residents. More so construction of a house does not require constant supply of power from the first day to the last. Most of the time one needs water which was available in the colony and the need for power was restricted to run the machine for polishing the floor etc. at the time of finishing of the house, therefore, it cannot be presumed that a sum of Rs.,80,000/- shall be incurred on the generator while such generator is easily purchasable on a cost of Rs.15,000/- to 20,000/- only. The alleged generator is said to have been used by the complainant between May to September, 2001 but since on May 2, 2001 alongwith other residents the complainant had himself agreed to take the offer of the opposite party for a generator alongwith its maintenance and its operation, the running of the separate generator by the complainant cannot be believed. It is further submitted on behalf of the opposite party that the complainant, being a lawyer himself, has harassed the Society and the Society itself deserve to be compensated from the complainant and the appeal filed by the opposite party itself deserve to be allowed while the appeal filed by the complainant itself deserves to be dismissed.

In the light of the aforesaid contentions of both the parties and after careful perusal of the entire record, we have found and come to this conclusion that since it is an admitted fact that a network of the roads has already been laid down in the colony by the local authority, another network of the roads may not be required and in this regard the impugned order is not liable to be sustained.



The admitted position of electrification in the colony as today is that the colony has already been electrified and energized for the electricity. The ample evidence is on record, rather it is an admitted fact in the affidavits and the contentions of both the parties, that the colony remained with no electricity in between May, 2001 to September, 2001. We need not to enter into this merit as to whether the electricity in the colony prior to May, 2001 was authorized or unauthorized and we need not further to enter into merit that the electricity department or the opposite party have energized again the colony for electricity as per rules and regulations or otherwise. The bare fact remains before us that the colony was with no electricity in between the month of May, 2001 to September, 2001 and undoubtedly in this period the residents of the colony one of whom the complainant is, have to make alternate arrangement for the electricity. No doubt there is ample evidence too on record in the form of affidavits of the parties and in the form of agreement in between the parties that the opposite party had offered a generator set to the residents of the colony for electricity and the expenses of its running were to be borne by the residents of the society. In our view the provision of generator by the opposite party may not be a provision for supply of electricity for the purpose of machines to be run which were to be used in the construction work. The arrangement of one generator by the opposite party may be an alternative remedy for the residents of the society for lightening the streetlights. A single generator provided by the opposite party cannot be said the sufficient arrangement for the residents of the society to get the construction work of the building done, wherein so many machines and instruments had to be run

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and certainly Sri V S Bisaria the complainant had to arrange a generator for the purpose of construction of the building which is duly proved on record by the complainant by way of affidavits, not only of the affidavit of the complainant rather the affidavit of Sri Sonu, who had provided the generator to Sri Bisaria the complainant. The complainant proved that he had incurred a sum of Rs.75,000/- in arrangement of the generator. The District Consumer Forum awarded a sum of Rs.50,000/- compensation towards the arrangement of generator, which in our view neither is excessive; nor such a sum is said to be less than the expenses incurred by the complainant because had there been the electric connection in the house of Sri Bisaria the complainant, certainly some electric charges would have been borne by the complainant. So far as the question of contention of the opposite party in this regard is concerned that generally the generators are available on a cost of Rs.15,000/- to Rs.20,000/- and Sri Bisaria should not be believed that he had incurred a sum of Rs.75,000/- in this regard, we are of this view that question is not to purchase a generator, the question is the expenses for alternative arrangement to get the electricity generated, which may be in the form of purchase of the generator and recurring expenses on it or may be in the form of a generator hired with no expenses except the rent for hiring the generator. In our view since the complainant paid Rs.500/- per day for the generator and which is affirmed by the provider of the generator and which fact had not been proved in negative by any of the person that such type of generator was not arranged by the complainant, we are of this view that the complainant is entitled to get the sum awarded by the District Consumer Forum in this regard.



The appeal filed by the complainant shows that by way of the appeal of the complainant merely enhancement of the compensation is sought to the tune of Rs.75,000/- instead of Rs.50,000/- awarded by the District Consumer Forum and as discussed above, when we have found that the compensation awarded by the District Consumer Forum since is sufficient, we do not find any substance in the appeal filed by the complainant, which is liable to be dismissed.

So far as the question of appeal filed by the opposite party is concerned, we are of this view that the appeal filed by the opposite party deserves to be partly allowed, because the impugned order provides that the opposite party had to deposit the amount of estimate of the electricity department to get the electricity supply in order in the colony and to construct the packka road of coaltar in the colony and since in the present scenario both the aforesaid works had already been carried out in the colony, the impugned order deserves to be modified accordingly.

So far as the question of compensation of Rs.50,000/- awarded by the District Consumer Forum in favour of the complainant is concerned, the aforesaid discussion shows that the complainant is entitled to get the aforesaid amount alongwith Rs.1,000/- as litigation expenses which could not be said on the higher side, because the opposite party had been in deficiency of service to provide the electricity in between May, 2001 to September, 2001 in that way as was projected at the time of visit of the site by the complainant for making his mind to purchase the plot in the colony for construction of his house. There is ample evidence on record that the earlier supply of electricity in the colony for a period in between May to September, 2001 the electricity supply in the colony was stopped

 

by the hydel department. Whatever may be the reason in this regard we need not to probe but since it is the bare fact that during that period no electricity was available in the colony as was available prior to May, 2001, the generator alleged to have been provided by the opposite party for the residents of the colony may not be the alternate of the uninterrupted electricity to the complainant which was being projected in existence at the time of purchasing the plot by complainant. Hence the compensation awarded in this regard being not excessive is liable to be paid by the opposite party to the complainant. Hence the appeal filed by the opposite party is also liable to be dismissed.

ORDER

The Appeal No. 343/2006 filed by the complainant is hereby dismissed. Both the parties shall bear their own costs to this appeal.

The Appeal No. 102/2007 filed by opposite party is partly allowed thereby setting aside the impugned order except for compensation and litigation expenses awarded in favour of the complainant.

This judgment shall be placed on the record of Appeal No.343/2006 with its copy to be laid on the record of Appeal No. 102/2007.


(JUSTICE VIRENDRA SINGH)
PRESIDENT


(A K BOSE)
MEMBER