

APP.

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
UTTAR PRADESH, LUCKNOW**

**APPEAL NO. 790 OF 2008**

(Against the judgment/order dated 18.02.2008 in Complaint Case No. 650/1998 of the District Consumer Forum-II, Lucknow.)

M/s Ansal Housing & Construction Ltd. & another

.....Appellants

Vs

Dr. R. B. Saxena

.....Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT**

**HON'BLE MR. C. B. SRIVASTAVA, MEMBER**

For the Appellant : Sri. Rajesh Chadha, Advocate.

For the Respondent : Sri. S. S. L. Srivastava, Advocate.

Dated : 29.03.2011

**JUDGMENT**

**MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)**

This appeal is directed against the impugned Judgment dated 18.02.2008 of the District Consumer Forum-II, Lucknow whereby the appellants M/s Ansal Housing & Construction Ltd. were directed to execute the sale deed in respect of the house allotted to the complainant subject to the payment of Rs.2,22,422.00 by the latter.

The appellants' contention is that the complainant was a defaulter and as such liable to make the payment of Rs.10,96,364.00 as due upto April, 2008 and also he is under an obligation to pay the interest upto date.

Shortly stated the complainant alleged in his complaint that as against the price of Rs.4,35,000.00, he had deposited Rs.2,33,932.00 and when he received a notice on 25.11.1993 regarding demand of the outstanding amount on that date he requested for the payment to be made in three instalments which request was conceded to. The instalments of Rs.40,000.00 each deposited in January, 1994 & February, 1994 were included in the aforesaid amount of Rs.2,33,932.00. The complainant protested against the demand letter dated 10.05.1997 whereby a sum of Rs.2,67,387.00 was asked to be paid. It was pleaded by him that since possession was not offered in time he was not liable to either pay the interest or the escalated amount of Rs.52,995.00. When his protest letter was not replied, he filed the complaint

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in the year 1998 and asked for a relief regarding execution of the sale deed on payment of the balance amount. On the other hand, the appellants stated in the written statement that by means of the letters dated 27.03.1995, 24.02.1996, 10.05.1997 & 25.05.1997 the complainant was asked to remit the balance amount outstanding against him. Various sums as stated in those letters were due to be paid by the complainant and as is evident from perusal of the demand letter dated 25.05.1997 a sum of Rs.2,75,002.46 was payable by the complainant. In this letter the escalation cost was reduced marginally to Rs.49,452.00 and besides interest several other charges on account of sewer connection, water charges, development charges, malva charges and grill charges were also claimed. Since the size of the plot on which the house had been raised, there was reduction in the total price of the house from Rs.4,35,000.00 to Rs.4,14,338.50. According to these calculations drawn by the builders, a sum of Rs.2,75,002.46 was the ultimate demand vide letter dated 25.05.1997. The complainant instead of complying with the demand filed his complaint before the Forum below.

The District Consumer Forum examined the statement of accounts, the pleadings of the parties as also the evidence adduced in support thereof and recorded a finding that a sum of Rs.2,22,422.00 only was payable by the complainant and if that money is remitted to the appellants, the latter shall be under an obligation to execute the sale deed in respect of the House No. M-900, Anjuman Type-3, Ashiana, Lucknow.

It may be relevant to mention that the aforesaid amount was remitted by the complainant to the appellants but they did not accept it on the ground that they proposed to question the validity of the judgment by filing an appeal and eventually this appeal was preferred by them.

The crucial question which seems to have been <sup>posed</sup> possessed for our answer is as to whether the builders i.e. the appellants are liable for deficiency in service on their part or not? For the reasons that may follow, the answer is bound to emerge in negative:-

Firstly, the complainant as per terms of the agreement and the Plan-A opted by him, ~~he~~ <sup>he</sup> could obtain possession on payment of 95% of the total price of the house which he has not paid till date. Secondly, the instances of

default are obvious on the part of the complainant. As informed by the appellants he had to deposit 55% of the total price i.e. 2,27,885.00 upto 1993 but he by then remitted only a sum of Rs.1,19,185.90. He, however, requested as is evident from his endorsement on the letter dated 26.10.1993 (Annexure-3) to make the deficiency good by way of three instalments of Rs.40,000.00 each and this request was granted by the appellants. He was accordingly asked to pay Rs.40,000.00 on 25.11.1993, the second instalment of Rs.40,000.00 by January, 1994 and another Rs.40,000.00 on February, 1994. With the payment of these three instalments the complainant till date has paid merely a sum of Rs.2,33,932.00. It may be important to note that the facility of this payment of three instalments of Rs.40,000.00 each had no connection with the payment plan of instalments as opted by the complainant at the initial stage of the agreement. The said plan was percentage wise and he failed to pay 95% before seeking delivery of possession.

Thirdly, the complainant did not reply the notice dated 27.03.1995 of the appellants nor he acted upon the letter dated 24.02.1996 of the appellants whereby he was asked to take possession of the house on payment of the balance amount outstanding against him. A perusal of this letter of February, 24, 1996 would reveal that the appellants were aggrieved of the delay on the part of the complainant and they had also resented to protect possession by their watch and ward <sup>to</sup> by ~~the~~ department and also they had conveyed that <sup>the</sup> timely maintenance of the house is also adding to the cost and, therefore, the possession would be offered <sup>to</sup> <sup>on</sup> "as is where is basis". The complainant did not respond to this letter. However, Sri S. S. L. Srivastava, Learned Counsel for the respondent/complainant has submitted that the complainant did not receive these letters of 27.03.1995 and 24.02.1996 but since the letters were sent by the registered post, we believe that they might have <sup>been</sup> delivered to the complainant as his address was rightly depicted on both these letters. Fourthly, the letter dated 10.05.1997 which had been replied by the complainant vide his notice sent through his lawyer clearly indicates that a total sum of Rs.2,67,389.00 was due from him but he had given a detailed account and justification as to why he should not be asked to pay the

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escalation cost and other charges. Before this reply notice would have reached in the office of the appellants they had written another letter of May 25, 1997 and rationalised<sup>he</sup> the cost on the count of escalation, reduced it marginally by claiming Rs.49,452.55 and calculated a total sum of Rs.2,75,002.46. With this last letter from the side of the appellants the correspondence between the two had come to an end and the complainant filed his complaint in the succeeding year in 1998 resenting the appellants' demand for various charges.

We find ourselves not in agreement with the complainant's contention that he was not liable to pay the escalated amount on the ground of there being delay on the part of the builders in completing the construction. The District Consumer Forum's finding that since the builders failed to prove the exact date of delivery of possession, they would not be entitled to claim escalation cost, is devoid of any reasoning. If we go through the various payment plans offered by the builders, Plan-B indicates that possession was likely to be offered sometime in the year 1992 or 1993 but in the case of the complainant payment Plan-A clearly postulated that he would be entitled to claim possession only on payment of 95% of the total cost. Though he resented the demand<sup>to</sup> by the final demand letter dated 25.05.1997 but as we have observed earlier there was no justification for him to have resisted the said demand. He was under an obligation to pay the interest for the delay on his part as also the escalated cost which was roughly 12% of the total price of the house. Also he was liable to pay the sewer and water connection charges etc.

Sri Rajesh Chadha, learned Counsel for the appellants has pointed out that the house in question is still intact and despite the fact that there was a serious default on the part of the complainant allotment was neither cancelled nor the house had been allotted to anyone else; rather it is being protected for the complainant during the last 16 years.

Having regard to all the above aspects of the matter, we arrive at a conclusion that the appellants were not guilty of the deficiency in service rather it was the other way around, the complainant was to blame for the default on his part. Since he agreed to pay the interest in case of delay on his part, he has to pay the interest on the balance amount he has not yet paid.

The appellants were fully justified to refuse to accept the amount of Rs.2,22,422.00 offered by the complainant in accordance with the directions of the Forum below, as a higher sum was due to them to be paid by the complainant. The rate of 24% as penal rate of interest has been calculated by the appellants and it is in accordance with the terms of agreement between the parties. Although the complainant has not signed the agreement, it is recited in Clause-17(b) that in case of default the allottee shall be liable to pay the penal interest @ 24% per annum.

The learned Counsel for the complainant has however submitted that since the complainant is not a party to the agreement, he may not be forced to pay that higher rate of interest. Keeping all aspects of the matter in view, it may be observed that now there are two options available to the complainant - one, either he pays interest @ 15% per annum on the amount of Rs.2,75,002.46 as on 25.05.1997 and take away the house on 'as is where is basis' or he takes his money back alongwith 15% interest.

Dr. R. B. Saxena who is present in court before us after consultation with his learned Counsel Sri S. S. L. Srivastava expresses his willingness to accept the house on payment of 15% interest on the aforesaid amount of Rs.2,75,002.46 w.e.f. 25.05.1997 as mentioned in Annexure-7.

Accordingly we allow this appeal in part, uphold the District Consumer Forum's direction to the appellants to execute the sale deed in favour of the complainant on <sup>ke</sup> payment of Rs.2,75,002.46 as on 25.05.1997 alongwith interest to be calculated @ 15% w.e.f. 25.05.1997 itself. Calculating accordingly, if the entire outstanding sum is remitted to the appellants within ~~two~~ <sup>one</sup> month<sup>s</sup> from today, the builders i.e. appellants shall execute the sale deed without asking for payment of anything else except of course the stamp papers for execution of the deed. The execution of the deed shall take place within four weeks from the date the aforesaid amount is received by the appellants. The registration charges shall be payable by the complainant. Keeping the long drawn litigation into our consideration, we

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do not make any order as to costs.

  
(JUSTICE BHANWAR SINGH)  
PRESIDENT

  
(C. B. SRIVASTAVA)  
MEMBER

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