

(2001) 05 NCDRC CK 0025

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

JAGDEEP SHARMA

APPELLANT

Vs

FEDELIA CONSTRUCTIONS PVT.
LTD.

RESPONDENT

Date of Decision: May 4, 2001

Citation: 2002 3 CPJ 140

Hon'ble Judges: K.C.Bhargava , D.D.Bahuguna , Rachna J.

Final Decision: Complaint partly allowed

Judgement

1. THE complainant has filed this complaint for payment of Rs. 2,22,898/- by way of interest at the rate of 21% per annum and Rs. 50,000/- as damages on account of mental tension, etc.

2. THE facts of the case stated in brief are that the opposite party gave wide publicity for raising constructions of "Pioneer Plaza". THE completion date was given as June, 1990. It was a multi-storyed office complex at 20 Vidha Sabha Marg, Lucknow. THE complainant applied for a space in the said Pioneer Plaza. THE opposite party accepted the request of the complainant and allotted an office space of 515 sq. ft. on 3rd floor (Space No. 311-A) for a sum of Rs. 2,57,500/- calculated at the rate of Rs. 500/- per sq. ft. THE allotment letter is dated 5.1.1989. THE terms and conditions were enclosed with allotment letter, which is Annexure No. 1 to the complaint. It was provided in the agreement that in case of delayed payment of instalments, interest at the rate of 21% per annum shall be payable to the opposite party. THE complainant paid a sum of Rs. 2,44,625/-, the details of which are given in para No. 5 of the complaint.

The complainant is serving in Merchant Navy and in this connection he remains out of India for about eight months. The last instalment was paid by the complainant on 25.1.1991. After making the payment, the complainant met the Director of opposite party to know about the probable date of possession of the space allotted to the complainant and handed over to him. The opposite party did not give any satisfactory reply. It was disclosed that some changes are being made in the location of flat allotted to the complainant. It is further alleged by the complainant that information was sent by the opposite party by letter dated 7.10.1992 to the complainant informing that there are certain progress in construction of the building but there has been a change in the management and detailed plans are being made and they are preparing time schedule for completion of building after its revalidation from Lucknow Development Authority. It was also intimated that the work shall start in 1992 and is expected to be completed by middle of 1995. It is further alleged that those who wish to have their money refunded, they may intimate the opposite party. Thereafter on 7.11.1992 the complainant informed the opposite party to confirm about the payment of interest at the rate of 21% per annum on the amount to be refunded. The opposite party refused to pay any interest on the amount to be refunded. In that letter it was also informed that if the complainant wants, he can get possession of the space which has been allotted to him after completing the construction by June, 1995. Thereafter, the correspondence went on between the parties and ultimately a Bank Draft for Rs. 2,44,625/- was sent to the complainant which was encashed. Now the complainant has prayed for reliefs as mentioned above.

The opposite party in its written version has alleged that one of the terms and conditions of the agreement was that if the project is abandoned, no claim will be preferred except that the money paid by the allottee will be refunded without interest or compensation. The complainant is bound by the terms and conditions of the agreement. It is further provided that an option was given to the complainant as well as to other allottees who have deposited the money with the erstwhile management, either to take back the money or they should wait for completion of the project. As the complainant had given his consent and demanded back the money, the refund was made to him. The complainant is not entitled for any interest in terms of the agreement. The complainant is trying to blackmail the opposite party even after taking back the money deposited. The payment of interest at the rate of 21% is nowhere provided in the agreement.

3. THE parties lead evidence in support of their respective contentions. We have perused the evidence on record, and heard complainant. Opposite party was

absent.

The only question which has to be decided in this complaint is whether the complainant is entitled to get interest on the amount deposited by him or not. It is an admitted fact that the complainant has deposited a sum of Rs. 2,44,625/- in instalments and the last instalment was paid on 25.1.1991. The first instalment was paid on 3.1.1989. Learned Counsel for the complainant has argued that as per the terms of agreement, the construction was to be completed in the year 1990. A perusal of the agreement entered into between the parties will go to show that Clause 2(c) provided as under :

"If for any reason, the whole project is abandoned, no claim monetary or otherwise will be preferred or accepted except that the money paid by you will be refunded without interest or compensation. According to this clause, opposite party has contended that as the project has been abandoned hence no interest is to be paid to the complainant. This contention of the opposite party cannot be accepted. A perusal of this agreement goes to show that the interest will not be paid on the refunded amount if the project is abandoned. In the present case there is no plea in the written statement that the project has been abandoned. Moreover, this was not the case of the opposite party when the refund was made."

4. WHEN the complainant asked for interest on the refunded amount, the opposite party by letter dated 2.12.1992 did not mention that the scheme has been abandoned, therefore, the interest is not to be paid. Similarly in the written statement this plea was not taken that the project has been abandoned. This has, for the first time, come in the counter affidavit filed by the opposite party. Thus we find that till the time the refund was made to the complainant of the amount deposited by him, the scheme has not been abandoned and the complainant has been given a choice either to take back the money or to wait till the completion of the project. This assurance is contained in paras 1(iii) and 18 of the written statement. It has clearly been mentioned that only on the request of the complainant the money is being refunded. It has also been written that the complainant may also take possession of the allotted space if he is intending to do so. Thus the facts on records clearly go to show that the scheme was not abandoned when the complainant had taken back the amount and thus the complainant is entitled for interest.

Now the complainant has contended that interest at the rate of 21% per annum should be awarded to the complainant as the opposite party has provided under the agreement that interest at the same rate shall be payable in case the instalments

are paid late. This is contained in Clause 2

(i) which provides that if the instalments and other amounts payable by the buyer are not paid on their respective due dates, the buyer shall apart from any other consequence be liable to pay interest for the period of delay at the rate of 21% per annum. Thus it goes to show that 21% per annum interest shall be payable by the complainant in case he makes delay in payment of instalments. Therefore, the equity provides that the same rate of interest should be paid by the opposite party to the complainant. Thus the complainant is entitled for 21% per annum interest on the amount refunded by the opposite party with effect from the date of respective deposits. The complainant has claimed a sum of Rs. 50,000/- as compensation for mental torture. The complainant has failed to prove that how so much damage he has suffered. The interest which has been awarded to the complainant would also take care of the mental torture, etc.

In view of the discussions above, the complainant will get interest at the rate of 21% on the amount refunded to him till the date of complaint ORDER The complaint is partly decreed with cost of Rs. 3,000/-. The complainant is allowed interest at the rate of 21% per annum on the deposited amount from the date of deposit till the date of complaint. Let compliance of the order be made within a period of two months from today. Let copy as per rules be made available to the parties. Complaint partly allowed.