

(2012) 04 NCDRC CK 0058

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Rajasthan Housing Board,
Through Deputy Housing
Commissioner, Chopasani
Housing Board

APPELLANT

Vs

Vimlesh Chaudhary

RESPONDENT

Date of Decision: April 11, 2012

Citation: 2012 0 NCDRC 118 : 2012 2 CPJ 445 : 2012 2 CPR 361

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Advocate: Narottam Vyas , Badridas Sharma , Aishwarya Bhati , Karminster Singh

Judgement

1. PETITIONERS which were the opposite parties before the District Forum have filed this Revision Petition against the order dated 09.10.07 passed by the State Consumer Disputes Redressal Commission, Rajasthan (for short, "the State Commission") in appeal no.122/06 upholding the order of the District Consumer Disputes Redressal Forum, Rajasthan (for short, "the District Forum") dated 26.06.06 except that it modified the order of the District Forum to the extent that the petitioners shall pay interest @9% p.a. on the amount of Rs.5,53,434/- instead of interest @18% on the amount of Rs.9,21,000/- as awarded by the District Forum.

2. COMPLAINANT/Respondent (hereinafter to be referred to as "the Respondent") applied for allotment of HIG House to the Petitioners under the "Open Counter Scheme" and was allotted House No.2/5 in Kudi Bhagatsani Housing Board Scheme. Petitioners issued allotment letter. Total costs of the house was fixed at Rs.9,31,834/-. Respondent deposited the aforesaid amount on 31.1.2005. Petitioners

by letter dated 11.2.05 informed the Respondent that because of the Writ Petition filed by Smt. Kanta Vyas it was not possible to hand over the possession of the allotted house to her. Petitioners gave an option to the Respondent to take two MIG houses instead of the HIG House allotted to her. Respondent accepted the offer. In the District Allotment Committee (DAC) meeting, a proposal was passed to allot only one MIG house [No.1-B-14] to the Respondent for Rs.4,42,500/-. By its letter dated 5.10.05 the Petitioners asked the Respondent to complete the legal formalities. Respondent submitted the relevant papers on 10.10.05 after completing all the formalities. On 10.10.05, possession letter was issued and the Respondent was handed over the possession of the unit allotted to him. Petitioners after deducting the sum of Rs.4,42,500/- towards the cost of the MIG house out of sum of Rs.9,31,834/- deposited by the Respondent for allotment of HIG house, refunded the balance amount of Rs.4,92,199/- to her.

Respondent filed the complaint before the District Forum alleging deficiency in service on the part of the Petitioner Board claiming that she should have been allotted the MIG House for Rs.3,78,400/- i.e. the cost shown in the booklet for counter sale at the relevant time and not Rs.4,42,500/- i.e. the price prevalent at the time of allotment. She also claimed the interest @20% on the sum of Rs.5,53,434/-, Rs.50,000/- as damages, Rs.35,000/- as compensation for undue harassment and Rs.25,000/- as costs of the litigation.

Petitioners, on being served, filed their joint reply contesting the averments made in the complaint and raising the contention that the Respondent had willingly accepted the cost of Rs.4,42,500/-. Since the Respondent had accepted the allotment of MIG House at the cost of Rs.4,42,500/- voluntarily, the complaint filed by the Respondent was liable to be dismissed.

3. DISTRICT Forum after taking into consideration the pleadings and the evidence led by the parties allowed the complaint granting the following reliefs:-

(i) Opposite Party shall pay interest @ 18% p.a. on the amount of Rs.9,21,000/- from 31.1.05 to 10.10.05. (ii) Opposite Party shall charge Rs.3,78,400/- instead of Rs.4,42,500/- for MIG house No.1-B-14 and the balance amount of Rs.64,100/- shall be refunded to the Complainant along with interest @18% w.e.f. 10.10.05 till payment. (iii) Opposite Party shall pay Rs.21,000/- to the complainant towards compensation for mental agony and Rs.1000/- as litigation costs within 15 days of passing this order failing which the amount shall carry interest @12% p.a. from the date of passing of order till the date of payment. Petitioners, being aggrieved, filed the appeal before the State Commission. State Commission partly allowed the

appeal and directed the Petitioners to pay interest @9% on the sum of Rs.5,53,434/- instead of interest @18% p.a. on the sum of Rs.9,21,000/-. Rest of the order of the DISTRICT Forum was upheld. The observations of the State Commission reads as under:- "As a result this appeal is partly allowed and it is ordered that complainant shall receive interest @ 9% p.a. on amount of Rs.5,53,434/- instead of 18% p.a. on Rs.9,21,000/- for the period from 31.1.05 to 10.10.05. Likewise complainant will receive interest @ 9% p.a. on Rs.64,100/- from 10.10.05 till the date of payment. Rest of the order is verified."

Petitioners, being aggrieved, have filed the present Revision Petition. This Revision Petition was admitted on 29.11.07 on two points i.e. as to whether the Petitioner Board was entitled to the final costs of Rs.4,42,500/- instead of estimated costs of Rs.3,78,400/- and as to whether the Board was liable to pay the compensation of Rs.21,000/-. Undisputed facts are that the Respondent applied for and was allotted HIG house i.e. 2/5, Kudi Bhagatsani Housing Board Scheme, under the "Open Counter Scheme" priced at Rs.9,31,834/- which was paid by the respondent. Possession of the house allotted could not be handed over because of pendency of the writ petition in the High Court. Offer made by the Petitioners to allot MIG house instead of HIG house was accepted by the Respondent. Accordingly, MIG house No.1-B-14 was allotted to her. In the brochure of the "Open Counter Scheme" price of MIG house was mentioned as Rs.3,78,400/-. Since the Respondent had applied for HIG house in the "Open Counter Scheme" the sale was on the table and a person could purchase the property at the price mentioned in the booklet. Had the Respondent been told that she could be allotted MIG house then the Respondent would have paid Rs.3,78,400/- willingly as is evident from the fact that she paid Rs.9,31,834/- on 31.1.05 for the allotment of HIG House. Since the Petitioners were not in a position to give possession of the HIG house allotted to the Respondent, Petitioners should have offered to allot the MIG house at the price which was prevalent at the time of the allotment of the MIG house and not the price prevailing of such a house on the date of the allotment. At the relevant time, the price of MIG house was Rs.3,74,800/-. Petitioners were liable to offer the MIG House to the Respondent at the price prevalent at the time when the Respondent paid the price for the HIG house.

4. WE endorse the view taken by the Fora below that the Respondent was liable to pay Rs.3,78,400/- only i.e. the price of the MIG house prevalent at the time of her purchasing and paying the price of HIG house and not the enhanced price of the MIG house in October, 2005. Since the Petitioners had allotted the MIG house instead of HIG house and refunded the balance amount and the fact that the

Petitioners had been ordered to pay interest @9% on the refunded amount the award of compensation of Rs.21,000/- is not justified. The same is set aside. Except to the extent indicated above, the revision petition is dismissed. No orders as to costs.