

**Kanwal Arora Vs. H.P. State Urban Development Authority (Himuda), Shimla**

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**Court :** Himachal Pradesh State Consumer Disputes Redressal Commission  
SCDRC Shimla

**Decided On :** Mar-26-2012

**Judge :** Surjit Singh, President, Chander Shekhar Sharma, Member & the  
Honourable Mrs. Justiceprem Chauhan, Member

**Appeal No. :** First Appeal No.341 of 2009

**Appellant :** Kanwal Arora

**Respondent :** H.P. State Urban Development Authority (Himuda), Shimla

**Judgement :**

Surjit Singh, President J. (Oral).

1. This is a complainants appeal against the order dated 4<sup>th</sup> August, 2009, of learned District Consumer Disputes Redressal Forum, Shimla, whereby his complaint, under section 12 of the Consumer Protection Act, 1986, which he filed against the respondent, HP State Urban Development Authority, has been dismissed. 2. Facts, which led to the filing of the complaint by the appellant, against the respondent may be stated. On an application moved by the appellant in response to some advertisement got published by the respondent, one flat in Housing Colony, Shoghi, was allotted to the appellant, vide letter dated 06.02.1998, Annexure A-1. As per this letter, tentative cost of the flat was `5,37,500/-. Fifteen percent of the tentative cost was to be paid at the time of the

issuance of allotment letter and the balance amount in six half yearly instalments of Rs.53,750/- each, so as to make up 75% of the total cost by the time the flat was supposed to be ready for being delivered to the appellant. Remaining 25% amount of money was to be paid in instalments after the delivery of possession.

3. Vide letter dated 13.12.2000, (page 31 of the complaint file) appellant was informed by the respondent that the final cost of the flat was Rs.6,27,000/- and he was required to pay a sum of Rs.1,35,985/- representing the amount of balance in respect of instalments already paid and a sum of Rs.15,110/- on account of penal interest, which it appears the appellant paid by the date mentioned in the said letter.

4. Appellant was informed vide letter dated 04.09.2001, (page 35 of the complaint file) that the flat was ready and he should take the possession by paying a sum of Rs.2,05,508/-, which was stated to be due on account of some quarterly instalments and included a sum of Rs.19,051/- on account of penal interest. Appellant wrote back to the respondent that the construction of the flat was not complete, in all respects, and there were several defects and deficiencies, which he pointed out in letter dated 09.09.2001, (page 39 of the complaint file) letter dated 06.12.2001, (page 40 of the complaint file) and final letter dated 12.03.2002, (page 41 to 43 of the complaint file) in which detailed defects/deficiencies in the flat were pointed out. Respondent, vide letter dated 20.06.2002, (page 45 of the complaint file) informed the appellant by referring to his letter dated 12.03.2002, in which the defects and deficiencies were described, in detail, that the defects pointed out stood removed and he should take the possession, after executing hire purchase agreement, for which some codal formalities were required to be completed. Finally, possession was delivered to the appellant on 11.08.2002, vide office order, (page 47 of the complaint file).

5. After the delivery of possession, a demand for Rs.54,781/- was raised on account of balance of 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> instalments and also penal interest worked out at Rs.11,619/-. Appellant wrote to the respondent, vide letter dated 22.12.2002, (page 49 of the complaint file) that he had already paid the amount and only a sum of `67.296/- was due from him and he submitted a cheque for the

aforesaid amount of money. He received a notice dated 14.02.2003, (page 51 of the complaint file) whereby he was called upon to pay a sum of Rs. 4,339/- more. He replied to that letter vide letter dated 23.02.2003, (page 52 of the complaint file) that nothing was due. Appellant received another letter dated 06.09.2003, whereby he was required to pay not only the aforesaid amount of Rs. 4,339/-, but also two instalments of `16,824/- each with penal interest worked out at Rs. 2,027/-. Appellant informed the respondent that nothing was due. Respondent kept on sending notices to the appellant in the years 2004 and 2005 and the appellant replying that nothing was due, as he had already paid more-than what was due from him.

6. Ultimately, the appellant filed a complaint under section 12 of the Consumer Protection Act, 1986, in the year 2005, seeking issuance of a direction to the respondent not to make any demand and to refund Rs.45,000/- with interest at the rate of 18% per annum, on account of over charging of money and also to pay `25,000/- as damages. Litigation expenses to the tune of `5500/- were also demanded.

7. Respondent contested the complaint. It was pointed out that the possession of the flat was offered to the complainant on 13.12.2000, but he dilly dallied the taking over of the possession and informed through a writing dated 09.09.2001, copy Annexure R-7, that he had been arranging money by raising loan from bank and sought some time to make the payment. It was denied that there were any defects or deficiencies in the flat. Possession of the flat was offered to the appellant in December, 2000. It was stated that certain fittings remained to be provided, which as per their case were to be provided only when the possession was taken over, because the past experience showed that the fittings provided before delivering the possession had been stolen.

8. Learned District Forum, dismissed the complaint holding that the respondent had made demands in the letters written before delivery of possession of the flat, claiming money due on account of penal interest and various instalments, but the appellant neither paid the money so demanded, nor did he explain how the money was not due from him.

9. Appellant is aggrieved by the order of dismissal of his complaint and has, therefore, approached this Commission, by filing the present appeal. We have heard learned counsel representing the parties and gone through the record.

10. Tentative cost of the flat as indicated to the appellant at the time of issuance of allotment letter was Rs.5,37,500/-, as noticed while narrating the facts. This being only tentative cost, final cost was intimated to the appellant by the respondent later on, vide letter dated 13.12.2000 (page 31 of the complaint file). The final cost was Rs.6,27,000/-.

11. As per letter of allotment dated 06.02.1998, 75% cost of the flat was required to be paid before the delivery of possession. This portion of 75% cost, was to include earnest money and the 15% of the tentative cost paid before issuance of allotment order. Seventy five percent of the final cost, i.e. Rs.6,27,000/- comes to Rs.4,70,250/-. Respondent itself has submitted a document, i.e. letter dated 06.09.2003, (pages 55 and 56 of the complaint file) per which appellant had deposited a sum of Rs.5,78,504/- upto 24.05.2002, whereas, possession was delivered to him on 11.08.2002. This amount of Rs.5,78,504/- included an amount of Rs.7,310/- on account of penal interest on the first instalment, which was due on 15.02.2001, it was paid on 18.12.2001. Now if this amount of penal interest is subtracted, from the amount of Rs.5,78,504/-, which had been paid by the appellant, the amount paid by him towards cost of the flat exclusive of penal interest, comes to `5,71,194/-. This amount is much more than the 75% of the final cost of the flat, which was conveyed to the appellant through letter dated 13.12.2000.

12. Aforesaid letter dated 06.09.2003, relied upon by the respondent itself (pages 55 and 56 of the complaint file) further shows that after taking over of the possession, appellant paid two instalments of `16,824/- each and the balance amount of 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> instalments, penal interest and part of 9<sup>th</sup> instalment all amounting to `67,296/-. Two instalments of Rs.16,824/- were paid on 05.09.2002 and 20.11.2002, while the amount of `67,296/- was paid on 24.12.2002. That means by 24.12.2002, appellant had paid a total sum of `6,72,138/- to the respondent against the final cost of the flat, which was Rs.6,27,000/- and some

amount towards penal interest, which as per respondents own documents were as follows:-

a) Penal interest due on or before dated 23.12.2000 as per letter 31.12.2000. Rs. 15,110/- b) As per letter dated 30.11.2002 Rs. 11,619/-

Total: Rs 26,729/-

13. Penal interest amounting to `11,619/- indicated in letter dated 30.11.2002 (page 48 of the complaint file) would not have been claimed by the respondent for the reason it was worked out on the instalments in respect of the amount in excess of 75% of the cost of the flat and these instalments were to be paid only after the delivery of the possession. Possession was delivered on 11.08.2002, or say only three months before the date of the aforesaid letter dated 30.11.2002. Instalments on which penal interest was charged, were shown due in this letter on 15.08.2002 and 15.11.2002.

14. The total amount inclusive of penal interest of Rs.15,110/- as shown in response to letter dated 04.09.2001 (page 35 of the complaint file), payable by the appellant of the possession was thus Rs.4,70,250/- on account of final cost of the flat + Rs.15,110/- on account of penal interest, aggregate of which comes to Rs.4,85,360/-. Against this amount, appellant had paid Rs.5,78,504/- by the time, he took the possession, as is made out from later dated 06.09.2003 of respondent (page 55 of the complaint file), though as per letter of allotment, he was supposed to have paid only Rs.4,70,250/- being equivalent to 75% of the final cost + Rs.15,110/- on account of penal interest or say Rs.4,85,360/-. Thus, he had already paid a sum of `93,144/- in excess of what was due from him on account of 75% of the cost of the flat at the time of the delivery of the possession of the flat to him. After taking delivery of the possession of the flat, he paid two instalments of Rs. 16,824/- each on 05.09.2002 and 20.11.2002 and also paid a sum of Rs. 67,296/- on account of balance amount of 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> instalments and part of 9<sup>th</sup> instalment. The total payment thus made by him comes to Rs.6,72,138/- against his liability for Rs.6,42,110/-. Thus, a sum of 30,028/- has been paid by the appellant in excess of his liability.

15. We find no merit in respondents plea that the appellant dilly dallied the taking of possession of the flat, as he did not have the money to pay 75% of the final cost of the flat. Reason is that though in the reply, it is denied that there were no deficiencies or defects in the flat when the possession was offered to the appellant for the first time in December, 2000, or at any point of time thereafter, yet, while acknowledging the receipt of letter dated 12.03.2002, of the appellant, in which a large number of defects/deficiencies were pointed out by the appellant, the respondent intimated him (appellant) through letter dated 20<sup>th</sup> June, 2002, signed on 19.06.2002, that all the defects pointed out by him in the said letter had been removed and the flat was ready for possession. Defects which were pointed out by the appellant in the letter dated 12.03.2002, are not minor.

16. As a result of the above stated position, we accept the present appeal, set aside the impugned order of learned District Forum and consequently allow the complaint and order the respondent to refund the amount of Rs.30,028/- paid by the appellant in excess of his liability with interest at the rate of 9% per annum from the date of the complaint to the date of the payment of aforesaid amount of money. Further demand made by the respondent in letter dated 29<sup>th</sup> April, 2005, for Rs.68,525/-, is quashed. Also, respondent is directed to pay `20,000/- for harassment and mental torture for making unjustified and unreasonable demands despite having been paid in excess of the amount actually due to it and also to pay `10,000/- on account of litigation expenses of the complaint and the present appeal.

17. One copy of this order be sent to each of the parties, free of cost, as per Rules.

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