

R. Amuthavalli Vs. the Executive Engineer and Executive Officer and Another

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC Chennai

Decided On : Jun-28-2011

Judge : Honourable Thiru Justice M. Thanikachalam President & Tmt. Vasugi Ramanan, M.a., B.L., Member

Appeal No. : F.A.357/2009 [Against order in C.C.13/2008 on the file of the DCDRF, Salem]

Appellant : R. Amuthavalli

Respondent : The Executive Engineer and Executive Officer and Another

Judgement :

The appellant as complainant filed a complaint before the District Forum against the respondents/opposite parties praying for the direction to the opposite parties to repay the initial deposit amount and the first monthly EMI totally Rs.64,601/- with interest, to pay Rs.1 lakh as compensation for mental agony and discomfort and to pay Rs.3,000/- towards cost. The District Forum dismissed the complaint, against the said order, this appeal is preferred praying to set aside the order of the District Forum dt.27.11.2008 in C.C.13/2008.

This appeal coming before us for hearing finally on 15.06.2011, upon hearing the arguments of the either counsels and perused the documents, the order of the District Forum, this commission made the following order:

M. THANIKACHALAM J, PRESIDENT

1. The complainant is the appellant.

2. The complainant/appellant had deposited a sum of Rs.64,601/- with the second opposite party, as initial deposit and the first monthly installment for the allotment of MIG 86 at Seelavari Project on 14.02.1996. Despite the complainant approached the second opposite party several times, there was no reply, compelling the complainant to send a letter on 09.02.2004, which elicited a reply on 2.5.2004, as if, the entire scheme was handed over to the first opposite party. Thereafter, the complainant contacted the first opposite party and the first opposite party also failed to allot the plot as agreed, thereby committed clear deficiency in service and negligence, causing mental agony and discomfort to the complainant, for which, the complainant is entitled to a sum of Rs.1 lakh as compensation. Thus alleging deficiency, a consumer complaint was filed, seeking an order to pay Rs.1,67,601/- with interest at 24% per annum with other reliefs and not for allotment of the property.

3. The first opposite party admitting the payment and handing over of the scheme to the second opposite party, would contend that the complainant, who paid a sum of Rs.64,601/- has not submitted necessary application for allotment as well not participated in the lot auction, resulting the allotment of the plot to one S.Muthu, as per the proceedings dated 7.12.98 and that the claim of the complainant is barred by limitation, which is liable to be dismissed since they have not committed any deficiency in service.

4. The second opposite party admitting that Trichy TNUDP Division was clubbed with the first opposite party's jurisdiction, would contend that because of the change of Office, no document is available except Subsidiary Day Book where there is an entry of Rs.64,601/- on 14.02.96 and as such since they have not committed any deficiency, not liable to pay any compensation, praying for the

dismissal of the complaint.

5. The District Forum, as seen from the order, recorded a finding *Allotment of the plot is not is the matter of routine unless giving an application and pursuing it. As such the complainant has not established that there is deficiency of service on the part of the opposite party. Hence, the complaint is dismissed with an observation.* In view of the above said finding, there cannot be any direction against the opposite parties to refund a sum of Rs.64,601/- with interest, whereas the operative portion of the judgment reads **In the result, the complaint is dismissed with a direction that the opposite parties are directed to refund the deposit amount of Rs.64,601/- with 6% interest to the complainant immediately. No costs,** thereby showing the District Forum has not properly applied its mind while rendering decision.

6. Aggrieved by the dismissal, the complainant has filed this appeal, wherein, he sought a prayer, the order of the District Forum should be modified, allowing the complaint, as prayed for and no other relief is sought for. By going through the admitted facts, after hearing either side, we are of the view that the dismissal of the complaint, cannot be faulted and if at all, the direction should be faulted and we record our reasons.

7. The second opposite party was administering Seelavari Housing Scheme initially which was taken over or clubbed with the first opposite party that is Tamil Nadu Housing Board, Salem. When the Scheme was under the control and management of the second opposite party namely Trichy Division, the complainant had deposited a sum of Rs.64,601/-, seeking allotment of MIG 86 on 14.02.96, thereafter he slept over for several years and much water bloom under the bridge, including the change of administration regarding the above said scheme. As pleaded by the second opposite party not challenged, the complainant though paid a sum of Rs.64,601/- in the year 1996 has not furnished the application or has not furnished the correct particulars and therefore, the said plot was allotted one S.Muthu on 7.12.98 as pleaded by the first opposite party, not disputed. Thereafter, issuing notice at the first instance in 2004, the complaint came to be filed on 28.01.2008, seeking refund of the amount as well compensation also as

said above.

8. As rightly recorded by the District Forum, allotment of Plot is not the routine matter and the complainant also failed to prove that within the reasonable time atleast, he approached the opposite parties for allotment or they failed. Therefore, the finding recorded by the District Forum that the complainant failed to prove the deficiency of service is acceptable to us and on this ground, the complaint is liable to be dismissed. Not only on this ground, but also on the ground of limitation also, the complaint is liable to be dismissed.

9. Admittedly, the complainant had paid the amount on 14.2.96. There is no agreement between the parties, what is the period of allotment or any other agreement between the parties by binding themselves. In the absence of any such pleadings and proof, we are of the view, for not allotting the house or for returning the amount, in a case of consumer dispute, case should be filed within two years from the date of cause of action that is from 14.2.96. The issuance of notice in the year 2004, will not extended the period of limitation. In the complaint also, the complainant has not stated, how the claim is in time since there is a bar under Section 24(A) of the Consumer Protection Act, to take the case on file. If it is not filed within two years from the date of cause of action and the date of cause of action only on 14.2.96 and no date is also pleaded. In this view also, it is to be held that the complaint is barred by limitation. However, the factum of receipt of the amount by the opposite party and its availability is admitted. Hence, on humanitarian ground as directed or advised by the District Forum, the opposite parties should return the amount, which cannot be taken as precedent for any other case. The direction so given by the District Forum is also not challenged by the opposite parties by way of appeal. Hence, it is for the opposite parties to act, as per the direction or as per the advise of the District Forum and in this appeal, we find no merit, to modify the order of the District Forum or allow the complaint, as prayed for since the complainant had committed default, in agitating the case within the time stipulated.

10. Appeal is dismissed, confirming the order passed by the District Consumer Disputes Redressal Forum, Salem, in C.C.13/2008, dated 27.11.2008. No order as

to cost in this appeal.

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