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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Sep-07-2007

Judge : J.D. KAPOOR, PRESIDENT & THE HONOURABLE MS. JUSTICE RUMNITA MITTAL, MEMBER

Appeal No. : Complaint Case No. C-135 of 1998

Appellant : Efficient Offset Printers

Respondent : Delhi Development Authority

Judgement :

J.D. Kapoor, President (Oral):

1. The complainant firm has alleged deficiency in service on the part of the opposite party-DDA in cancelling the allotment of plot and has claimed withdrawal of the cancellation of allotment and delivery of possession of the plot or in the alternative to refund the amount of Rs. 7,55,000 with 24% interest, Rs. 2.00 lacs as compensation for mental agony and Rs. 25,000 as cost of litigation.

2. Case of the complainant, which is a partnership firm, in brief, is that residential/commercial/mixed land use scheme was advertised by OP in the month of July/August 1996 in the west part of Delhi known as Bindapur in the Dwarka/Pappankalan project, by means of auction. The OP offered to render services by making improvement in the land for valuable consideration and handing over the same to the successful bidders/allottees in the shape of mixed land use/plots. The complainant in good faith, participated in the public auction on 18.9.1996 and was the successful highest bidder with regard to one plot in the same scheme. It was stated that the premium/cost of the land shall be Rs. 7,55,000. The complainant was not provided any document by the OP to evidence the entire transaction under which the complainant had parted with a sum of more than Rs. 7.5 lacs of hard earned money. The complainant paid in pursuance of the aforesaid transaction and plot No. 2 in Block CP, Pocket 3, Bindapur, Dwarka, Delhi measuring 100 sq. mtrs. was allotted. At the time of payment of 3rd and 4th instalments, complainant faced certain difficulties, OP was informed for condonation of delay and willingness of the complainant to pay the lawful interest for the delay caused. Instead of demand letter the OP sent a letter dated 21.8.1997 cancelling the allotment of the plot of the complainant. The letter appeared to also have been issued without application of mind and without any regard to the payments made by he complainant. No concrete decision has been taken so far inasmuch as neither there is any written communication from the OP formally withdrawing the illegal cancellation of allotment nor is there any headway for handing over of possession of the said plot to the complainant. The OP wants to usurp the plot and the money of the complainant without any just and sufficient cause. The complainant having paid the entire full consideration is entitled to immediate possession of the plot and transfer of title in its favour. Hence this complaint.

3. While refuting the allegation of the complainant, the OP raised the following contentions:

(i) That the complainant was to deposit Rs. 5,66,300 by 24.10.1996, failing which bid was to be cancelled and

earnest money was to be forfeited, whereas the complainant deposited the final amount on 7.11.1997.

(ii) That the OP considered the request of the complainant in granting extension of time but there was a provision in Rule 29 of Nazul Land rules that the extension could be granted upto 180 days and beyond this limit the Ministry was requested vide office letter dated 5.1.1998 for relaxing the Rule 29 whereas Ministry declined the request of OP vide their letter dated 28.7.1998.

(iii) That the OP had no option but to comply with the orders of the Ministry. Accordingly the complainant was informed and Rs. 5,66,300 was refunded after forfeiting the earnest money.

(iv) That the complainant is not a consumer and the controversy involved in the complaint is not a consumer dispute. It was an outright sale and there was no hiring of services involved in this sale. OP has cancelled the allotment as per terms and conditions of auction. The complainant has received the refund.

4. The aforesaid conspectus of facts shows that the request of the complainant for granting extension of time beyond the period of 180 days was under consideration with the Ministry but was finally declined in terms of Rule 29 of Nazul Land Rules on 28.7.1998. But there is no dispute that the demand amount of Rs. 5,66,300 was required to be deposited by 24th October, 1996 but in actuality was deposited on 7th November, 1997 i.e. almost after one year or so whereas delay only upto 180 days was condonable. In that event OP should have refunded the entire amount as it had already forwarded the request to the Ministry but it did not take its decision in the light of Rule 29 of Nazul Land Rules. It is nowhere provided that the Ministry or the Government of India has discretion to extend the period beyond 180 days.

5. Thus in our view forfeiture of Rs. 1,88,700 of the earnest money was not justified as at first instance the amount paid on 7.11.1997 should not have been accepted if the OP wanted the benefit of forfeiture of the earnest money.

6. In the result, the complaint is allowed in the following terms:

(i) OP shall refund the entire amount of Rs. 7,55,000, if already not refunded or encashed by the complainant; amount already paid shall be adjusted.

(ii) OP shall pay interest @ 9% on the amount of Rs. 1,88,700 which was illegally and unjustifiably forfeited by way of earnest money from the date of filing of complaint till the date of this order by way of compensation; and

(iii) Besides OP shall also pay Rs. 10,000 as cost of litigation.

7. Aforesaid order shall be complied with, within one month from the date of receipt of this order.

8. A copy of this order as per the statutory requirements, be forwarded to the parties free of charge and thereafter the file be consigned to Record Room.

Complaint allowed.

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