

CASE NO.:
Appeal (civil) 304-306 of 2004

PETITIONER:
H. P. Housing Board

RESPONDENT:
Varinder Kumar Garg & Anr.

DATE OF JUDGMENT: 11/08/2004

BENCH:
S. N. VARIAVA & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

These Appeals are directed against the Order of the National Consumer Disputes Redressal Commission dated 21st April, 2003.

Briefly stated the facts are as follows:

1st Respondent was allotted a house viz. MIG-II/97 at Raddi on 8th October, 1992 for a consideration of Rs.1,75,866/-. The full amount was paid. On taking possession of the house, he noticed that there were major defects in the construction of the building and material of poor quality had been used. He pointed out the defects, short comings and construction flaws to the Appellants in various letters. His efforts to get the defects rectified and/or removed met with no success. He therefore filed a complaint before the District Consumer Disputes Redressal Forum, Shimla.

It must be mentioned that pursuant to the complaint of the 1st Respondent the Appellants had appointed an Architect to visit the place and file a report. The Architect had found that the slab in the drawing room had lifted 6 cms from the centre towards the outer wall. The Architect had also found that the slab in the bedroom had lifted by 4.5 cms towards the outer window wall. The Architect had also found that very poor quality concrete had been used and that the mix could be taken out of the floor with bare fingers. In spite of such glaring defects having been found they had not been rectified by the Appellants.

The District Forum called for the Departmental files and, on scrutiny of the files, found the above mentioned report of the Architect. The District Forum, on the basis of the material before it, directed payment of damages of Rs.50,000/-. It also directed the Appellants to pay costs of Rs.1,000/- and further directed an enquiry to fasten liability on the Officers or Officials who, at the relevant time, were in-charge of construction and who had passed such defective construction.

On the above mentioned facts, the Order of the District Forum was absolutely just and correct. One would have expected that a public body like the Appellants would have now held an enquiry and fastened the blame on the person/s responsible; and taken action against those persons. Instead the Appellants files an Appeal before the State Commission. They also take no action against the Officers concerned.

The State Commission takes note of the fact that no action had been taken against the concerned Officers in spite of the specific directions to take action. The State Commission notices that in the condition in which it is the flat is inhabitable. It therefore directs refund of the amount of Rs.1,75,866/- along with interest at 18% from the date of the filing of the complaint. The State Forum enhances the compensation to Rs.60,000/- instead of Rs.50,000/- and increases the

costs to Rs.5,000/-.

As against this Order, the Appellants go in Revision to the National Forum. The National Forum sets aside the Order awarding the compensation of Rs.60,000/- and maintains the directions to refund the amount with interest at the rate of 18% per annum. The National Forum holds that the interest will be payable from the date of respective deposit of the amount.

We have heard the parties. In our view, the conduct of the Appellants is shocking. They first sell a defective flat and even when the defects are pointed out to them and confirmed by their Architect they take no action to rectify and/or removed the defects. We have set out the defects above. It is clear that the defects are of serious nature. The slabs of the drawing room and bedroom have lifted. There is a strong possibility that they may collapse at any moment. The flat is inhabitable unless major repairs are carried out to the flat.

Before us there is a dispute as to whether or not the 1st Respondent is still in possession of the flat. According to the Appellants, the 1st Respondent is in possession. However, 1st Respondent claims that he is not in possession of the flat. We do not wish to enter into this controversy. In our view, the conduct of the Appellants is such that they deserve no sympathy. Being a public body performing a public service, they cannot act in such a blatantly callous and corrupt manner. They have sold a flat which had major defects and was of a poor quality construction. Such a construction could not have been passed by the concerned Officers unless they were in collusion with the contractor/builder. One would have expected that action had been taken not just against the contractor/builder but also the Officers who so colluded. In spite of clear direction from the District Forum no action has been taken against these Officers. On the contrary we are told that they have been exonerated. One fails to understand on what basis they could have been exonerated.

On these gross facts we give to the 1st Respondent an option. If he desires to keep the flat he will be entitled to do so and will then also be entitled to have compensation of Rs.60,000/- which he can use for getting the flat repaired. If the 1st Respondent desires to keep the flat he must intimate the Appellants in writing within one month from today. Within two weeks of the receipt of the letter/intimation from the 1st Respondent, the Appellants shall handover the possession of the flat, if it is with them, and also pay the sum of Rs.60,000/-.

If the 1st Respondent finds that the flat is inhabitable he can inform the Appellants in writing that he does not desire to have the flat. In that case the Appellants shall refund the sum of Rs.1,75,866/- along with interest at the rate of 18% per annum from the date when the amounts were deposited with the Appellants. Such refund to be made within two weeks of receipt of intimation from the 1st Respondent. We clarify that, in this case, we are maintaining grant of interest at 18% per annum on an ad-hoc basis and that it includes compensation for mental agony and harassment.

In either case, the Appellants shall pay to the 1st Respondent costs of litigation fixed at Rs.5,000/-.

We clarify that this Order shall not be taken as a precedent in any other matter as the order is being passed taking into account special features of the case. The Forum/Commission will follow the principles laid down by this Court in the case of Ghaziabad Development Authority vs. Balbir Singh reported in (2004) 5 SCC 65 in future cases.

The Appeals stand disposed of in the above terms.