

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1057 OF 2020

(Against the Order dated 15/06/2020 in Appeal No. 1343/2019 of the State Commission
Rajasthan)

1. URBAN IMPROVMENT TRUST, BIKANER

URBAN IMPROVMENT TRUST, BIKANER THROUGH ITS
SECRETARY URBAN IMPROVMENT TRUST, BIKANER,
RAJASTHAN

BIKANER

RAJASTHAN

.....Petitioner(s)

Versus

1. BABULAL JAT

A-66-67, VYAPAR NAGAR YOJNA, NOKHA ROAD
GANGASHAHAR, BIKANER, RAJASTHAN

BIKANER

RAJASTHAN

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONER : MR. KESHAV KR. ISHWAR,
ADVOCATE (VC)

FOR THE RESPONDENT :

FOR THE RESPONDENT : MR. GULAB CHAND MARU,
ADVOCATE

Dated : 27 September 2024

ORDER

1. This Revision Petition No.1057 of 2020 challenges the order of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur ('State Commission') dated 15.06.2020. Vide this order, the State Commission dismissed Appeal No.1343 of 2019 and affirmed the order of the District Consumer Disputes Redressal Forum, Bikaner ('District Forum') dated 13.11.2019 wherein the District Forum allowed the complaint.

2. As per report of the Registry, there is a delay of 65 days in filing the present Revision Petition. For the reasons stated in IA/7092/2020, the Revision Petition is treated to have been filed within limitation.

3. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

4. Brief facts of the case, as per the Complainant, are that he participated in an auction organized by the Opposite Party (OP) on 24.07.2014 for residential plots in Thomas Nagar Yojna. He purchased Plot No. 42 (measuring 25x50 feet) and paid 25% of the total amount on the spot, as prescribed. This payment was acknowledged by the OP vide receipt dated 24.07.2014. The auction approval was granted by OP on 02.09.2014. However, when the Complainant visited the plot, he discovered that one Bulakidas Suthar was in possession of Plot No.42, with a board bearing his name already placed on the plot. Further investigation revealed that a legal dispute involving this plot was pending in the court, and a stay order had been issued. On 19.09.2014, the OP issued a demand notice to the Complainant, asking for the balance payment. In response, he submitted applications to the District Collector and the President of Urban Improvement Trust, Bikaner, requesting a spot inspection and demarcation of the plot. He sought physical possession of the plot to be handed over only after resolving the issue. The OP did not take any action. As the OP failed to address the concerns, he requested a refund of the deposited amount along with interest through letters dated 01.12.2015, 17.03.2017, and 10.04.2017. After nearly three years, on 25.05.2017, the OP agreed to refund the deposited amount of Rs.4,33,000 but refused to pay interest. The Complainant contended that the OP was aware of the ongoing legal dispute and the stay order on the plot at the time of the auction, yet proceeded with the sale. This resulted in a significant financial loss to him. He claimed this act constituted a deficiency in service and an unfair trade practice. Being aggrieved, the complainant filed a consumer complaint before the District Forum.

5. The OP in its Written Version filed before the District Forum acknowledged that the plot was sold to the complainant in auction and that he had deposited 25% of the total amount. OP also admitted that the refund order was issued on 25.08.2017, and the Complainant received the refunded amount on 30.08.2017. The OP denied his claim for interest and contended that the Complainant accepted the refunded amount without any objections. Therefore, they contended that the Complainant's demand for additional compensation was baseless. The OP argued that the Complainant does not qualify as a consumer under the Consumer Protection Act and thus, the complaint should be dismissed with costs.

6. The District Forum, vide order dated 13.11.2019 allowed the complaint with the following directions:

“ ORDER

6. Therefore, the complainant filed by the complainant under Section 12 of the Consumer Protection Act, 1986 is allowed and the opposite party is ordered to pay interest to the complainant on the amount of Rs.4,33,000/- at the rate of 9 percent per annum from 25.07.2014 to 29.08.2017. Besides this, Rs.20,000/- has been ordered to be paid to the complainant towards mental agony and Rs.5000/- towards cost of litigation. If the payment of the said amounts is not made within one month, interest at the rate of 9 percent will be paid thereon from the date of order till the date of actual payment.”
(Extracted from translated copy)

7. On Appeal, the learned State Commission, vide the order dated 15.06.2020 affirmed the District Forum order dated 13.11.2019 with reasons as below:

“Heard arguments and perused file.

The complainant purchased plot in auction. The bid of the complainant was highest. He deposited 25% of the total amount of Rs.4,33,000/- as per rules but some Bulakidas Suthar was in possession of the said plot and stay order was passed by the Civil Court relating to the said plot. Under these circumstances, the said plot could not be given to the complainant. The complainant sought refund of 25% of the total amount deposited by him but payment of the same was made to him after 3 years on 25.08.2017. The complainant seeks interest of 3 years on this amount while the opposite party says that the plot is a case of auction, therefore the complaint was not maintainable. This question is not of auction of plot. The plot which was auctioned was in possession of someone else and stay order was granted by the court on that plot. In spite of this the plot was auctioned and got deposited 25% of the total amount. The said amount was not paid till 3 years. There is no condition of interest in the conditions of auction but if the complainant had deposited the amount late then an interest at the rate of 15% would have been recovered from him.

Under these circumstances the interest at the rate of 9% per annum and amounts towards mental agony and costs of litigation awarded by the learned Forum is less in the opinion of this Commission but the order passed by the learned District Forum is correct under every circumstances and there is no need to interfere with the said order.

This appeal is liable to be dismissed and accordingly.”

(Extracted from translated copy)

8. In his arguments, the learned Counsel for Petitioner reiterated the grounds taken in the Revision Petition and reply filed before the District Forum. He contended that the complaint is not maintainable and sought setting aside of the orders of the State Commission and District Forum on the ground that an auction purchaser is not a consumer under the Act. He asserted that the Hon'ble Supreme Court and NCDRC have held that an auction purchaser is not a consumer. Thus, any disputes relating to auctions, including refunds, interest, or possession, cannot be adjudicated as consumer disputes. Auction of the plot in question was conducted on an "as is where is" basis, as clearly stated in the conditions of auction (Annexure P/3). The OP made all the necessary information and conditions available to the Respondent prior to the auction. He participated in auction knowing the risks. Therefore, no complaint can be entertained for possession or refund of interest. As per Rule 14 of the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974, the OP could forfeit the

25% of the amount paid by him for failure to deposit the balance. However, acting reasonably and equitably, OP refunded Rs.4,33,000 without forfeiture. Under Rule 31 of the 1974 Rules, the OP exercised its power to relax the forfeiture rule in this exceptional case. However, they could not extend its authority beyond by granting interest, which is not permissible under law. While claiming that the OP refused to refund the amount, he failed to clarify whether the complaint referred to principal amount of Rs.4,33,000 or interest. He accepted refund without protest and misled the forum by false allegations to seek compound interest clearly intending to profit unfairly. He suppressed vital information, including acceptance of the refunded amount, to gain advantage. Hon'ble Supreme Court has held that such actions amount to fraud on the court, which unravels even the most solemn proceedings. The District Forum and State Commission erred in traversing beyond the relief sought. By shifting focus to interest, both fora exceeded jurisdiction. The Respondent's actual grievance related to the sale of the plot, which was sold on an "as is where is" basis. This matter is inherently a civil dispute and does not fall within the ambit of consumer law. He sought dismissal of the complaint and relied on the following precedents in support of his arguments:

A. *UT Chandigarh Administration & Ors. v. Amarjeet Singh* (2009) 4 SCC 660.

B. *Chief Manager/Authorized Officer, State Bank of Mysore v. G. Mahimaiah* (FA/483/2014) NCDRC.

C. *Arulmighu Dhandayudhapaniswamy Thirukoil, Palani, Tamil Nadu v. Director General of Post Offices* (AIR 2011 SC 2604).

9. On the other hand, the learned Counsel for the Respondent/ Complainant reiterated the averments made in the Complaint before the District Forum. He has argued in favour of the concurrent findings of the Fora below and sought dismissal of the Revision Petition with costs. He has relied upon the following judgments:

A. *Dharamvir Singh & Anr. Vs. Jai Prakash Associates Ltd. & Anr., CC. No.675 of 2016 decided on 12.12.2023 NCDRC;*

B. *Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, Civil Developers Pvt. Ltd., Civil Appeal No.6044 of 2019, decided on 07.04.2022 by the Hon'ble Supreme Court;*

C. *Sandvik Asia Ltd. vs. Commissioner of Income Tax-I, Appeal (Civil) No.1337-1340 of 2005 decided on 27.01.2006 by the Hon'ble Supreme Court.*

10. I have examined the pleadings and associated documents placed on record, including the orders of the both the learned fora, and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties.

11. As regards the OP's contention that the Complainant is not a consumer under the Act, it is an admitted position in the complaint itself that the OP had organised auction of residential plots in Thomas Nagar Yojana on 24.07.2014 and he purchased Plot No. 42 in the said auction and paid 25% of the total amount as per rules. This payment was acknowledged by OP vide receipt dated 24.07.2014 and the OP granted auction approval on 02.09.2014. When he visited the plot, he discovered that someone else was in possession of the same Plot No.42. Ascertaining of the matter revealed that a dispute involving this plot with OP was pending in the court, and there was a stay against any transfer. Notwithstanding the same, OP persisted with demand for payment of balance consideration for the plot in question, while being unable to hand over the same. He thus sought refund of the total amount deposited and the same, to the extent of principle, was made after 3 years on 25.08.2017. The entire dispute, therefore, pertains to auction purchase by the complainant. Hon'ble Supreme Court in **UT Chandigarh Administration & Anr. Vs. Amarjeet Singh & Ors. (2009) 4 SCC 660**, had held:

“14.With reference to a public auction of existing sites (as contrasted from sites to be `formed`), the purchaser/ lessee is not a consumer, the owner is not a `trader` or `service provider` and the grievance does not relate to any matter in regard which a complaint can be filed. Therefore, any grievance by the purchaser/ lessee will not give rise to a complaint or consumer dispute and the fora under the Act will not have jurisdiction to entertain or decide any complaint by the auction purchaser/lessee against the owner holding the auction of sites.” The National Commission after taking submissions of both sides observed that in view of the settled law in regard to an auction purchaser not being entitled to be treated as a `consumer` under the Act, the lower fora have certainly acted without jurisdiction in entertaining and adjudicating in this matter in the Consumer Complaint and First Appeal respectively. Therefore, the revision petition was found to have merits and was allowed.

12. Similarly, this Commission in the case of Mohd Siddique Khan Vs. Forest Division Officer, RP No. 454/2019, decided on 01.05.2024 has taken the similar view.

13. In view of the foregoing deliberations the Complainant is an auction purchaser and the transaction he entered into with the OPs does not give rise to relationship between them as Consumer and Service Provider under the Act. accordingly, I find merit in the present Revision Petition and the same is allowed. Consequently, the impugned orders passed by the learned District Forum in CC No. 59 of 2018 dated 13.11.2019 and that of the learned State Commission in FA No. 1343 of 2019 dated 15.06.2020 are set aside and the complaint filed by the Complainant before the learned District Forum is dismissed.

14. Needless to say, the Complainant has right to approach appropriate legal fora to seek relief in respect of the grievances against the OPs. He may also seek benefit of the provisions of Section 14 of the Limitation Act, 1963 in doing so with respect to the time spent in prosecuting this litigation.

15. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

16. All pending Applications, if any, also are disposed of accordingly.

.....
AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER