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(2015) 02 NCDRC CK 0073

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

K D Kothiyal

APPELLANT

Vs

Phool Kaul

RESPONDENT

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Date of Decision: Feb. 17, 2015

Hon'ble Judges: K.S.CHAUDHARI J.

Advocate: Sudipto Sircar , ASHISH VIRMANI , Sunena Virmani

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Judgement

1. THIS appeal has been filed by the appellant against order dated 21.12.2011 passed by the U.P. State Consumer Disputes Redressal Commission, Lucknow (in short, "the State Commission") in Consumer Complaint No. 38/2007 Smt. Phoola Kaul Vs. Annuradha Sahkari Awas Samiti Ltd. by which, while allowing complaint, President of OP No. 1 was directed to execute sale deed of Flat No. D -902 in favour of the complainant and give possession of the flat.

2. BRIEF facts of the case are that complainant/Respondent No. 1 became member of OP No. 1/Respondent No.2 and deposited Rs.3,00,000/- on 17.1.2001. Complainant booked flat with OP No. 1 and later on paid Rs.1,25,000/- on 17.4.2001 and subsequently made some more payment totalling Rs.7,75,000/-. It was further alleged that OP No. 1 never informed complainant about meeting held by OP No. 1 and committed various irregularities. By draw of lots, complainant was allotted Flat No. D -902 on 15.2.2003, but as flat was on 9th floor, complainant by letter dated 27.2.2004 informed OP No. 1 to allot flat on lower floors and also requested that flat allotted to him may be transferred to some other person and fund may be returned to him for purchase of another flat in close vicinity. It was further alleged that from Mr. M.L. Dhullu who is also member of OP No. 1 came to know that General Body

Meeting on 3.10.2004 allotted Flat No. D -902 to one Mr. K.D. Kothiyal without following proper procedure. On 11.10.2004, complainant asked OP No. 1 to give him possession of the allotted flat. Complainant never resigned as member and only requested for change of floor. Complainant again vide letter dated 31.12.2004 asked for remaining outstanding payment and President of OP No.1 by letter dated 24.1.2005 apprised that Rs.2,41,700/- balance was payable for Flat No. D -902. Possession of flat was not given to him. Alleging deficiency on the part of OP, complainant filed complaint before State Commission for getting possession of the flat and for execution of documents in favour of the complainant. OP No. 1 and 2 resisted complaint and admitted allotment of Flat No. D -902 to the complainant, but submitted that complainant by letter dated 27.9.2004 requested to transfer this flat in some other person's name and accordingly flat has been allotted to Mr. K.D. Kothiyal to whom possession has been given after receiving consideration and prayed for dismissal of complaint.

In the year 2011, OP No. 4/petitioner filed application under Order I Rule 10 CPC which was allowed by learned State commission and later on OP No. 4 filed written statement and submitted that he became member of OP No. 1 after depositing Rs.3,00,000/-. He also applied for flat and deposited amount from time to time as mentioned in paragraph 7 of the written statement. It was further submitted that he was allotted Flat No. B -902 vide letter dated 13.1.2004 by OP No. 1 which was changed to D -902 vide letter dated 27.9.2004. He also deposited Rs.47,500/- as per demand dated 14.6.2005. He is in possession of flat from the date of allotment dated 27.9.2004 and paying maintenance charges regularly to the Society. It was further submitted that earlier Flat D -902 was allotted to complainant who refused to accept the same and resigned from the membership of Samiti and then later on this flat was allotted to him. It was further submitted that complainant wanted favourable order from State Commission without impleading him as a party and prayed for dismissal of complaint. Learned State Commission after hearing all the parties allowed complaint and directed OP No. 1 to execute sale deed of flat D -902 in favour of complainant and give possession against which this appeal has been filed.

3. RESPONDENT No. 2 filed reply to appeal, but later on did not appear and he was proceeded ex -parte. Presence of Respondent No. 3 and 4 was dispensed with as no order was passed against them by State Commission.

Heard learned Counsel for the parties and perused record.

4. LEARNED Counsel for the appellant submitted that inspite of proof of lawful allotment of flat in favour of appellant by the Society, learned State Commission committed error in allowing complaint. It was further submitted that as there was dispute between the members of the Society and required proof of voluminous documents and evidence, learned State Commission committed error in disposing complaint in a summary way and complainant should have been asked to approach civil court/appropriate forum for redressal of grievance; hence, appeal be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent no. 1 submitted that order passed by learned State commission is in accordance with law and there was no necessity to get the matter decided by civil court/other forum; hence, appeal be dismissed.

5. PERUSAL of record reveals that earlier flat D -902 was allotted by Society in favour of the complainant, but on the basis of letter dated 27.2.2004 written by complainant to OP for cancellation of his membership and for refund of amount, Society in General Body Meeting Minutes dated 5.9.2004 and 12.9.2004 observed that complainant wanted change of floor instead of flat allotted to him and later on vide letter dated 27.9.2004 allotted flat D -902 to OP No. 4. It appears that later on vide letter dated 11.10.2004, complainant again asked for fresh allotment of another flat, but he was not allotted another flat. Later on, on complainant's letter dated 28.11.2004, President of the Society vide letter dated 24.1.2005 apprised about balance amount of Rs.2,41,700/- . It appears that OP No. 4 vide letter dated 1.4.2005 apprised to the Society for valid allotment of a flat to him as complainant intimated to him that he has not resigned from the Society. Society vide letter dated 19.12.2005 refused to restore the flat to the complainant.

6. ALL these documents reveal that there was dispute between two members of the Society pertaining to allotment of flat D -902.

7. LEARNED Counsel for the appellant submitted that after due notice to the Respondent No. 1 by the Society Flat was allotted to him whereas learned Counsel for Respondent No. 1 submitted that he never received any intimation from the Society regarding cancellation of his allotment and allotment of disputed Flat to appellant. In such circumstances, parties are required to prove all necessary documents by evidence which is apparently not possible in summary proceedings.

8. COMPLAINANT should have impleaded OP No. 4 in the complaint but he intentionally not impleaded him, though, he was aware that OP No. 4 has been allotted disputed flat and in such circumstances, complainant has not approached State Commission with clean hands and tried to get order in his favour in absence of OP no. 4.

9. SECTION 111 of U.P. Co -Operative Societies Act, 1965 bars jurisdiction of Civil or Revenue Court in respect of any dispute falling under Section 70 of this Act. Under Section 70 (a) dispute between members is required to be referred to the Registrar. Section 26 (3) of the Act also provides that after the expiry of period of notice of withdrawal member shall be deemed to have withdrawn and in such circumstances, apparently, State Commission was not a proper forum for deciding complaint in summary nature.

10. LEARNED State Commission also observed in impugned order that allotment to appellant was not perhaps in accordance with terms and conditions of scheme meaning thereby State Commission could not give definite finding about validity of allotment in favour of appellant. State Commission also observed that one of the members Mr. Vijay Bhargav has not signed proceedings whereas proceedings

contain signatures of Mr. Vijay Bhargav. Learned Counsel for the appellant further submitted that he was in possession of disputed flat since allotment and was paying maintenance charges whereas learned Counsel for Respondent No.1 submitted that possession was never given to appellant. In such circumstances, looking to number of disputed facts between the parties, complainant was required to seek remedy before the appropriate authority/court for redressal of his grievance instead of State Commission and learned State Commission committed error in allowing complaint in summary proceedings without discussing all the correspondence between the Society, appellant and respondent no. 1.

11. CONSEQUENTLY , appeal filed by the appellant is allowed and order dated 21.12.2011 passed by the State Commission in Consumer Complaint No. 38/2007 Smt. Phoola Kaul Vs. Annuradha Sahkari Awas Samiti Ltd. is set aside and complaint stands dismissed and Respondent No. 1 is given liberty to approach civil court/appropriate authority for redressal of his grievance with no order as to costs.