
MADHU RATHOUR Vs South Delhi University Teachers

None

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Oct. 16, 2012

Citation: 2012 4 CPJ 658 : 2012 4 CPR 385

Hon'ble Judges: ASHOK BHAN , VINEETA RAI J.

Final Decision: Appeal dismissed

Judgement

1. COMPLAINANT /Appellant herein has filed this Appeal against the judgment and order dated 28.11.05 passed by the State Consumer

Disputes Redressal Commission, Delhi (in short, "the State Commission") in Complaint Case No. C -186/1993 whereby the State Commission

while partly allowing the complaint filed by the Appellant has directed the Respondent Housing Society to pay a compensation of Rs.25,000/- to

the Respondent along with costs of Rs.10,000/-. FACTS: -

2. APPELLANT /Complainant was a member of the Respondent Cooperative Group Housing Society since 1984. Respondent Society issued a

circular dated 07.05.84 offering Duplex Flat to its members for a consideration of Rs.1,30,000/- and the Appellant applied for the same. Vide

circular dated 26.03.85, Respondent Society escalated the cost of the Duplex Flat from Rs.1,30,000/- to Rs.1,75,000/-. Thereafter, again

Respondent Society escalated the cost of Duplex Flat to Rs.2,00,000/- and also introduced a category of M.S. flats for a consideration of

Rs.2,80,000/-. Appellant requested the Respondent Society to switch over from Duplex Flat to M.S. Flat which request was acceded to by the

Respondent. By letter dated 11.03.88, Respondent Society informed the Appellant that the amount due upto 6th installment of M.S. Flat was

Rs.2,08,500/- while the Appellant had paid Rs.1,95,000/- only and demanded the balance amount of Rs.13,500/-. Appellant paid the said

amount and M.S. Flat No.224 was allotted to her by the Respondent. Vide circular dated 16.02.88, Respondent Society escalated the price of

M.S. Flat from Rs.2,80,000/- to Rs.3,25,000/- and the enhanced amount was paid by the Appellant to the Respondent. Appellant requested the

Respondent Society to deliver the possession of the allotted Flat by writing various letters. On 24.08.90, Respondent Society issued expulsion

notice from the primary membership of the Society to the Appellant if she failed to make payment of Rs.62,522.83 within a period of 30 days.

Appellant, being aggrieved, filed the complaint No.186/93 before the State Commission on 12.12.93.

3. SINCE the Respondent Society did not file its written statement even after six months from the date of receipt of notice on 09.09.93, State

Commission struck off the defence of the Respondent. Feeling aggrieved, Respondent filed R.P.No.481/94 before this Commission which was

allowed reserving liberty to the Respondent to file its written statement before the State Commission.

Respondent filed its written statement on 16.03.94 before the State Commission contesting the complaint on the grounds that the possession of the

flat could not be delivered to the Respondent as she had defaulted in paying the balance amount of Rs.55,000/-; that the question of pricing of the

flat is not the subject matter of the consumer fora; that the difference in price was due to change in the category of the flat by the Appellant from

Duplex Flat to M.S. Flat and the since the Appellant had failed to make the payment of difference in cost of the flat, maintenance charges and

interest, there was no deficiency in service on the part of the Respondent Society in not delivering the possession of the flat. Pursuant to the order

passed by the State Commission, possession of the flat was handed over to the Appellant on 10.07.94 on her paying the balance amount of

Rs.55,000/-. State Commission partly allowed the complaint and directed the Respondent Society to pay a compensation of Rs.25,000/- to the

Appellant along with costs of Rs.10,000/- by observing as under: -

However, once having given the consent for switch over from ordinary category to MS Flats and after being informed from time to time as to the

enhancement of the cost which was one of the terms of the contract giving authority to the OP to escalate the cost as and when it is required, there

was no question for the complainant to withhold the payment as demanded by the OP. At the same time, it was also the duty of the OP to hand

over the possession of the flat on having received substantial part of the cost of the flat and by raising one demand after, for few thousand rupees,

the possession was wrongfully and unjustifiably withheld and for this deficiency in service the OP is liable to compensate the complainant

commensurately, it is also pertinent to mention here that it was after being compelled by this Commission directing the complainant to pay sum of

Rs.55,000/- subject to the final decision of this Commission that the possession of the flat was handed over.

4. IT was high handedness on the part of the OP to deprive a consumer from the fruit of flat, it was not the main condition of the contract between

the parties that the possession shall be handed over only demand of final payment raised by it. Moreover, the escalation in the price by the OP on

more than 2 to 3 occasion also was such that could not have been anticipated by the complainant. Merely because the discretion was vested with

the OP to escalate the price as and when the circumstances are created by way of raise in the labour, material etc. cannot deprive the consumer

from taking over the possession of the flat, if substantial payment particularly the original cost has been paid.

5. RESPONDENT has accepted the order passed by the State Commission and has not filed any appeal while the Complainant has filed the

present appeal seeking enhancement of compensation. We have heard the Ld. Counsel for the parties. As per the law settled by the Hon"ble

Supreme Court, Consumer fora has no jurisdiction to interfere in question of pricing of the flat. The only point which needs to be determined by us

in the matter is regarding amount of compensation. Ld. Counsel appearing for the Appellant as well as the Appellant in person contend that the

Respondent had deprived the Appellant of the possession of the flat for a period of six year despite her having paid the substantial amount of

Rs.3,50,000/- and as such the compensation of Rs.25,000/- awarded by the State Commission is very meager. That the Appellant needs to be

compensated adequately. As against this, authorized representative of the Respondent has brought to our notice the letter dated 21.09.89

(Annexure A -7) wherein it was specifically stated that the Appellant was required to give an undertaking to the effect that he/she will pay any

additional amount as demanded by the Society after the final cost of the flat has been calculated. In this letter, it was also mentioned that the

Appellant was required to pay Rs.55,522.83 before taking the possession. Since the Appellant did not pay the balance amount of Rs.55,522.83

the Respondent was not obliged to hand over the possession.

6. POSSESSION of the flat was handed over to the Appellant in the year 1994 during the pendency of complaint with the State Commission on

her paying the balance amount of Rs.55,522.83. Appellant having given the consent for switch over from ordinary category to M.S. Flat and after

being informed from time to time as to the enhancement of the cost which was one of the terms of the contract giving authority to the Respondent

to escalate the cost as and when it is required, she was not justified in withholding the payment as demanded by the Respondent. Supreme Court in

its recent judgment in the case of S. Srinivasa Murthy Vs. Karnataka Housing Board, 2012 8 SCC 424 in somewhat similar circumstances has

held that a person having unequivocally agreeing to pay the enhanced cost, cannot subsequently make any grievance against the costs specified in

the revised allotment letter. Appellant had voluntarily sought the change in the mode of purchase and had unequivocally agreed to pay the revised

cost. In view of the change made by her she was to pay the cost of the M.S. Flat as determined by the Respondent from time to time. The relevant

observations of the Supreme Court are as under: -

16. We have considered the respective arguments/submissions and carefully scanned the record. In our view, the appellant cannot make any

grievance against the cost specified in the revised allotment letters issued on 22.1.99 and 25.1.99 because he had voluntarily sought change in the

mode of purchase and unequivocally agreed to pay the cost i.e. Rs.5,33,232. The appellant's plea that the cost of the flat cannot be more than

what was specified in the registered sale deed sounds attractive but lacks merit. A carefully reading of the letters dated 22.8.1998, 27.11.98 and

15.5.99 sent by the appellant to the respondent makes it clear that he had conveyed his unequivocal willingness for registration of the sale deed

showing the cost of the flat at Rs.4,31,918/- although the actual cost was Rs.5,33,232. Having taken advantage of the offer made by the Board to

get the deed registered at a price less than the actual cost of the flat, the appellant cannot turn around and demand refund of Rs.1,01,314.

7. WE do not find any substance in the submission of the Ld. Counsel for the Appellant that she was illegally denied the possession of the flat for a

period of six years. Since the Appellant did not pay the balance amount of Rs.55,522.83, Respondent was not obliged to hand over the

possession of the flat to the Appellant. In our considered opinion, over all compensation of Rs.25,000/- awarded by the State Commission is

adequate and sufficient and no case for further enhancement of the compensation is made out. For the reasons stated above, we do not find any

merit in the appeal and dismiss the same with no order as to costs.