

## Makhan Lal Bhat Vs DELHI DEVELOPMENT AUTHORITY

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** Sept. 2, 2011

**Citation:** 2011 0 NCDRC 594 : 2011 4 CPJ 643

**Hon'ble Judges:** Anupam Dasgupta J.

**Final Decision:** Appeal dismissed

### Judgement

1. THIS application (RA no. 61 of 2011) seeks review of the order dated 24.02.2011 passed in FA no. 2 of 2010 filed by Makhan Lal Bhat

against the order dated 29.08.2009 of the Delhi State Consumer Disputes Redressal Commission, Delhi (in short, ?the State Commission?) in

complaint no. C - 112 of 2000.

2. I have heard Dr. Rajesh Bhat, authorised representative of the applicant/appellant (who was the complainant before the State Commission), Mr.

B. I. Wali, Advocate on behalf of the applicant/ appellant and Mrs. Girija Wadhwa, Advocate on behalf of the respondent - Delhi Development

Authority (DDA).

Dr. Bhat authorised argued at length that the price charged by the DDA for the flat allotted to the applicant/appellant/ complainant was higher (in

terms of land premium as well as the rate of construction per square foot) than that for the flat immediately above the flat allotted to the

complainant in the same building. He also argued that the DDA committed deficiency in service by delaying the handing over of possession of the

flat for nearly a year after full payment had been made. As regards the delay in filing the appeal, the explanation was that the complainant was

seriously unwell and hospitalised for considerable length of time, as a result of which the appeal against the State Commission?s order could not be

filed in time.

On the other hand, Mrs. Wadhwa pointed out that the appeal filed by the DDA against the same order of the State Commission was dismissed by

this Commission by its order dated 17.12.2009. The applicant/complainant accepted the payment of Rs.1 lakh compensation awarded by the

State Commission and filed the appeal sometime in January 2010. The authorised representative of the complainant who is present today was also

present on 17.12.2009 before this Commission and the order was passed in the presence of both the parties. Thus, the delay of 425 days in filing

the appeal was not at all justified and could not be condoned. Further, the point regarding discrimination in the pricing had been dealt with

adequately by this Commission in the above-mentioned order dated 17.12.2009. Neither the applicant/complainant nor the DDA challenged this

order dated 17.12.2009 before the Apex Court. Thus, the order attained finality against both the parties, in view of the provisions of section 24 of

the Consumer Protection Act, 1986.

3. IT may be noticed that in disposing of the appeal filed by the complainant, the following parts of the order dated 17.12.2009 were reproduced:

4. Mrs. Wadhwa seeks to assail the impugned order on the ground that the State Commission has erred in recording the finding of deficiency in

service on the part of the DDA in delaying the delivery of the possession of the flat to the complainant because in the present case, the complainant

has also contributed to the delay at least to some extent in as much as he did not submit the duly executed conveyance deed promptly and was not

willing to accept the possession when it was offered to him. In any case her submissions is that even if there was small delay on the part of the

DDA, the State Commission was not justified in awarding compensation of Rs.1,00,000/- for such small delay. On the other hand Rajesh Bhat,

son/ authorised representative of the complainant ? respondent has refuted the contention and urged because that DDA has charged much higher

price from the complainant for the flat as compared to the price it has charged from the allottee of the upper floor. He further contends that

compensation so awarded by the State Commission is grossly inadequate and prays that it should be enhanced. 5. Having considered the above

submissions, we may observe that we cannot accept the plea of the respondent ? complainant for upgradation of the relief to the complainant

because the complainant has not filed any appeal against the impugned order and, therefore, he will be deemed to have accepted the order of the

State Commission. In any case, the complainant cannot be allowed to raise a plea in regard to the pricing of the flat in question because he

accepted the terms of allotment with open eyes and acted upon it by depositing the entire price as demanded by the DDA and has even take the

possession of the flat in question though after some delay?.

As rightly pointed out by Mrs. Wadhwa, the allegation of the complainant that he had been charged a price higher than that of the flat just above

the flat allotted to the complainant was considered by this Commission in passing the aforesaid order. The Commission specifically returned the

finding that the complainant could not be allowed to raise the plea regarding the pricing of the flat in question because he had accepted the terms of

the allotment and acted upon it by depositing the entire price demanded by the DDA and thereafter taken the possession of the flat. As already

observed, that order of this Commission has attained finality vis-à-vis both the parties and the complainant has also accepted the compensation of

Rs.1.00 lakh.

4. FURTHER, the point regarding delay was also dealt with in paragraph 4 of the order dated 24.02.2011 and no new ground has been adduced

by Dr. Bhat on this score.

As a result, the review application is dismissed.