

GROUP CAPTAIN HARJAS SINGH BAINS Vs DELHI DEVELOPMENT AUTHORITY VIKAS SADAN

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: May 27, 2011

Citation: 2011 0 NCDRC 308

Hon'ble Judges: V.B.Gupta , Suresh Chandra J.

Final Decision: Revision petition stands disposed of

Judgement

1. PRESENT revision petition has been filed against order 30.3.2007 passed by Delhi State Consumer Disputes Redressal Commission (for short

State Commission).

2. VIDE impugned order, State Commission disposed of two appeals (No. A-1611/2003 and No. A-03/2004) filed by both parties against order

dated 2.6.2003 passed by District Consumer Disputes Redressal Forum II, New Delhi (for short District Forum).

Brief facts are that petitioner/complainant was intimated by letter dated 26.12.1991 about allotment of flat in Dwarka against consideration for

Rs.6,25,000/- with stipulation that 90% of the cost shall be payable in four six monthly installments, which was paid by him within time.

On 27.6.1996, petitioner was allotted specific flat No.222. Vide letter dated 11.11.1996, he was asked to clarify payment of Rs.26,500/-, which

was sent by CDA in July, 1993, but respondent failed to get the cheque encashed, despite the fact that petitioner had given all the necessary details

of payment. Any how petitioner managed to pay the amount and CDA also sent another cheque of Rs.26,500/- on 4.3.1997. The said amount

was paid to the respondent and respondent issued the final letter of demand on 23.1.1998.

3. THUS, it is alleged by the petitioner that he was over charged in comparison to the others and as such, he filed a complaint before District

Forum.

Respondent, in its written statement, denied that any excess amount has been charged from the petitioner. It is further stated that draw was held on

18.6.1996 and demand-cum-allotment letter was issued on 23.1.1998 and after completion of formalities, possession letter was issued on

20.7.1998. The possession was taken on 12.8.1998 and conveyance deed was executed on 23.11.1998.

4. AS far as cheque for sum of Rs.26,500/- is concerned, the same was not encashed, so petitioner was asked to furnish the details. This amount,

however, was deposited on 23.6.1997. Respondent has not charged any amount, except A.P.I. (actual period interest) as sum of Rs.26,500/-

was not credited to respondents account till January, 1997. Petitioner has got benefit of interest waiver from the respondent and thus, the

complaint is without any substance.

District Forum vide order dated 2.6.2003, partly allowed the claim of the petitioner.

Aggrieved by the order of the District Forum, both parties filed separate appeals before the State Commission.

5. PETITIONER himself has appeared and argued his case. It is contended by him that State Commission wrongly annulled the relief granted to

him by the District Forum, as the sum of Rs.25,872/- charged from him in December, 1998, as API was to be refunded with interest since this

amount was paid to the respondent, as early as in July, 1993 by cheque but the same was not encashed by respondent. Thereafter, another cheque

of Rs.26,500/- was sent in 1997, which was then encashed.

6. ON the other hand, it is contended by learned counsel for the respondent that demand-cum-allotment letter dated 13.10.1997 was issued to the

petitioner, as the cost of the flat was Rs.7,87,747/- petitioner was asked to pay a sum of Rs.2,57,600/-. Petitioner, vide letter dated 10.12.1997

made representation about the loss of cheque and requested for favourable decision. ON his representation, interest of Rs.26,500/- was waived.

It is further contended that revised demand-cum-allotment letter was issued on 12.1.1998 and demand amount was reduced. Thus, only Rs.644/-

has been charged as interest and a sum of Rs.1,14,068/- was refunded to the petitioner. Thereafter, possession letter was issued to him on

20.7.1998 and petitioner has taken possession of the flat after completely satisfying himself and thus, the present revision is not maintainable.

The short question which arises for consideration is as to whether petitioner is liable to pay Rs.25,872/- as API on late payment of Rs.26,500/-.

7. DISTRICT Forum in this regard has observed ; It has been proved on record that all the installments demanded by DDA vide letter dated

26/31.12.1991 which was issued in bulk has been paid by the complainant. It is admitted by DDA that cheque for RS.26,500/- was deposited by

complainant but the same was not encashed by DDA (para 3 of the reply), though the same was given to DDA in July, 1993. We do not think

complainant can be penalized for inefficiency or lapse of OP itself. DDA cannot take benefit of its own mistake/lapse. DDA wakes up only in

November, 1996 i.e. after 3 years and asked the complainant to furnish details and complainant deposited it on 13.1.1997 (para 10 of reply). In

the same para, it is again stated that the amount was deposited on 23.6.1997 and OP was informed on 11.8.1997.
(Date of deposit 23.6.1997 is

clearly wrong and date of deposit 13.1.1997 seems to be correct because CDA also sent another cheque dated 4.3.1997 which was encashed.

Thus, payment was made much before 23.6.1997. Complainant claims to have deposited the amount on 10.1.1997.) As per DDAs own rules and

terms and conditions of allotment, interest on the amount deposited by allottee is payable (after 2 years of first payment) till the issue of final

demand-cum-allotment letter but in the case interest has been paid upto August 1996 while demand-cum-allotment letter was finally issued on

23.1.1998 (after considering his representation against the demand raised in letter dated 13.10.1997) whereas allottee i.e. complainant is being

charged interest even when he is not at fault. In view of the above discussions, we are of the opinion that DDA has certainly caused deficiency of

service by charging Rs.25,872/- as API on late payment of Rs.26,500/-, which is entirely due to the fault of DDA itself as pointed out above and

we, therefore direct DDA to refund the amount of Rs.25,872/- to the complainant with interest @ 12% from the date of deposit till payment.

However, State Commission, in the impugned order, simply observed ; However, the order of District Forum for refund of Rs.25,872/- with

interest @ 12% is hereby set aside.

8. NO reason whatsoever have been given by the State Commission, as to on what basis order of District Forum for refund of Rs.25,872/- with

interest, was set aside.

It is the admitted case of the respondent also that cheque for the sum of Rs.26,500/- was received by them in July, 1993 but the same was not

encashed till 1997. The defence of respondent is that the petitioner was asked to furnish the details. Thus, admittedly respondent has asked for the

details of the cheque deposited in the year 1993, in November, 1996, that is after three and half years.

The District Forum rightly observed about inefficiency of the respondent in its order quoted above ; We do not think complainant can be penalized

for inefficiency or lapse of opposite party itself. DDA cannot take benefit of its own mistake/lapse. DDA wakes up only in November, 1996 i.e. 3

years and asked the complainant to furnish details.

9. WE fully agree with the above findings of the District Forum and find no reason to disagree with it.

10. THE impugned order of the State Commission setting aside the order of District Forum for refund of Rs.25,872/- with interest @ 12% was

passed without any basis nor any reason was given for upsetting the findings of the District Forum.

Under these circumstances, we allow this revision petition and set aside the impugned order and restore the order dated 2.6.2003 of District

Forum. However, respondent shall get the adjustment for the payment made already to the petitioner in pursuance of the order of District Forum.

The revision petition stands disposed of accordingly, with no order as to costs.