
(1997) 09 NCDRC CK 0046

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NEENA GUPTA

APPELLANT

Vs

EKTA VIHAR
CO-OPERATIVE
GROUP HOUSING
SOCIETY LTD.

RESPONDENT

Date of Decision: Sept. 26, 1997

Citation: 1997 2 CPC 522 : 1997 3 CPJ 35

Hon'ble Judges: Sardar Ali Khan , S.Chakravarthy J.

Final Decision: Enquiry discharged

Judgement

1. THIS is a matter remitted by the Hon"ble Supreme Court of India for hearing the application of Ms. Neena Gupta (complainant hereafter), who had moved this Commission with a complaint alleging that Ekta Co-operative Group Housing Society Limited (respondent hereafter) has indulged in certain prohibited trade practices under the MRTP Act, 1969. The Hon"ble Supreme Court of India's order dated 2nd Sept., 1996 in Civil Appeal No. 1572 of 96 refers in this connection. It was directed by the Hon"ble Supreme Court of India that the parties should appear before the Commission and that the Commission should fix a date for hearing the application of the complainant. The said civil appeal in the Hon"ble Supreme Court of India was filed by the respondent against the order of the Commission dated 18th Sept., 1995. In that order of the Commission, the respondent was directed to discontinue the prohibited trade practices indulged in by it and not to repeat the same in future. Furthermore, the respondent was directed to hand over the possession of one flat of three bedrooms to the complainant.

2. BESIDES moving the Hon"ble Supreme Court of India, against the said order of this Commission dated 18th Sept., 1995 the respondent moved a review application before us. The review application moved before the Commission was under Section 13(2) of the MRTTP Act. When the review application was being considered by the Commission, it was brought to our notice that the respondent had moved the Hon"ble Supreme Court of India as well and therefore, the review application was adjourned sine-die. After the Hon"ble Supreme Court of India remitted the case to the Commission for hearing afresh, notice was given to both the parties to appear before us and argue the matter. In the light of the direction of the Hon"ble Supreme Court of India in having remitted the matter for hearing afresh, the review application does not survive. We, therefore, decided on 17th Feb., 1997 to proceed with the hearing in the original enquiry instituted by the Commission in RTPE 103/94. In other words, in line with the direction of the Hon"ble Supreme Court of India, we have given a hearing afresh to both the parties. Mr. H.R. Khan, Advocate for the complainant advanced his arguments followed by Ms. Manisha Vyas, Advocate for the respondent. Both of them filed a synopsis of their arguments.

Before dealing with their arguments, it is necessary to briefly list the facts stated by the complainant in her original complaint application and also the reply of the respondent. These are narrated in the order of the Commission dated 18th Sept., 1995. However, to make this order a self-contained one, they are repeated here.

The complainant is working as a Lecturer in Lady Shriram College in Delhi. She applied to the respondent for membership of the Society and also allotment of a flat. The Secretary of the Society advised her in his letter dated 16th May, 1987 to apply for membership and to pay an amount of Rs. 1,37,570/- alongwith an affidavit and filled in application form. She paid a total amount of Rs. 1,75,000/- in the form of cheques between 29th May, 1987 and 1st August, 1987 for which the Society issued receipts. The respondent retained the deposited amount for about 3 years after which, it sent a letter to the complainant returning the same with interest @ 5% per annum and informing her that it would not be possible for the Society to enroll her as a member. Her provisional membership was also cancelled by the Society. Thereupon Ms. Neena Gupta retransmitted the refunded amount back to the Society as she felt that the cancellation of the allotment was "mischievous" and as no explanation was forthcoming from the Society for the cancellation. Citing the case of one Ms. Anita Aggarwal, who had deposited only an amount of Rs. 40,000/-, four months after the complainant had deposited the amount, Ms. Neena Gupta has complained that the said Ms. Aggarwal was confirmed as a member of the Society in the vacancy of one Shri Umesh Kumar superseding her priority for the membership. The complainant moved the Registrar of Cooperative Societies, Delhi, Lt. Governor, Delhi, Consumer Disputes Redressal Forum (District Forum) Delhi, State Commission (Consumer Disputes Redressal Commission) and also the National Commission. According to her, she could not succeed in any of the aforesaid FORA. The appeal before the National Commission however was said to be pending at that time, she filed me complaint application.

3. HER lament is that by the action of the Society, she has been deprived of a flat. She has alleged that the action of the respondent is "arbitrary and against natural justice", having accepted the entire price of the flat at par with regular members of the Society and that the respondent "has fraudulently rejected her membership and allotted membership to a person whose name was far below her in the waiting list and had made payment later" in comparison with the date of payment by the complainant.

She has prayed for justice in her complaint application.

4. A Notice of Enquiry (NOE) was issued by the Commission summarising the facts given in the complaint application and charging the respondent of restrictive trade practices, having manipulated the conditions of delivery and rendering of services with a view to causing unjustified costs and restrictions on the complainant attracting the provisions of Section 2(o)(ii) of the MRTP Act.

The respondent filed a counter affidavit of its Honorary Secretary Shri Gopal Mohan. The averments therein are summarised herein below:

1. The complainant is indulging in "multiplicity of litigation on the same alleged cause of action claiming the same relief". 2. Her claims in other FORA have been dismissed. 3. The complainant could not be enrolled as member of the Society "due to the non-availability of a vacancy in the Society and the amount voluntarily deposited by her has been refunded to her with interest." 4. The Society is not engaged in any prohibited trade practice in terms of the definition in the MRTP Act and has not committed any of them. 5. The payments made by the complainant do not create any right for her to become a member of the Society. 6. The complainant was never enrolled as a member and, therefore, the question of confirmation of her membership does not arise. 7. The respondent had made it very clear through its letter dated 16th May, 1987, that the complainant's name would be kept in the provisional list and that she would be enrolled as a member only after a vacancy arose in future and consequently she cannot claim any right of membership. 8. Ms. Anita Aggarwal applied for membership of the Society on 1st Feb., 1987, whereas the complainant had applied for membership later on 4th May, 1987. 9. The complainant has not impleaded Ms. Anita Aggarwal as a party. 10. The respondent has not given membership to any person below the complainant in chronological priority. 11. The Society has a limited number of flats and there is no scope

for any non member to become eligible for allotment of flat. 12. The respondent has refunded all the monies paid by the complainant along with interest and thus there is no sufferance for the complainant.

. The main question in this controversy hinges on whether the complainant had chronological priority over Ms. Anita Aggarwal and whether she (Ms. Neena Gupta) instead of Ms. Aggarwal should be entitled for a flat. Before dealing with this question we propose to deal with the preliminary objections of the respondent regarding the maintainability of the Notice of Enquiry.

5. MS. Nimisha Vyas, Advocate for the respondent stated at the outset that the general law must yield to the special law. As the controversy raised by the complainant is regarding her membership and consequently her entitlement to a flat, it will fall under the purview of the Delhi Co-operative Society Act, 1972. Drawing our attention to Section 60 of the said Act, she observed that the proceedings under the MRTP Act should yield to the available redress under the Delhi Co-operative Societies Act, 1972. She cited an order of the Hon"ble Supreme Court of India in The Chairman Thimvalluar Transport Corporation v. The Consumer Protection Council (1995) 2 Supreme Court Cases 479 and pointed out that the Apex Court had categorically posited that the general law must yield to the special law.

6. WE have given our anxious consideration to this argument. The Delhi Co-operative Societies Act, 1972 may be a Special Law but so is the MRTP Act, 1969. What falls under the ambit of the MRTP Act are prohibited trade practices, of which, there are three types namely restrictive, unfair and monopolistic. This Commission under the power conferred by the MRTP Act, is the Forum designated for dealing with prohibited trade practices. The subject matter of prohibited trade practices cannot and will not fall under the purview of the Delhi Co-operative Societies Act, 1972. The allegation of me complainant is that the respondent has indulged in manipulation of conditions of delivery and rendering of services, a practice which constitutes a restrictive trade practice attracting Section 2(o)(ii) of the MRTP Act. The NOE categorically mentions this. The allegation of manipulation of conditions of delivery and rendering of services and this enquiry cannot fall under the Delhi Cooperative Societies Act, 1972.

In this view of the matter, neither Section 60 of the Delhi Co-operative Societies Act nor the Hon"ble Supreme Court's observation in the Thiruvalluvar Transport Corporation case supra to which our attention has been drawn by Ms. Nimisha Vyas, Advocate for the respondent has any application in the instant case. With respect, we disagree with Ms. Nimisha Vyas.

The second main preliminary objection advanced by Ms. Nimisha Vyas is that the respondent Society is not indulging in any "trade" within the meaning of Section 2(s) of the Act. She added that consequently the respondent could not have indulged in a "trade practice" within the meaning of Section 2(u) of the Act, much less, a "restrictive trade practice" under Section 2(o) of the Act. Nor for that matter, according to her, has the respondent perpetrated any unfair trade practice falling within the mischief of Section 36A of the Act. Here again, we are unable to agree, with Ms. Nimisha Vyas, as Section 2(r) which defines "service" includes dealings in real estate, as clarified in the Explanation to the said section. We note from the Byelaws of the respondent Society that among its objects, the Society acquires through purchase or lease, land for development and construction of houses and flats for allotting to its members. Thus, the Society renders a service in terms of Section 2(r) of the Act. Consequently, it is also engaged in a "trade" in terms of Section 2(s) of the Act, which includes in the expression "trade" the provision of any service. It is further follows that the respondent has indulged in a "trade practice" which is defined in Section 2(u) of the Act which covers any practice relating to the carrying on of a trade.

7. IN view of the definitional sections above, there is no doubt at all in our mind, that the MRTTP Act applies to the facts and circumstances of the case and in particular the alleged trade practices on the part of the respondent Society. The third preliminary objection articulated by Ms. Nimisha Vyas, Advocate for the respondent is that the complainant has not come with clean hands. She pointed out the multiplicity of litigation indulged in by the complainant before the Registrar, Co-operative Societies, Delhi, Lt. Governor, Delhi, Consumer Disputes Redressal Forum (District Forum) Delhi, State Commission (Consumer Disputes Redressal Commission) and also the National Commission and added that complainant has not mentioned that she has had even moved the High Court Delhi, which had in its order dated 15th December, 1994 restored the complainant's appeal pending before the Registrar, Co-operative Societies, Delhi.

From a perusal of the pleadings, it is clear that the complainant has suppressed information regarding her moving the High Court, Delhi. Now we have the benefit of perusing the judgment of the said High Court. In its judgment, in C.W. No. 1925/93 and C.W. No. 3062 / 93, the High Court has restored the appeal of the complainant before the

Registrar of Co-operative Societies, Delhi. Her appeal originally before the Registrar, Co-operative Societies was filed, after the respondent had informed the complainant that it was not in a position to enrol her as a member of the Society. It is obvious that the enrolment as a member is a condition precedent for the allotment of a flat. The complainant's grievance in the Commission is the refusal by the respondent for according membership to her, as a consequence of which, she could not secure a flat. The complainant in her pleadings has essentially relied on Ms. Anita Aggarwal superseding her in getting membership even though Ms. Aggarwal had tendered the membership fee later. On this point the High Court's order referred to above categorically states that the application of Ms. Anita Aggarwal was for a different category and that the complainant was not an applicant in respect of that category of flats. In view of this finding of the Delhi High Court, it is not possible to peg our conclusion on the inter-se priority between the complainant and Ms. Aggarwal. Be that as it may, the complainant's grievance in not having being enrolled as a member by the respondent has been sent back by the Delhi High Court to the Registrar, Co-operative Societies, Delhi and law will take its own course. Thus the only fulcrum around which the complainant's case rests is now before the Registrar, Co-operative Societies (if not already disposed of) and it is for the complainant to make her presentation of her grievance in that Forum. We do take note of the fact that the complainant has thus not come to us with clean hands by suppressing material information.

8. WE, therefore, hold that the respondent is not guilty of the offences listed in the Notice of Enquiry. The Notice of Enquiry shall stand discharged. The interim injunction of the Commission dated 28th Sept. 1994 is vacated. No order as to costs. WE record our appreciation of the assistance rendered by Mr. H.R. Khan, Advocate for the complainant and Ms. Nimisha Vyas, Advocate for the respondent in our adjudicatory effort. Enquiry discharged.