

(1996) 01 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

AIRPORT COOPERATIVE GROUP HOUSING SOCIETY LTD.

APPELLANT

Vs

KAMLESH KUMAR AGGARWAL

RESPONDENT

Date of Decision : 30-01-1996

Acts Referred:

Citation : 1996 0 ACJ 237 : 1996 0 NCDRC 35 : 1996 1 CPC 380 : 1996 1 CPJ 248 : 1996 1 CPR 93 : 1996 2 CLT 100 : 1996 4 CTJ 686

Hon'ble Judges : B.S.YADAV , R.THAMARAJAKSHI , S.P.BAGLA , S.S.CHADHA J.

Advocate : P.N.KUMAR , ANURAG KUMAR , MALVIKA KUMAR

Judgement

1. THIS First Appeal by Airport Cooperative Group Housing Society Ltd.. is directed against the Order dated 23.7.1993 in case No. C-312/92 of the State Commission, Delhi allowing the complaint and directing the Appellant herein to pay a sum of Rs. 68,210/- to the Complainant within three months failing which the amount will carry interest at the rate of 18% per annum from the date of the complaint till the date of payment besides costs of Rs. 1,500/-.

2. THE facts may briefly be noticed. The Complainant became member of the Airport Cooperative Group Housing Ltd. (for short called the said Society) on 1.10.1980 and opted for allotment of a "C" type flat for which the tentative cost was Rs. 1,84,125/- (Rs. 1,94,125/- later communicated on 7.3.1987 by the said Society to the Complainant) payable in four instalments of Rs. 46,032/- falling due on 31.1.1986, 30.3.1986, 31.8.1986 and 30.11.1986. The said Society raised demands in their Circular dated 23.5.1988 for extra items to be paid in two instalments of Rs. 16,000/- and Rs. 9,000/- and again another demand was raised by the Society on 11.10.1988 of Rs. 4,000/- for "C" type flat. According to the Complainant he paid Rs. 2,16,769/- upto the month of September, 1988. According to the said Society there was an outstanding amount of Rs. 15,398/- which the Appellant communicated to the Complainant in their notice dated 8.4.1989 and called upon the Complainant to deposit the amount by 25.4.1989 failing which his name would not be forwarded to the Registrar of Cooperative Societies for allotment of flat. By letter dated 19.9.1989 the said Society

submitted a consolidated list of 106 members of the said Society for clearance and for onward submission of the names cleared to the Delhi Development Authority for further action. In the said letter it was mentioned that nine members have not cleared their dues as per the Society's demand and their names have been listed at page 10 of the consolidated list. The name of the Complainant appears in that list. By letter dated 9.10.1989 the Registrar cleared the names of 88 members out of that list for allotment of flats and sent the clearance to the Delhi Development Authority for allotment of flats. The first allotment of flats was made. The State Commission rightly came to the conclusion that the Complainant was not entitled to be allotted a flat at the time of the first allotment as he was a defaulter and for that reason his name was not cleared by the Registrar and sent to the Delhi Development Authority. The Complainant later paid the balance of the amount and upto January, 1990 he paid a total sum of Rs. 2,34,419/-. The said Society submitted a list of nine members for issue of the clearance in their letter dated 7.5.1990, but the name of the Complainant was not included in that list. The Registrar by its letter dated 7.6.1990 informed the Delhi Development Authority that the Registrar had cleared the names of the eight members out of the proposal of nine members for allotment of flats and for further necessary action. The Delhi Development Authority permitted the said Society to hold the draw of lots of specific flats to eight members whose membership and eligibility for allotment had been verified and cleared by the Registrar against 20 flats on 9.8.1990. This was the second draw of lots.

3. IN the meantime the said Society vide its letter dated 19th June, 1990 forwarded a list of nine members for getting clearance from the Registrar and for onward transmission to DDA for getting the members allotted their respective flats. The Registrar gave the clearance in its letter dated 11.7.1991 addressed to the Delhi Development Authority and the name of the Complainant was included in it. The third draw of lots of 10 members against 11 flats was made on 3.1.1992. The possession of the flat allotted to the Complainant was later on delivered on 3rd of March, 1992 to him. The Complainant alleged that his name was not included in the second allotment due to the negligence and mala fide intentions of the said Society and its Executive Committee and the Complainant suffered because of the delay in the allotment of flat which was actually made on 3rd of March, 1992. The Complainant claimed Rs. 1,69,134.47/- on account of defective construction, mental agony and interest on the amount deposited by the Complainant with the said Society. The complaint was contested by the said Society who in its written version pleaded that the Complainant is not a consumer as defined under the Consumer Protection Act and that there was no negligence on the part of the said Society as the name of the Complainant was not cleared by the Registrar for the second allotment. The State Commission as already noticed granted the complaint and directed the said Society to pay an amount of Rs. 68,210/-.

4. WE have heard the counsel for the parties and have gone through the record.

The contention of the counsel for the Appellant is that on 7.5.1990 when the Appellant submitted the list of nine members, it included only those members who became eligible after removing technical objections of the Registrar for clearance and that in this list the name of the Complainant was not sent because the Registrar wanted the name of the defaulters who had since paid their dues to be sent in one lot and not in piecemeal. It is urged that the Appellant forwarded the list of nine members including the Complainant on 19.6.1990 but the Registrar did not clear it till 11.7.1991 for the reasons best known to it. The submission is that there is no deficiency in service on the part of the Society. There is no merit in this submission. Admittedly, the Complainant cleared all his dues by January, 1991. No intimation was sent to the Registrar immediately thereafter that the Complainant is no longer a defaulter as having paid all the dues as demanded by the Society. We have seen the letter dated 7.5.1990 (R-14) by which the names of nine members was sent for issue of clearance. The letter reads : "Please find enclosed herewith in triplicate name of 9 members duly signed by the Competent Authority to issue clearance from your end so that the said list could be sent to DDA. Thanking you."

It is nowhere on record that it is a list of nine members whose names were withheld when the list of 106 members was sent or there was any technical objection for clearance by Registrar and those objections had been removed. No copy of the resolution of the Managing Committee of the Society has been produced on the record as to under what circumstances the names of nine members were included in the letter dated 7.5.1990 and why the name of the Complainant similarly situated was withheld. At the time of forwarding the first list the Executive Committee discussed and decided vide Resolution dated 20.9.1989 not to forward the names of those Members who had not cleared their dues and the Complainant is one of them. The Complainant had cleared his dues admittedly by January, 1990. The name of the Complainant could have been included in list of 7.5.1990 as there was no impediment at that stage. The allegation that the Registrar wanted the names of all the defaulters in one lot and not in piecemeal is not supported by the Registrar who is a party to the complaint before the State Commission. On these facts the State Commission rightly came to the conclusion that the Complainant was entitled to the allotment of a flat at the 2nd draw of lots and that the name of the Complainant was improperly excluded by the said Society. So far as the quantum is concerned the assessment by the State Commission is fair. The amount of the Complainant was improperly withheld and utilised by the Society from 19th July, 1990 till 3rd March, 1992. The State Commission calculated interest @ 18% per annum from 19.7.1990 to 3rd March, 1992 on the sum of Rs. 2,34,419/-, amounting to Rs. 68,210/-. For the above reasons the appeal fails and is dismissed with costs which we fix at Rs. 2,000/-.