
(2002) 03 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

AVAS AYUKT, U.P. AVAS EVAM VIKAS PARISHAD

APPELLANT

Vs

VIOLE KATHRINE NAIR

RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Citation : 2002 2 CLT 529 : 2002 2 CPR 127 : 2003 2 CPJ 429

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna , Rachna J.

Final Decision : Appeal partly allowed and Revision allowed

Judgement

1. APPEAL No. 511/SC/1999 has been filed by the appellant Housing Commissioner, U.P. Awas and Evam Vikas Parishad and Estate Management Officer of U.P. Avas Evam Vikas Parishad, Agra against the judgment and order dated 1.12.1998 passed by District Consumer Forum-I, Agra in Complaint Case No. 756/1994. Revision No. 128/1999 has been preferred by both the appellants in the above appeal against the order dated 23.9.1999 passed by the same Forum under Section 27 of the Consumer Protection Act arising out of the judgment and order referred to in the appeal. Therefore, both the appeal and the revision are being taken up together for adjudication.

2. BRIEFLY stated the case of the complainant before the District Forum was that she had applied for allotment of a middle income group house on 20.2.1979 in response to the scheme of the opposite party, U.P. Avas Evam Vikas Parishad. The terms and conditions were published in the brochure of the opposite party and the scheme for allotment of the house was known as "Sikandra" Scheme in Agra. As per terms of the registration booklet, the area was to be 195.72 sq. mts. and the possession was to be given within three years. The approximate estimated cost was to range between Rs. 46,000/- to Rs. 50,000/-. The other option provided was an MIG house in the area covering 162.0 sq. mts. and the price was to range between Rs. 28,000/- to Rs. 30,000/-. The complainant deposited the registration amount of Rs. 5,000/- on 20.2.1979. After five years the opposite party notified that the prospective allottee should deposit another amount of Rs. 5,000/-. Accordingly an amount of Rs. 5,000/- was deposited on

30.10.1984 with the opposite party. The complainant time and again contacted the opposite party at Agra as to the position of allotment of the house and she was ultimately informed that allotment will be made after a lottery draw. On 28.3.1993 she was informed that house No. 6F/136 has been allotted to her in the Sikandra Scheme and she was asked to deposit an amount of Rs. 87,675/- alongwith monthly instalment at the rate of Rs. 2,319/- p.m. Lease rent and other dues amounting to Rs. 12,592/- were to be paid in addition to the above amount. The complainant protested to the opposite party about the arbitrary escalation in the cost of the house and stated that the house should have been allotted within a period of three years from the date of deposit from 20.2.1979 and even thereafter another amount of Rs. 5,000/- was required to be deposited by the complainant on 3.10.1984. She requested the opposite party to reconsider the matter in regard to the escalated cost. A request was also made to the Housing Commissioner to ensure completion of the construction work of the house which was incomplete and other amenities should also be provided but no response was given. She sent letters on 13.9.1993 and 11.10.1993 to the opposite parties but they did not reply to the abovesaid letters. However, she deposited an amount of Rs. 60,000/- under protest. On 3.10.1994 she again wrote to the opposite party to complete the house at the earliest and settle the cost of the house on reasonable terms. Correspondence was further made between the parties but surprisingly she received a letter dated 7.5.1994 from the opposite party informing her that her allotment had been cancelled. A sum of Rs. 26,103/- was forfeited and deducted from the total deposit made by the complainants. She alleged that the cancellation letter was unjustified and illegal. Requisite arrangements of electricity, water, sewerage etc. were not done and construction of the house allotted was still incomplete and unfinished. The opposite parties want to allot the house to some other person and deliver the possession by irregular methods. In the process she has suffered harrassment, mental torture and a huge financial loss which is an unfair trade practice on the part of the opposite party in addition to deficiency in service. The complainant, therefore, lodged a claim before the District Consumer Forum praying that the opposite parties be directed to re-allot or transfer the aforesaid house to her on terms and conditions settled between the parties and also a direction be given to them that cancellation of the allotment of house be withdrawn as she is ready to pay the amount on the basis of terms and conditions as settled. Alternatively she claimed the entire amount deposited by her amounting to Rs. 75,000/- along with 18% per annum interest and a compensation amounting to Rs. 50,000/- be also granted to her for physical and mental torture and financial loss she suffered in the process. The opposite party in the written version before the District Consumer Forum stated that the area of the house along with cost and the amount of instalments shown in the brochure were approximate and also liable to be changed. The deposit of the amounts on various dates has been admitted. The complainant gave consent on 14.8.1993 to include her name in the draw of lots on 14.8.1993 and in consent letter she opted to purchase the house on instalments basis. She had visited the house and the site and was satisfied. On

the basis of her satisfaction and consent her name was included in the lottery draw wherein she was successful. Accordingly house No. 136 in Sector VI in Sikandra Scheme was allotted to her on 28.8.1993 and an allotment letter to this effect was issued to her. The complainant instead of depositing the demand amount asked for the cancellation of her allotment and, therefore, 20% of the registration amount was deducted. It was made clear in the allotment letter that in case extra time is taken by the allottee, then besides deduction of the registration amount, interest from the date of issuance of the allotment letter till the cancellation date shall be charged. The terms and conditions of the allotment letter are binding on the complainant. Since the complainant did not deposit the demanded amount, resultantly registration and cancellation of allotment was done. Escalation of cost was also binding on the complainant. As per terms of the allotment letter the complainant was required to deposit a sum of Rs. 90,505/- towards the cost of house and a sum of Rs. 12,592/- towards lease rent, water charges, documentation charges etc. but did not pay the demanded amount in time for which a notice was served on her on 12.10.1993 to clear the amount within 15 days. Therefore, the registration and allotment was cancelled by making stipulated deductions from the deposited amount. The Board is ready to pay the balance amount of Rs. 50,822/-.

The parties led evidence before the District Consumer Forum in support of their claim and counter-claim which after hearing directed the opposite party to re-allot the house in question to the complainant and in case the house has been allotted to somebody else, then alternatively the opposite party was directed to pay the amount of Rs. 70,000/- deposited by complainant along with interest at the rate of 15% per annum from the date of deposit. An amount of Rs. 5,000/- was also allowed as compensation for harrassment and mental agony. The Forum also directed that the order be complied within 45 days failing which the opposite parties were liable to pay the interest at the rate of 18% per annum.

3. THE revision petition is directed against the order passed by the Forum in Execution Case No. 3/1999 arising out of the judgment and order in the Complaint Case No. 756/1994 wherein it has been stated by the revisionist that the revisionist had filed an application before the District Forum that the State Commission has been moved for early hearing of the appeal or for grant of stay order but the application was arbitrarily rejected by the Forum and the Forum passed an order on 23.9.1999 in which punishment of imprisonment of one year each along with fine of Rs. 2,000/- on each one of the opposite parties was imposed. Before passing the impugned order no notice was issued to the present Housing Commissioner and the present Estate Management Officer, Agra and the order has been passed without giving an opportunity for hearing. No order can be passed under Section 27 of the Consumer Protection Act without making compliance of Section 25 of that Act. On the other hand opposite party in the written version has stated that the revision has been filed to harrass the complainant and to delay the compliance of the order of the District Forum and the order in the execution case. The revisionist did not obey the interim orders

dated 27.9.1999 of this State Commission in which the opposite parties were directed to pay to the complainant the amount of Rs. 70,000/- within 10 days but instead of paying the amount in ten days' time, one month's time was taken to return the deposited amount of Rs. 70,000/-. Therefore, the revision is liable to be rejected.

4. WE have heard the learned Counsels for the two parties. The learned Counsel for the appellant has argued that the house in question was allotted to the complainant after her consent was obtained in writing. She failed to make payment to the Housing Board for which notice had been sent to her and, therefore, the allotment had to be cancelled. Deductions were made as per rules of the appellant and the appellants were prepared to refund the amount after deductions as per rules. The learned Counsel for the complainant has argued that the terms and conditions of the brochure were binding on both the parties and as per those terms, the area of the house was to be 195 sq. mts. but later on the area was reduced to 110 sq. mts. Similarly in 1979 the cost of the house was to be in the range of Rs. 45,000/- to Rs. 50,000/- but the cost now being charged is Rs. 2,19,186/- which is arbitrary. The booking of the house was made in the year 1979 and the allotment was made after 14 years in 1993. Therefore, there has been gross deficiency in service on the part of the opposite party. The learned Counsel has also stated that the total amount of Rs. 70,000/- deposited by the complainant towards the allotment of the house has been refunded to her and the complainant is entitled to interest on the deposited amount. A perusal of the papers placed on the appeal file will go to show that the complainant was registered for an M.I.G. house in the year 1979 for which a registration amount of Rs. 5,000/- was deposited by the complainant. The registration amount was further increased by the Housing Board in 1984 and the complainant deposited the remaining registration amount of Rs. 5,000/-. Thus the total registration amount against the M.I.G. house was Rs. 10,000/-. A perusal of the judgment and order passed by the Forum goes to show that this amount of Rs. 10,000/- has been taken as the amount towards the cost of the house. In our view the District Consumer Forum has not gone thoroughly into the details of the registration contained in the registration booklet. The amount of registration deposited by the complainant is not towards the cost of the house. It merely provides that in the event of allotment, the registration money so deposited shall be adjusted against the cost of the house and the interest payable on that as per rules of the appellant shall also be admissible and adjusted against the cost of the house. The mere registration does not guarantee the allotment of the house. When the properties are completed, registered persons are given an opportunity to be included in the draw and for that purpose their consent is taken. Thus the U.P. Housing Board floats the scheme and registers the property aspirants so that the land acquisition process is expedited and accordingly development and other related activities could proceed. Therefore, the approximate price indicated at the time of registration could not be the final price. In this particular case the allotment was made after 14 years and, therefore, the price obtaining in 1979

cannot be applicable when the allotment was made because of the obvious reasons that cost of land, cost of construction and cost of material including the labour charges are bound to go high. This has been made clear by this Commission in *Dr. Onkar Singh Kalra v. U.P. Housing and Development Board*, reported in III (2001) CPJ 278. This Commission has held that mere registration does not entitle one to allotment. The Housing Board starts processes of acquiring land after registration is completed and the process could take longer time because of delay in land acquisition and other process. In the case *Smt. Geeta Verma v. Estate Management Officer, U.P. Avas Evam Vikas Parishad*, reported in 2001 (3) CPR 172, it was held by this Commission that price of plot or house is taken on the date of allotment and the complainant is bound to pay the amount mentioned in allotment letter. In that case the complainant had got registered for allotment of house in 1980 and deposited registration amount of Rs. 5,000/- and further amount of Rs. 5,000/- in 1985. The house was allotted in 1991 at a price of Rs. 1,43,402/- as against the price of Rs. 45,000/- to Rs. 55,000/- indicated at the time of registration. In the present case the allotment was made by the U.P. Housing Board through a draw of lot and the allotment letter dated 28.8.1993 clearly indicates the area of the house along with cost. The area of MIG house is 110.20 sq. mts. and the price of the house along with land is Rs. 2,19,186/-. Since the complainant was offered the house on instalment basis, she was required to pay Rs. 90,505/- along with other charges of Rs. 12,592/- and monthly instalments were also fixed. Each monthly instalment was of Rs. 2,319/-. The complainant instead deposited the lumpsum amount of Rs. 60,000/- protesting the enhancement clause but at the same time had given her consent for allotment. A declaration was also made in the consent letter that she had inspected the property in question and is prepared to take the house on "as is where is" basis. The consent letter is dated 14.8.1992. The allotment order is dated 28.8.1992. Therefore, it would have been proper for the Housing Board to have given clear understanding to the complainant that the cost of the house would be Rs. 2,19,186/-. The consent letter nowhere provides such an information and only on the allotment the complainant is informed of the cost of the house. Since the complainant could not deposit more than Rs. 60,000/- over and above the amount of Rs. 10,000/- already paid for registration, her allotment was cancelled after deducting 20% of the registration money and Rs. 24,103/- as interest at the rate of 17.5%. Since the complainant was not informed in writing in regard to the cost of house then these deductions should not have been made. Of-course the complainant was not entitled to a house on her depositing a mere amount of Rs. 60,000/- because the amount to be deposited at the first instance was to be Rs. 90,505/-. Therefore, although the allotment cancelled is justified but the deductions made are not tenable. The complainant, therefore, is entitled to refund of Rs. 60,000/- deposited by her and the additional amount of Rs. 10,000/- previously deposited by her in terms of registration amount. It was the duty of the Housing Board, the appellant, not to have accepted the amount of Rs. 60,000/- when she was required to pay more. In the process the Housing Board also retained this amount of Rs. 60,000/- for

quite some time. The complainant is, therefore, entitled to claim the entire amount deposited along with 10% per annum interest as the allotment stands cancelled. The Housing Board was deficient in their service to the extent indicated above. The appeal is, therefore, liable to be allowed in part. In view of the foregoing discussion the revision is also liable to be allowed. ORDER Appeal No. 511/SC/1999 is allowed in part and the judgment and order of the learned District Forum is set aside. It is directed that the appellant shall pay to the complainant the deposited amount of Rs. 70,000/- along with 10% per annum interest from the date of deposit till the date of payment. The appellant shall also pay a cost of Rs. 2,000/- to the respondent. Revision No. 128/SC/1999 is also allowed and order dated 23.9.1999 passed in Ex. Case is set aside. Let compliance of the order be made within a period of two months from today. Let copy as per rules be made available to the parties. Appeal partly allowed and Revision allowed.