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**(2012) 05 NCDRC CK 0022**

**In the National Consumer Disputes Redressal Commission**

Bansilal B Shah

APPELLANT

Vs

DELHI DEVELOPMENT AUTHORITY

RESPONDENT

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**Date of Decision :** 17-05-2012

**Acts Referred:**

**Citation :** 2012 0 NCDRC 280 : 2012 3 CPJ 192

**Hon'ble Judges :** ASHOK BHAN , VINEETA RAI J.

**Final Decision :** dismissed

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**Judgement**

1. THESE two cross-revision petitions, R.P. Nos.2975/2007 and 3940/2007 have been filed by Bansilal B. Shah(hereinafter referred to as the "Petitioner ") and Delhi Development Authority (hereinafter referred to as the "Respondent/ Authority ") respectively, being aggrieved by the order of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the "State Commission ") in Appeal No.378/2007 which upheld the order of the District Forum by confirming compensation of Rs.2.5 lakhs in favour of Petitioner herein. Since the parties and the facts are similar in both cases, we propose to dispose these of by a single order by taking the facts from R.P.No.2975/2007.

2. BRIEFLY , the facts of the case are that Petitioner had been allotted a MIG Flat on hire purchase basis by the Respondent/Authority for a total consideration of Rs.4,74,000/-. As per the terms and conditions of the Hire-Purchase, confirmation money of Rs.20,000/- was payable on 09.06.1994 and payment of Rs.2,13,579.09p was to be made in installments after adjusting the sum of Rs.11,907.41p on account of registration money and interest thereon. Respondent/Authority sent a demand letter to the Petitioner at his Hari Nagar address in Delhi though the Petitioner had informed the Respondent/Authority about the change of his address to Mumbai in 1991. Subsequently, the demand letter was sent to the Mumbai address and Petitioner sent the requisite amount which was received by the Respondent reportedly after a delay of 4 days from the due date and Respondent, therefore, cancelled the allotment. Later, on a representation made by the Petitioner, competent authority restored the flat on

payment of Rs.2,850/- as restoration charges. Petitioner protested against its imposition and did not make this payment. The possession letter was therefore not given to the Petitioner. Aggrieved by this, Petitioner filed a complaint before the District Forum on grounds of deficiency in service and requested that Respondent/Authority be directed to hand over the possession of the flat to the Petitioner and pay Rs.9 lakhs towards damages/financial loss/occupancy loss and Rs.10,000/- towards litigation costs. The above contentions were denied by the Respondent who stated that the allotment had been cancelled as per rules and was subsequently restored subject to payment of restoration charges. However, Petitioner had still not paid the restoration charges of Rs.2,850/- and therefore, the possession letter was not issued to him. The District Forum after hearing the parties allowed the complaint by quashing the demand of Rs.2,850/- and directed the Respondent/Authority to hand over the possession of the flat to the Respondent. Keeping in view the harassment caused to the Petitioner, it further directed the Respondent to pay the Petitioner a lump sum payment of Rs.2,50,000/- and Rs.5,000/- as litigation costs. District Forum directed the Petitioner to pay the installments due as in the demand-cum-allotment letter from the 10th of the month subsequent to the delivery of the possession of the flat to him. Respondent/Authority was directed to comply with the order within one month of its receipt.

3. BEING dissatisfied with the amount of compensation awarded by the District Forum, Petitioner filed an appeal before the State Commission. The State Commission upheld the finding of the District Forum by concluding that keeping in view the nature of the deficiency, the Petitioner has been adequately compensated. Hence, the present revision petition filed by the Petitioner on grounds of enhancement of compensation. The Respondent/Authority which had not filed an appeal against the order of the District Forum has now filed a revision petition against the order of the State Commission which had upheld in toto the order of the District Forum.

4. WHEN the case came-up for hearing in December, 2007, it was noted that the possession of the flat had not been handed over to the Petitioner as directed by the State Commission. An application filed by the Respondent/Authority narrating the reasons for not delivering the possession was rejected and by an order dated 15.11.2007, this Commission directed the Respondent/Authority to immediately hand over the possession of the flat to the Petitioner on or before 13.12.2007 subject to the condition that further repairs to make it habitable will be carried out. On 17.12.2007, this Commission reiterated the orders and directed the Respondent/Authority that Petitioner be given possession of the flat upon giving an undertaking that he would pay the amount due to the Respondent/Authority as directed by the District Forum. On 18.02.2008, Counsel for Respondent/Authority stated that possession had been handed over to the Petitioner after obtaining an undertaking from him to pay the amounts due. Counsel for Respondent further stated that necessary action will be taken to carry out the repairs of the flat. During the course of proceedings before us, it was noted that

Petitioner has handed over the keys of the flat to the concerned Jr.Engineer and the necessary repairs were carried out. Finally, the possession of the flat was handed over to the Petitioner after repairs in April, 2011. On 26.03.2012 during oral submissions, Counsel for Respondent contended before us that even after taking possession of the flat, Petitioner had not paid the amounts due. Counsel for Petitioner on the other hand stated that Petitioner had paid the entire balance amount and produced in Court, receipts and demand drafts sent by him to the Respondent in respect of the outstanding amounts. Counsel for Respondent sought to verify the same which was permitted and the case was adjourned to 10.05.2012. Counsel for Respondent was present. Neither Petitioner nor his counsel was present despite service of notice. The case was, therefore, heard ex parte. Counsel for Respondent contended that as per the calculations made by the Respondent/Authority on the basis of documents, the amount pending from Petitioner is Rs.2,83,068/- plus Rs.19,259/- which comes to a total of Rs.3,02,327/-. We have considered the submissions of the learned Counsels and have carefully gone through the evidence on record. The fact that the Petitioner had been allotted a flat on hire-purchase basis by the Respondent is not in dispute. It is also a fact that the Respondent sent the demand letter to a wrong address and then because of a small delay of 4 days, cancelled allotment of the flat which was subsequently restored by the competent authority but with a restoration charges of Rs.2,850/- which we agree was rightly set aside by the District Forum because the delay occurred on account of the deficiency in service on the part of the Respondent/Authority which did not sent the demand letter at the address given by the Petitioner. We agree that the compensation awarded to the Petitioner by the District Forum and upheld by the State Commission was justified since the delay in allotment of the flat was because of a deficiency in service on the part of the Respondent/Authority and even after possession of the flat was handed over to the Petitioner after several years, it was not in a habitable condition and it was only after directions were issued by this Commission that necessary repairs were undertaken and the flat was made habitable in April, 2011. Keeping in view all these facts in their totality, we agree with the Fora below that a compensation of Rs.2,50,000/- with litigation cost of Rs.5,000/- is justified. Counsel for Respondent states that an amount of Rs.3,02,327/- is still due from the Petitioner. In order to end this prolonged litigation, where the Respondent/Authority was guilty of deficiency in service, we direct that the above amount of Rs.3,02,327/- purportedly due from the Petitioner be adjusted against the compensation of Rs.2,50,000/- to be paid by the Respondent/Authority in compliance with the orders of the Fora below which have been confirmed by us, and no further amount be recovered from the Petitioner. The orders of the Fora below are therefore, upheld and the revision petition No.2975/2007 is disposed on the above terms.

5. SO far as Revision Petition No.3940/2007 filed by Respondent/Authority is concerned, since Respondent/Authority did not file Appeal before the State Commission against the order of the District Forum, this revision petition now

filed against the order of the State Commission is not maintainable and the same is dismissed.