
(2014) 05 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

DELHI DEVELOPMENT AUTHORITY

APPELLANT

Vs

RAJINDER PRASAD

RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:

Citation : 2014 3 CPJ 489

Hon'ble Judges : VINEETA RAI J.

Final Decision : Petition dismissed

Judgement

1. THE present set of 53 revision petitions was filed by the Delhi Development Authority (for short "the DDA") being aggrieved by the orders dated 19.12.2007 of the Delhi State Consumer Disputes Redressal Commission, which had dismissed the appeals. The revision petitions were heard in this Commission by a Bench comprising two members, namely, Hon"ble Mr. Justice K.S. Chaudhari, Presiding Member and Hon"ble Dr. B.C. Gupta, Member, who, however, failed to arrive at a consensus and, therefore, wrote two separate orders, one allowing the revision petitions and the other dismissing the same. The revision petitions were, therefore, assigned by the Hon"ble President to the undersigned as provided under Section 20(1A)(iii) of the Consumer Protection Act, 1986. Briefly the facts of the case are that, Respondents/Complainants had been allotted flats by the Petitioner/DDA in Sector -18, Rohini, Delhi under a Scheme known as "Rohini HIG Housing Scheme, 2003" on payment of the demanded amount, which included the cost of flat, conversion charges, share money and service charges. Possession of the flats was subsequently handed over to the Respondents/Complainants on the basis of demand letters dated 15.9.2013. Respondents/Complainants thereafter contended that the Petitioner/DDA had demanded lesser amount from subsequent allottees under the same Scheme by not charging them service charges and share money, as indicated in the demand letter sent to them. Consequently, the Petitioner/DDA had reduced the cost of the flats to the extent of Rs. 20,000 per flat. Alleging deficiency of service on the part of the Petitioner/DDA, Respondents/Complainants first represented to the Petitioner/DDA and on not receiving a satisfactory response filed complaints

before the District Consumer Disputes Redressal Forum (South -II), New Delhi (for short "the District Forum"), praying for refund of (i) service charge and share money; (ii) Rs. 2900 charged on account of conversion charges; and (iii) Rs. 20,000 as the Petitioner/OP charged lesser amount from waitlisted allottees. Rs. 1.00 lakh was sought as compensation on account of downgrading the category of the flat.

2. THE District Forum, after hearing the parties and on the basis of evidence produced before it, allowed the complaints and directed the Petitioner/DDA to refund a sum of Rs. 33,665 (i.e. Rs. 34,665 on account of service charges and Rs. 1,000 on account of share money) to the Respondents/Complainants. Appeals filed by the Petitioner/DDA were dismissed by the State Commission. When the case came up before the Bench comprising Hon''ble Mr. Justice K.S. Chaudhari, Presiding Member and Hon''ble Dr. B.C. Gupta, Member, Justice Chaudhari accepted the Petitioner/DDA's contention that it had the right to dispense with or reduce service charges and share money from the subsequent allottees, as per Clause 26A of the Scheme, which reads as under: "26 -A: DDA reserves the right to alter any terms and conditions/clause of the scheme at its discretion as and when considered necessary."

It was inter alia observed as follows:

"9. Learned Counsel for the respondents submitted that petitioner had no right to discriminate between the allottees within a period of 15 days and if petitioner has dispensed with share money and service charges, respondents are entitled to get refund of aforesaid amount collected by petitioner from them. This argument is devoid of force because clauses of scheme permitted petitioner to alter any terms, conditions and clauses of the scheme at its discretion. There is no question of discrimination between subsequent allottees and previous allottees and dispensation of charges cannot be assailed before District Forum. Government and their different wings and PSU charge differently at different times..."

"11. ... Learned State Commission has wrongly come to the conclusion that Statutory Authority cannot formulate policy or rule on the ground of administrative inconvenience, which allows increase/decrease of the charges and in such circumstances, impugned order is liable to be set aside."

3. LEARNED Member, Dr. B.C. Gupta, on the other hand dismissed the revision petitions and upheld the orders of the Fora below by observing as follows:

"12. ... In the present case, as noted earlier, it is not a case whether the revision of prices is necessitated by the change of any cost or taxation structure, but two components included in the prices fixed earlier, have been taken away vide Resolution dated 29.9.2003. Obviously, the persons who were given allotments after the passing of Resolution dated 29.9.2003, shall stand to benefit, vis -a - vis, their counter -parts in the same locality who were allotted flats a few days earlier. I, therefore, fully agree with the views expressed by the District Forum

and the State Commission in their orders that such a situation shall attract Article 14 of the Constitution of India, because it discriminates between two persons, similarly placed."

4. LEARNED Counsel for both parties made oral submissions before me on 31st March, 2014. Ms. Girija Wadhwa, learned Counsel for the Petitioner/DDA, stated at the outset that this was not a consumer dispute because there was no deficiency in service on the part of the Petitioner/DDA since the Respondents/Complainants had not challenged the allotment and had accepted possession of the flats without any complaints. Further, since the complaints are confined to the question of pricing of the flats, these are not "consumer disputes" as settled by judgments of this Commission, including in (i) Gujarat Housing Board v. Datania Amritlal Fulchand and Others,, III (1993) CPJ 351 (NC) and (ii) Delhi Development Authority v. A.N. Saigal,, I (1996) CPJ 34 (NC), wherein it was essentially held that the Fora constituted under the Consumer Protection Act, 1986 are not empowered to go into the question of fixation of pricing of the flats built by public authorities or plots developed by the authorities. This finding has also been confirmed by learned Presiding Member Hon''ble Mr. Justice K.S. Chaudhari in para -8 of his order. Counsel for the Petitioner/DDA further contended that there was no discrimination or arbitrariness in the decision to dispense with share money and service charge for a set of allottees since the Petitioner/DDA was very much within its right to do so in terms of Clause 26A of the Scheme. It also needed to be kept in mind that the contract between the parties had been successfully concluded and the issue could not be reopened by the Respondents/Complainants on the ground of deficiency in service. In view of these facts, the Hon''ble Presiding Member had rightly concluded in favour of the Petitioner/DDA.

5. LEARNED Counsel for the Respondents/Complainants on the other hand stated that the Fora below as also a learned Member of this Commission had rightly concluded that there was clearly discrimination and arbitrariness on the part of the Petitioner/DDA in charging two different rates for exactly the same type of flats in respect of the same Scheme covered by a common brochure and allotment in the same draw of lots to the Respondents/Complainants and subsequent allottees and that too within a fortnight Petitioner/DDA's contention that dispensation of certain charges does not amount to discrimination is not correct because the overall effect clearly amounted to charging substantially higher rates for flats of the same type from similarly placed persons all of whom were given allotments under a single Scheme. Moreover, it is not correct that the service charge was merged in the land rate since the land costs remained the same at Rs. 4,87,330. Further, Rs. 20,000 extra charged on account of increase in construction cost of the flat is not an acceptable reason since a flat in the same building constructed at the same time with similar dimensions cannot have different costs.

6. I have carefully gone through the orders of the Hon''ble Presiding Member and

the Hon''ble Member and have also considered the submissions made by learned Counsel for the parties. The two main issues, arising out of this case and on which different conclusions have been arrived at, are: (i) Whether the complaints can be adjudicated under the provisions of the Consumer Protection Act, 1986, in view of the large number of judgments cited by Counsel for the Petitioner/DDA, by which it is concluded that complaints dealing with pricing cannot be gone into by the Consumer Fora; a view which was also taken by the Hon''ble Presiding Member; and

(ii) Whether the action of the Petitioner/DDA to dispense with service charge, share money, conversion charge, etc., under Clause -26 of the Scheme, which resulted in one set of allottees in the same Scheme having to pay less than another set of allottees, who had been issued letters just 15 days prior to this decision, was legally and constitutionally tenable and did not amount to any discrimination.

8.1 So far as the first point is concerned, it is clear from the evidence on record that the Respondents/Complainants have not questioned the pricing policy of the Petitioner/DDA or even its right to fix price of the flats allotted under the Scheme. Their grievance in the complaints is that by not charging service charge, share money and conversion charge from some allottees under the same Scheme to whom letters had yet to issue has resulted in Respondents/Complainants having to pay higher costs vis -a -vis flats allotted to another set of similarly placed allottees in all respects, thus, the complaints are against the element of discrimination and arbitrariness on the part of the Petitioner/DDA and not its pricing per se. It is thus dear that the judgments cited by the learned Counsel for the Petitioner/DDA are not relevant in the instant revision petitions since they do not pertain to the pricing of land/flat but to deficiency in service on the part of the Petitioner/DDA because of its discriminatory and arbitrary action. In view of these facts, I do not agree with the submission, of learned Counsel for the Petitioner/DDA, as upheld by the learned Presiding Member, that the Respondents/Complainants were not "consumers" and instead conclude that they were legally well within their rights to file their complaints under the Consumer Protection Act, 1986.

8.2 Regarding the second issue, Petitioner/DDA had defended its action to dispense with service charge, share money, etc. on the ground that it had every right to do so in terms of Clause 26A of the brochure, according to which "the Petitioner/DDA reserves the right to alter any terms and conditions/clause of the Scheme at its discretion as and when considered necessary and its consequent ratification by a resolution of the Petitioner/DDA. No doubt, the Petitioner/DDA had the right to make these changes in terms of Clause 26 A but these should then have been applied uniformly to all allottees under the Scheme i.e. to those to whom letters had yet to issue and also those to whom letters had already issued. It may also be mentioned that no reason for this decision has been specified in the resolution; it seems to be on grounds of administrative

expediency. We also note that the resolution issued by the Petitioner/DDA in response to Clause 26A states that the service charge will be merged in the land cost to be charged from allottees to whom these letters had yet to issue. However, this was not so because there was no change in the cost of the land which remained the same at Rs. 4,87,330 in respect of both sets of allottees.

8.3 Learned Presiding Member while concluding at the action of the Petitioner/DDA (sic) arbitrary nor discriminatory had, inter alia, cited the example of the Tatkal scheme of the Indian Railways by observing as follows "A person has to pay more for reservation under Tatkal scheme to the railways, whereas he has to pay less amount to the railways if he gets his reservation in ordinary way". I respectfully disagree with this analogy since there is a clear difference between that Scheme and the present case. Under the Tatkal Scheme, as is well known, passengers availing the Tatkal facility pay more because they avail of a special service made available by the Indian Railways for passengers who make late/last minute reservations and thus "jump the queue" over passengers who had bought their tickets in the normal way or were waitlisted. Learned Presiding Member has also cited example of Government's periodic revisions in the prices of petrol, diesel, etc. as another example. In my view, this also is not a relevant analogy with the present case. The Government as per a laid down policy periodically does review the prices of oil/oil products, which results in either reducing or enhancing the same but the reason for doing so is because these products are exposed to fluctuations and vagaries of the international prices of crude and oil as also changes in the exchange rates of the currency of the countries involved. In the instant case, there were no such factors because admittedly, as discussed at length by learned Member Dr. B.C. Gupta, there were no changes in the land cost, construction cost or even the taxation structure to justify the decision of the Petitioner/DDA.

8.4 Keeping in view these facts, I agree with the Fora below and the learned Member Dr. B.C. Gupta that the action of the Petitioner/DDA was whimsical and arbitrary and clearly amounted to deficiency in service. The following observation of the State Commission in this connection is relevant:

"Any arbitrary or unauthorised act by a statutory authority against the concept of equality before law amounts to deficiency in service which in terms of Section 2(1)(g) of Consumer Protection Act, 1986 means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service."

I also agree with the Fora below and learned Member Dr. B.C. Gupta that the action of the Petitioner/DDA in this case goes against the principles of equality under Article 14 of the Constitution of India. Elaborating on this cardinal principle, the Hon^{ble} Supreme Court of India in *Dakshin Haryana Bijli Vitran v. Bachan Singh*, : VI (2009) SLT 443 : (2009) 14 SCC 793, had observed as

follows:

"22. This Court time and again had observed that the principle underlying the guarantee of Article 14 of the Constitution is that all persons similarly placed shall be treated alike, both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation without any discrimination"

Further, the Hon'ble Supreme Court had in *Michigan Rubber (India) Ltd. v. State of Karnataka*, : VI (2012) SLT 116 : IV (2012) BC 177 (SC) : (2012) 8 SCC 216, observed as follows:

"The basic requirement of Article 14 is fairness in action by the State, and non - arbitrariness in essence and substance is the heartbeat of fair play..."

To sum up, in the instant case the action of the Petitioner/DDA, which discriminated against similarly placed allottees in all respects, was clearly whimsical and arbitrary with no credible or convincing reasons being given for their action and, therefore, apart from involving deficiency in service on the part of the Petitioner/DDA in terms of the Consumer Protection Act, 1986, it was also against the principles of "equality" under Article 14 of the Constitution of India.

7. FOR the reasons stated in the aforesaid paragraphs, I am in agreement with the orders of the Fora below as also learned Member Dr. B.C. Gupta and uphold the same. This order be placed before the Bench who had heard the revision petitions for pronouncement of the final order. Dr. B.C. Gupta, J.

8. THESE revision petitions, i.e., RP No. 1262 of 2008 to 1314 of 2008, have been filed by the petitioner/OP, Delhi Development Authority (hereinafter referred to as "DDA") against the consolidated impugned order dated 19.12.2007 passed by the Delhi State Consumer Disputes Redressal Commission (for short, the "State Commission") in appeal Nos. 07/930 - 982, *DDA v. Rajinder Prasad & Ors.*, vide which, while dismissing the appeals, the orders passed by the District Forum allowing the complaints were upheld. Since I am not in agreement with the order recorded by my learned brother, Hon'ble Justice K.S. Chaudhari, Presiding Member, I am writing this dissenting order.

9. BRIEFLY stated, the facts in question are that the complainants/respondents were allotted flats by petitioner/OP in Sector -18, Rohini, Delhi under the Rohini HIG Housing Scheme, 2003 and they deposited requisite amounts with the OP, which included the cost of flat, conversion charges, share money, service charges, etc. The possession of the flats was handed over to the allottees/complainants on the basis of demand letters issued on 15.9.2003. Subsequently, the DDA. took a decision on 29.9.2003 vide which the collection of share money for such similar flats in the same locality, was dispensed with and it was decided that no service charges shall be separately levied on flats and this will be a part of the land cost as intimated by land costing wing. It was also decided by this resolution adopted by DDA on 29.9.2003 that the decisions taken shall be

applicable for demand letters yet to be issued and the demand letters already issued will not be revised. The grievance of the complainants is that the OP/DDA did not impose service charges, share money, etc. from other allottees in the same locality and in the same scheme, who were allotted flats later and hence, the subsequent allottees were charged less amount as compared to the complainants. The decision of the DDA was, therefore, discriminatory against them. The complainants filed complaints before the District Forum praying for refund of service charges, share money, excess money charged for conversion charges and refund of Rs. 20,000 charged less from subsequent allottees and Rs. 1 lakh as compensation. The learned District Forum allowed the complaints and directed refund of service charges and share money amount. The appeal filed by petitioner/OP were dismissed by the State Commission vide impugned order against which these revision petitions have been filed.

10. AT the time of hearing, it was pleaded on behalf of the petitioner that they had a right to increase or decrease any charges by any amount and, hence, the learned State Commission and District Forum had committed error in allowing the complaints. It had been made clear in the brochure issued by the DDA for the scheme that the cost of the flats indicated in the brochure was valid up to 30.9.2003 and thereafter, the cost was liable for revision on every 1st October and 1st April. The land premium was revised every year on first April, while cost of construction was revised twice during the year, on every 1st October and 1st April as laid down in the brochure. It has also been indicated that in addition to the cost of the land, cost of construction, Departmental charges, etc., an allottee was required to pay service charges, ground rent, share money, fire risk cover and free -hold charges also. The DDA vide Resolution dated 29.9.2003 had taken a decision for not charging the share -money and changing the formula for charging the service tax and they had every right to do so. It has been made clear in Clause 26 under other general conditions" in the brochure that the DDA has the right to alter any terms and conditions at its discretion, as and when considered necessary. The learned Counsel invited our attention to the orders passed by the Delhi High Court in *Sheelwanti & Ors. v. D.D.A. & Anr.*, : 57 (1995) DLT 801 (FB), in which it has been held that in the matter of costing and fixation of prices, the scope of judicial review was very much limited. Further, the National Commission have also taken a similar view in the following matters: (i) *Gujarat Housing Board v. Datania Atnritlal Fulchand & Ors.*, [III (1993) CPJ 351 (NC)] [FA No. 241/1991, decided on 7.10.1993]

(ii) *Housing Board, Haryana v. Kartar Singh & Ors.*, I (1995) CPJ 7 (NC) : [Revision Petition Nos. 287 to 371 of 1992, decided on 8.11.1994]

(iii) *Delhi Development Authority v. A.N. Saigal*,, I (1996) CPJ 34 (NC) : [Revision Petition No. 578 of 1994, decided on 30.10.1995]

On the other hand, the learned Counsel for the respondents/complainants argued that they had not questioned the pricing policy of the DDA or the right of the DDA to fix the price for the plots in question, but they were only complaining

against the element of discrimination and arbitrariness in the matter. It was discriminatory on the part of the DDA to charge certain components of costing for the allotment letters issued on 15.9.2003, but to remove those components from the costing formula after the Resolution passed on 29.9.2003. He pleaded that in case, some component has been taken away from the total costing, the allottees of similar categories of flats in the same area who had obtained the flats, only a few days earlier, should be suitably compensated and the excess money charged should be refunded to them. He pointed out that in the allotment letter dated 15.9.2003, in respect of flat No. 110A, the land cost has been mentioned at Rs. 4,87,330, whereas the same land cost has been mentioned in the allotment letter issued on 14.1.2004 in respect of Flat No. 111A. However, the share money of Rs. 1,000 and service charges of Rs. 36,550 mentioned in case of allotment for flat No. 110A were not being charged from the allottee of flat No. 111 A, which was clearly discriminatory.

11. AN examination of the record reveals that in the brochure issued by the DDA for the Rohini HIG Housing Scheme 2003, the methodology of calculating the cost of the flats, in question, has been mentioned at serial No. 14 of the brochure. It has been stated therein that the disposal cost of the flat shall consist of the following items: (i) cost of the flat including land premium and cost of construction. The land premium is revised on first April every year while the cost of construction is revised twice a year on every first October and first April.

(ii) service charges

(iii) ground rent

(iv) share money

(v) fire risk cover

(vi) free -hold charges.

12. A careful examination of the facts on record makes it clear that for the allotments made in Sector 18, Rohini under the Scheme in it question, service charges and share money were charged from the earlier allottees. However, subsequently, on 29.9.20013, the DDA passed a Resolution, which reads as follows: "2. The following proposals are accordingly submitted for consideration of the Authority - -

(a) Interest during construction period as approved vide Authority Resolution No. 95/2002 be reduced to 10% p.a. from 12% p.a. because of decline in interest rates.

(b) Collection of share money collected @ Rs. 500 per flat from Janta/EWS/LIG flat and Rs. 1000 per flat from others as approved vide Authority Resolution No. 7/2002 be dispensed with.

(c) No service charges/capitalized service charges be separately levied on flats. This will be part of land cost as intimated by Land Costing Wing. This will have

the effect of charging of service charges to the cost of land as a whole instead of charging it only to flats.

(d) The above would apply on demand letters yet to be issued. Demand letters already issued will not be revised.

3. Approval of the Authority is required on para. 2 above.

RESOLUTION

The Authority approved the proposals in principle, with the stipulation that final decision regarding the rate of interest would be taken by the Vice -Chairman keeping in view the prevailing Prime Lending Rate fixed by the banks."

It is clear from the above Resolution that the component of share money has been dispensed with and it has been decided that service charges will be part of the land cost as a whole, instead of charging it only to flats. This decision has resulted in reduction in the value of flats for subsequent allottees. It is quite obvious that this reduction in the total cost is not due to any change in the cost of land or change in the construction prices or change in the taxation structure, etc. In case, there is an increase or decrease in any slab of taxes, etc. from a particular date, it is well understood that the costing shall undergo a change from that date and the subsequent allottees shall have to pay the extra cost or enjoy the benefit of reduced cost in this manner. Similarly, as laid down in the terms and conditions of allotment in the brochure, the cost of land is determined once an year while cost of construction is determined twice a year on predetermined dates. It is clear, therefore, that if the cost of land or the cost of construction changes, the subsequent allottees shall have to pay accordingly. The present case is, however, required to be distinguished from the case of change of costs or the taxation structure. The DDA vide its Resolution dated 29.9.2003 have decided to make two major changes, namely, that share money shall not form a part of the total costing and the service charges shall be part of overall cost of land and not of the flats. This change in the formula for calculating the total cost has to be made uniformly applicable to all allottees in the same area and if certain allotments were made before passing of the Resolution dated 29.9.2003, it is the bounden duty of the DDA to refund the amount to such allottees if charged extra. The learned District Forum have rightly observed in their order as follows: "In a country where rule of law is supreme, no Government Agency can formulate any policy which discriminates between two persons standing on the same platform. It is very ridiculous to say that person who was allotted flat on 15.9.2003 would pay Service Charges and Share Money and the person who was allotted flat after 29.9.2003 will not pay Service Charges and Share Money. This Policy certainly is hit by Article 14 of the Constitution of India."

13. FURTHER , the State Commission also made a similar observation in the impugned order as follows: "No statutory authority conferred with the powers to make rules or administer policy can formulate policy or rule which is

discriminatory or arbitrary. Main Statutory provision does not permit the administering authority to override the basic statutory provision may be for administrative convenience or for any purpose whatsoever. Any rule or resolution passed by the statutory authority which discriminates between two persons similarly placed is illegal and cannot be acted upon."

14. FROM the above decision, it is clearly made out that if the allottees before 29.9.2003 are made to pay service charges and share money, this policy is hit by Article 14 of the Constitution of India and shall amount to discrimination between two persons, similarly placed. The order passed by the Hon"ble Delhi High Court in Sheelawanti & Ors. v. DDA & Anr. (supra), as quoted by the learned Counsel for the petitioner also, contains the same principles. It has been held by Their Lordships in this case as follows: "From the above, it is clear that the scope of judicial review in the cases involving costing and fixation of prices is very much limited. Apart from the observations and the findings recorded in B.D.A.'s case (Page 126), extracted above, that a public body entering in the realm of contract acts merely in its executive capacity and thereafter the relations are no longer governed by constitutional provisions but by contract, which apply in this case as well, even otherwise, what has to be seen and examined by the Writ Court is whether the pricing of flats demanded by the DDA for different categories of allottees is whimsical or arbitrary. The data placed on record by the DDA, prima facie, does not warrant so. There are of course some contentions point, like formula and basis for working out the land rate, cost of development, construction and inclusion of certain expenses, which could only be decided on evidence, which we do not propose to do in writ jurisdiction. Merely, because the method of valuation suggested by the petitioners would be more fairer or logical, the method or the basis adopted by the DDA cannot be struck down as arbitrary or whimsical."

15. IT has been stated in the above judgment that while the scope of the judicial review in cases involving costing and fixation of prices is limited, but it is to be seen and examined by the Writ Court whether the prices of the flat demanded by the DDA for different categories of allottees is whimsical or arbitrary. In the present case, as noted earlier, it is not a case whether the revision of prices is necessitated by the change of any cost or taxation structure, but two components included in the prices fixed earlier, have been taken away vide Resolution dated 29.9.2003. Obviously, the persons who were given allotments after the passing of Resolution dated 29.9.2003, shall stand to benefit, vis -a - vis, their counter -parts in the same locality who were allotted flats a few days earlier. I, therefore, fully agree with the views expressed by the District Forum and the State Commission in their orders that such a situation shall attract Article 14 of the Constitution of India, because it discriminates between two persons, similarly placed.

16. UNDER such circumstances, it is held that these revision petitions are without any force and the same are ordered to be dismissed. The orders passed by the

District Forum and State Commission are based on correct appreciation of the facts and circumstances on record and these are upheld. There shall be no order as to costs. K.S. Chaudhari, J.

Revision Petition Nos. 1262/08 to 1314/08 arise out of the common consolidated order of State Commission involving same question of law; hence, all the revision petitions are decided by common order. These revision petitions have been filed by the petitioner/OP against the consolidated impugned order dated 19.12.2007 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, "the State Commission") in Appeal Nos. 07/930 -982 - -DDA v. Rajender Prasad & Ors., by which, while dismissing appeals, order of District Forum allowing complaints was affirmed.

17. BRIEF facts of the cases are that complainants/respondents were allotted flats by OP/petitioner in Sector 18, Rohini, Delhi and complainants deposited demanded amount with the OP, which included cost of flat, conversion charges, share money and service charges. Possession of flats was handed over to the complainants on the basis of demand letters issued on 15.9.2003, under the Scheme Rohini HIG Housing Scheme 2003. It was further alleged that OP has not charged service charges; share money from other allottees, who were allotted flats by demand letter dated 12.11.2005 and, thus, charged lesser amount from subsequent allottees. It was further alleged that OP reduced cost of the flats to the extent of 20,000 and downgraded status of flats from HIG to MIG on account of which, premium of the flat was reduced. Alleging deficiency on the part of OP, complainants filed complaints before District Forum and prayed for refund of service charges, share money, excess money charged for conversion, refund of Rs. 20,000 as OP charged lesser amount from subsequent allottees and Rs. 1,00,000 as compensation. OP/petitioner admitted dispensing with service charges, share money and also admitted demand of lesser amount on account of conversion charges, but denied reduction of cost of the flats and downgrading status of the flats. It was further submitted that service charges and share money were dispensed with in the light of resolution of OP and prayed for dismissal of complaints. Learned District Forum after hearing both the parties, allowed complaints and directed refund of service charges and share money amount. Appeal filed by the petitioner was dismissed by learned State Commission vide impugned order against which, these revision petitions have been filed.

18. HEARD learned Counsel for the parties and perused record. Learned Counsel for the petitioner submitted that petitioner had right to dispense with or reduce any charges, cost of flat in compliance to the resolution and learned State Commission has committed error in dismissing appeals and learned District Forum has committed error in allowing complaints; hence, revision petitions be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondents submitted that petitioner had no right to discriminate between the allottees within period of 15 days and order passed by learned State

Commission is in accordance with law, which does not call for any interference; hence, revision petitions be dismissed.

19. COMPLAINAN TS in their complaints prayed 5 reliefs before District Forum and learned District Forum allowed only 2 reliefs regarding service charges and share money and complaint was dismissed pertaining to prayer for refund of conversion charges, refund of Rs. 20,000, which was not charged from waitlisted allottees and regarding degradation of category of the flats. Learned State Commission while dismissing appeal of the petitioner, upheld refund of service charges and share money, which order has been assailed before us in these revision petitions.

20. LEARNED Counsel for the petitioner submitted that petitioner had right to dispense with or reduce service charges and share money, as per Clause 26A of the scheme, which runs as under: "26A: DDA reserves the right to alter any terms and conditions/clause of the scheme at its discretion as and when considered necessary.

In the light of aforesaid authorization, by resolution dated 29.9.2003, petitioner decided to reduce rate of interest from 12% to 10%, dispensed with share money and service charges and share money and service charges were not collected from subsequent allottees.

21. AS far as allotment of flat and charging of money from the respondents is concerned, that has been charged as per their contract and there is no dispute between the parties and no deficiency to that extent. The grievance of the respondents is only to the extent that, as petitioner has dispensed with service charges and share money from the subsequent allottees, respondents, who had taken possession of the flats earlier, are entitled to get refund of aforesaid amount. This dispute apparently does not fall within the purview of consumer dispute under Consumer Protection Act, 1986. As per clauses of the scheme, petitioner has authority to reduce or enhance any charges from time to time and merely because share money and service charges have been dispensed with from subsequent allottees, respondents cannot claim refund of aforesaid money.

22. LEARNED Counsel for the respondents submitted that petitioner had no right to discriminate between the allottees within a period of 15 days and if petitioner has dispensed with share money and service charges, respondents are entitled to get refund of aforesaid amount collected by petitioner from them. This argument is devoid of force because clauses of scheme permitted petitioner to alter any terms, conditions and clauses of the scheme at its discretion. There is no question of discrimination between subsequent allottees and previous allottees and dispensation of charges cannot be assailed before District Forum. Government and their different wings and PSU charge differently at different times which can be illustrated by following example: A person has to pay more for reservation under Tatkal scheme to the railways, whereas he has to pay less amount to the railways if he gets his reservation in ordinary way. By Finance Bill

Government of India and State Government change rate of taxes, excise duty, custom duty, etc. from a particular date and this cannot be assailed on the ground that persons have to pay more or less taxes from a particular date. In these days, Oil Companies which are Public Sector Undertakings are reducing/increasing prices of Petrol, diesel, etc. every fortnightly and deficiency cannot be attributed on the part of Oil Companies on the ground of increase/decrease of prices fortnightly.

Had there been increase of service charges, share money charges from subsequent allottees; whether respondents have come forward to make payment of difference of money to the petitioner. We think they would not have agreed and any demand raised on them would have been struck down. In the same way, they cannot claim refund of charges, which have been dispensed with by the petitioner from subsequent allottees.

23. IN such circumstances, merely by dispensing with share money and service charges from subsequent allottees, respondents do not get any right to get refund of share money and service charges paid by them, as per scheme of the petitioner. Learned State Commission has wrongly come to the conclusion that Statutory Authority cannot formulate policy or rule on the ground of administrative convenience, which allows increase/decrease of the charges and in such circumstances, impugned order is liable to be set aside. Consequently, revision petitions filed by the petitioner are allowed and impugned order dated 19.12.2007 passed by learned State Commission in aforesaid 53 appeals are set aside and complaints filed before the District Forum stand dismissed with no order as to costs.