
(2010) 05 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

DELHI DEVELOPMENT AUTHORITY VIKAS SADAN, I.N.A. NEW DELHI APPELLANT

Vs

MRS. SAVITA KUMAR BEDI , ANIL KUMAR BEDI RESPONDENT

Date of Decision : 26-05-2010

Acts Referred:

Citation : 2010 0 CTJ 745 : 2010 0 NCDRC 99 : 2010 3 CPJ 49

Hon'ble Judges : B.N.P.Singh , S.K.Naik J.

Advocate : Girija Wadhwa , Rohit Shankar

Judgement

1. RESPONDENTS/complainants had jointly applied for allotment of MIG flat under the festival Housing Scheme of the petitioner DDA during Nov., 2004. In the computerized draw of lots, they were declared successful for allotment of flat No.77, 2nd floor, Sector-18, Pocket-2, Block-B, Rohini. A demand-cum-allotment letter was issued on 18.2.2005. The complainant, on a visit to the site, however, did not find the flat and the matter was brought to the notice of the petitioner/opposite party. On realizing that it was an inadvertent mistake, they allotted another flat No.72, 2nd floor, Sector-23, Pocket 11A, Rohini after holding another computerized draw on 10.5.2005. A fresh demand-cum-allotment letter was accordingly issued to the respondents/complainants. Petitioner/opposite party, on 9.9.2005, asked the respondents/complainants to deposit the demanded amount within the stipulated period. The complainants, however, were not satisfied with the revised allotment of the flat, primarily on the ground that the flat was not part of the festival scheme and was outside the locality for which they had applied. Since, there was no positive response from the petitioner DDA, they filed a consumer complaint before the District Consumer Disputes Redressal Forum-II Delhi (for short District Forum) seeking immediate handing over of a suitable newly constructed MIG flat in the some good locality preferably in Dwarka or Rohini and further sought a compensation of Rs.1 lakh for mental harassment and agony. The complaint was resisted by the petitioner/opposite party. On perusal of the evidence thereafter produced by both the sides and on consideration of the arguments advanced by their counsel, the District Forum

passed the following order :-

2. IN view of the above discussion, the Forum orders opposite party as under :
(i) To give possession of the flat No.72, 2nd Floor, Pocket 11A, Sector-23, Rohini on payment of requisite charges without any interest to the complainant. (ii) However, it is clarified that if complainant is not interested in taking possession of the above noted flat, opposite party will refund the registration amount of Rs.1 lakh with interest at the rate of 9% p.a. from the date of receipt of registration money till the amount is actually paid. (iii) Pay Rs.25,000/- as compensation and cost of litigation to the complainant.

Not satisfied with the order of the District Forum, the complainants who are respondents herein challenged the order of the District Forum, in an appeal filed before the State Commission who vide the order impugned has allowed the appeal stating as under :- 7. In the result, we allow the appeal by directing the respondent to allot alternative flat to the appellants in the same area, same flat and on the same terms and conditions as agreed. However, if there is no such flat available, the flat No.72 offered by the respondent in the same terms and conditions and same price so eligible to the appellants. In case the appellant is not interested in taking possession of the aforesaid flat No.72, the respondent shall refund the amount of Rs.1 lakh with interest @ 9% p.a. from the date of filing of the complaint and also pay Rs.2.5 lakhs as compensation for the loss suffered by the appellants.

This order is now being challenged by the petitioner/opposite party DDA in this revision petition.

3. WE have carefully perused the orders passed by the District Forum and the State Commission and have perused the records of the case. WE have also heard at length learned counsel for the parties. The uncontroverted facts of the case are that the respondents/complainants on payment of sum of Rs.1 lakh registered themselves for the allotment of flat under the festival scheme 2004 of the petitioner/opposite party. On the basis of a computerized draw, they were successful for the allotment of flat No.77, 2nd floor, Sector-18, Pocket-2, Block-B, Rohini. The flat, however, was non-existent as it appears the block itself was not there on the ground. The petitioner/opposite party admitted that a mistake had occurred in putting such a block/flat for computerized draw of lots and soon thereafter put the name of the respondent/complainant for a draw of computerized lot for flats in Sector-23, Rohini and on the basis of said draw of lots, the respondents/complainants were allotted flat No.72, 2nd floor, Sector-23, Pocket-11A, Rohini. The allotment-cum-demand letter accordingly was issued to the respondents/complainants.

4. THE dispute arose from this point as the respondents/ complainants did not find the area of the flats so allotted to their liking and they raised the objection with regard to the flat being outside the original festival scheme. THE complainants did not comply with any further deposit after the initial registration

amount of Rs.1 lakh and resorted to litigation by filing a consumer complaint. THE District Forum, in our view took an appropriate and judicious decision in directing the petitioner/opposite party to allot flat No.72, 2nd floor, Sector-23, Pocket-11A, Rohini on payment of requisite charges by the complainant without any interest ; in addition the District Forum allowed interest @ 9% on the registration amount of Rs.1 lakh and has further awarded compensation and cost of Rs.25,000/-. This order, as is evident, was passed in the interest of the complainants themselves as there was not much of a difference with regard to the locality, area/size of the flats. It may noted that for the inadvertent mistake, petitioner/opposite party was not only deprived of any interest on the installments/payments to be made by the complainants but were also burdened with the award of a compensation of Rs.25,000/-. However, the respondents/complainants were not satisfied with the order of the District Forum and filed an appeal before the State Commission. THE main plea advanced in their appeal was that the District Forum had directed the petitioner/opposite party to give the same flat which was offered by the opposite party themselves but was not acceptable to the complainants whereas they were entitled to an alternate flat in the same area/same floor and on same terms and conditions. THE State Commission, as is evident from its order quoted above has directed the petitioner/opposite party to allot the same flat in the same area and on the same terms and conditions as agreed. This order of the State Commission cannot be sustained for the simple reason that in passing the said order, it has failed to take into consideration the fact that the petitioner/opposite party had admitted that the original allotment was a mistake as no such flat ever existed. It further failed to consider that apart from original deposit of Rs.1 lakh as the registration money, the respondent/complainant has not complied with the allotment-cum-demand letter for the allotment of alternate flat which the District Forum rightly considered to be the best alternate solution in the interest of the complainant. What is, however, very unusually striking in the order of the State Commission is that, it has enhanced the amount of compensation to Rs.2.5 lakhs even though the complainant himself had sought compensation of Rs.2 lakh in their memo of appeal. This amount in fact had been raised by the complainants against their original claim of Rs.1 lakh as compensation in the complaint filed before the District Forum. In doing so, the State Commission has committed an irregularity in the exercise of appellate jurisdiction. In our view, offer of an alternate flat in Sector-23, Rohini by the petitioner Authority for their mistake of allotting the non-existing flat earlier or refund of the deposited amount with interest @ 9%.a. from the date of deposit and further a compensation of Rs.25,000/- as awarded by the District Forum was the most appropriate and judicious dispensation of justice, as the State Commission could not compel the petitioner DDA to do the impossible. Accordingly, we set aside the order passed by the State Commission, allow the revision petition of the petitioner and restore the order passed by the District Forum. The petitioner is directed to inform the respondents/ complainants with regard to the payment of requisite charges by the complainants as directed by the District Forum and the complainant, thereafter, is directed to pay the same to

the petitioner Authority within a period of four months, where after the petitioner Authority will hand over the possession of the flat to the respondents/ complainants. If, however, the respondents/ complainants are not interested to accept the flat offered. They would be given refund of their deposit with 9% interest as ordered by the District Forum.