

(2014) 04 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

Managing Director, Army Welfare Housing Organisation

APPELLANT

Vs

Raj Kumar Dhingra

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Citation : 2014 0 NCDRC 206

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : A.K.TEWARI

Judgement

1. B .C. Gupta, Member This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 06.12.2011, passed by the Haryana State Consumer Disputes Redressal Commission (for short "the State Commission ") in FA No. 1162/2010, ""Managing Director, Army Welfare Housing Organisation (AWHO) versus Raj Kumar Dhingra "" vide which, while dismissing appeal, the order dated 14.06.2010, passed by the District Consumer Disputes Redressal Forum, Panchkula, allowing the consumer complaint no. 224/2009, was upheld.

2. BRIEF facts of the case are that the petitioner/OP is an organisation registered as a society under the Societies Registration Act, 1860 and its job is to provide dwelling units (for short "DU ") to the serving and retired Army Personnel as well as their widows all over the country on "no profit no loss " basis. It has been stated that the organisation does not get any grant from the Central Government or from the Indian Army for managing its activities. The complainant Raj Kumar Dhingra is a retired subedar from the Indian Army and he applied for an economy apartment in the annual registration scheme for getting a DU at Sandeep Vihar, Sector 20, Panchkula on 06.06.2004 by paying a sum of Rs. 90,500/ -. He was allotted registration no. EJC/EA/98248/AR/PKL/2004 on 15.06.2004. The cost of the economy apartment was quoted as Rs. 12,87,000/ -. On receipt of the application, the seniority was to be determined on the basis of date of bank draft towards payment of registration fees. Further, according to Rule 58(B) I of the allocation of DUs, 3% DUs in each type were to be reserved

for Army personnel who had either retired within 6 months from the date of application or those expected to retire within one year from the date of application. In addition, 3% DUs were reserved for widows. The complainant was placed at Sl. No. 15 in the list. On 24.10.2005, he was given an option to change his registration from sector 20, Panchkula to sector 27 Panchkula. It has been stated in the complaint that on 1.09.2006, one Brig. G.S. Sisodia with registration no. 104727 was placed at serial no. 1, Lt. Col H R Saini with registration no. 96060 was placed at serial no. 2, and Major Nagyal with registration no. 98011 was placed at serial no. 3, whereas the complainant was put at Sl. No. 4. After a couple of months, the complainant was placed at Serial No. 2, but Brig Sisodia remained at serial no. 1. However, when the attention of AWHO authorities was drawn to these facts on 21.05.2007, the complainant was told that he was seniormost wait -listed registrant now, because Brig Sisodia had since withdrawn his registration. The complainant has alleged that some allotments were made which were not in accordance with the procedure prescribed. He even had tele -conversation with the Managing Director of the Organisation and other officers, but in vain. The complainant then filed the consumer complaint in question dated 20.07.2009 before the District Forum. In their reply before the District Forum, the petitioners/OP 1 & 2 stated that after registration on 10.06.2004, the complainant was allotted seniority no. 723 as per draw of lots held on 09.07.2004. However, the availability for economy apartments/DUs was only 348. Since the complainant could not be allotted a DU in sector 20 Scheme, he was given the option to change over to Sector 27 Scheme alongwith other wait -listed registrants, but the complainant declined to opt for the same. The petitioners/OPs admitted in their reply that as per the computerised draw, Brig G.S. Sisodia had been assigned seniority no. 999, Lt. Col. H.R. Saini seniority no. 708, Major Nagyal seniority no. 719 and the complainant Raj Kumar Dhingra, seniority no. 723. After adjustment of various applicants, the complainant was placed at serial no. 1 in the said list, but the DU could not be allotted to him due to non -availability in that scheme. The District Forum after taking into account the evidence of the parties, directed the OPs to allot a flat/economy apartment to the complainant in sector 20 or sector 27, Panchkula or in Sector 114, Mohali within a period of 6 months. The operative portion of the order of the District Forum in this regard is as follows: - ""With the above said detailed observations and record placed on file grave deficiency in service on the part of OPs is clearly established and we hold the same with the following directions to the OPs to comply the same within a period of six months from the receipt of this order: - i) To allot the flat/Economy apartment to the complainant within a period of six months in Sandeep Vihar, Sec -20 or Sec -27, Panchkula failing which the complainant will be allotted an apartment in their housing project in Sec -114 (Mohali) as per his registration at the same price as well as on the same terms and conditions as detailed in (Ex. C -1). ii) It is also made clear that complainant will retain his lien as per his present waitlist seniority on any vacancy that may arise in Sandeep Vihar Sec -20 or Sec -27 Panchkula. Also that in case the complainant exercises his right case of vacancy

in sec -20/27 he will have to give up flat allotted to him in sec -114 Mohali. iii) To pay Rs.2000/- as compensation for harassment suffered by the complainant. ""

3. AN appeal was filed against the order of the District Forum before the State Commission, which was decided on 06.12.2011, vide which the order passed by the District Forum was upheld. It has been observed in the order of the State Commission as follows: - ""10. It is not the case of OPs -appellants that there were number of registrants with the same date bank draft. How and under what circumstances the draw was held and under whose supervision the draw was held has not explained by the Ops/appellants. Though rules do not prescribe for any computerized draw, however, even if for the sake of arguments, it is presumed that draw was held, the Ops have not disclosed the date of draw, the officer under whose supervision draw was held, what was the manner of draw etc. One of the registrants against whom there is a grievance by the complainant, that Brig. Sisodia who was not even a member of the scheme till 21.08.2004 while the complainant had applied and got himself registered in 6.6.2004 and draw was held on 9.7.2004, was shown high up on the seniority list. ""

4. IT has further been observed in the order of the State Commission as follows: - ""12. However, surprisingly the OPs vide letter dated 29.06.2009 Ex.C -9 have informed the complainant that out of 556 Dwelling Units situated in Sector 20, Panchkula, all the dwelling units have been handed over except one, for which documentary formalities are awaited from the allottee. When the allotment was made in July 2004, admission by the OPs in June, 2009 vide their letter Ex.C -9, that one of the allottees of Dwelling Units has still not been handed over possession for want of formalities, which as per rule 52 reproduced above was required to be made upto within 120 days, failing which it leads to termination of the registration, the non -occupation till June 2009 again shows that everything was not being done fairly at the end of OP. Even as against the quota reserved for widows, the same has also been in excess of quota. 13. Though the organisation was created for the welfare of serving/retired defence personnel and was expected to act in a transparent manner, however, the manner in which allotment have been made by adopting to a system of fixing security arbitrarily and in violation of allotment rules, presumably with a view to accommodate their own favourites, everything does not appear to have been done in a transparent manner. If enquired into deeply, this may again turn out to be another scam like Adarsh Society at Bombay. The grievance of the complainant was not even redressed by Director Marketing, who happens to be an Army Officer Col. Joy. K. and Managing Director, Major General S. Narasimhan. "" The petitioners as well as respondent have filed their written submissions in proceedings before this Commission. The oral arguments of the parties were also heard.

5. IT was stated by the learned counsel for the petitioner at the time of arguments that the AWHO does not get any grant from the Government and works on ""no profit no loss "" basis. The order of the District Forum duly

confirmed by the State Commission by which the petitioner have been directed to allot an apartment in their house project in Sector 114 Mohali (in case an apartment at sector 20 or sector 27 was not available) at the same price and on the same terms and conditions, could not be implemented by them because the prices at Mohali were much more than those at Panchkula in the scheme for which the complainant had registered himself. They had explained all the facts regarding the registration, the determination of seniority and allotment of DUs in their rejoinder to the reply to the respondent to the revision petition. The petition should, therefore, be allowed and the consumer complaint be dismissed because there was no deficiency in service or negligence on the part of the petitioner.

6. IN reply, the respondent/complainant, who argued his case in person stated that the petitioners had indulged in unfair trade practice while making allotments of DUs in question and even the persons who were placed later in the seniority list had been allotted the flats and he had been left out by unfair means. The orders passed by the lower consumer fora were, therefore, in accordance with law and should be sustained. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us. The petitioners have taken the main argument that they are a welfare organisation and working on ""no profit no loss "" basis and their projects are developed on self -finance basis from the contribution made by the allottees towards the cost of DUs and any amenities in the project. As per their version, the complainant continued to be at wait list no. 1 till the completion of the project and hence, it had not been possible to allot the DU to him. It has been observed by the State Commission, however, in their order that it was not clear how and under what circumstances, the draw of lots was held and under whose supervision such draw was held. The State Commission also observed that the petitioners had indulged in fixing seniority arbitrarily and in violation of allotment rules permissible with a view to accommodate their own favourites. According to the State Commission, there was an absence of transparency in the whole affair.

7. FROM the facts on record, the most glaring example supporting the allegation that there has been an absence of transparency on the part of the petitioners is the case of Brig G.S. Sisodia. As per the own version of the petitioners, Brig G.S. Sisodia had been assigned seniority no. 999, whereas the complainant had been given seniority no. 723 in the list drawn by the petitioner. The date of demand draft submitted by Brig G.S. Sisodia is 19.10.2005, whereas the date of demand draft in the case of complainant is 06.06.2004. It has not been explained anywhere by the petitioners how Brig. Sisodia acquired better seniority than the complainant in the list for allotment of such units. In their reply to the complaint filed in the shape of an affidavit before the District Forum, Col. K. Joy, Director Marketing (AWHO) stated that the application for deluxe apartment was received from Brig Sisodia on 24.10.2005. The officer later on shifted his registration for economy apartment and was then transferred to Dwarka, Delhi and finally he withdrew his registration. The petitioner/OP have not been thus able to clarify the manner of determination of seniority and hence, the observations of the

State Commission about lack of transparency and arbitrariness, appear to be correct. From the material on record, one gets the impression that the petitioner have made the seniority list in accordance with the ranks of serving officers in the Indian Army, and not as per rules and regulations governing allotment of such flats/DUs.

8. THE complainant has also alleged that the allotment made by the petitioner to the widows is also not in accordance with the rules. It is to be verified whether the widows of the Army personnel were given allotments in accordance with the scheme and whether they had applied within the prescribed time of two years from the demise of their husband as laid down in the rules. In view of the position described above and looking at the entire factual matrix of the case, it would be appropriate that the entire record concerning the registration, determination of seniority and allotment of these DUs is called by the State Commission from the office of the petitioner and then scrutinised to determine whether there has been irregularity in not accommodating the complainant in the allotment of these flats/DUs. With these observations, this revision petition is allowed and the matter is remanded back to the State Commission with the direction that they should call for the entire record from AWHO and carry out the necessary scrutiny in the presence of the parties and then determine whether there had been any injustice done to the complainant on the part of the petitioner/OP. The parties have been directed to appear before the State Commission on 24.07.2014. There shall be no order as to costs.