

(2002) 08 DEL CK 0009
In the Delhi High Court
Case No : C.W. 6937 of 1999

Technology Cooperative Group Housing Society Ltd.	APPELLANT
Vs	
Presiding Officer, Delhi Coop. Tribunal and Others	RESPONDENT

Date of Decision : 01-08-2002

Acts Referred:

Delhi Co-operative Societies Act, 1972 — Section 60

Citation : (2002) 100 DLT 184 : (2002) 64 DRJ 282

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : Ranjan Mukherjee and Sanjay K. Ghose, for the Appellant; V. Shankra, for Govt. of NCT of Delhi and R.N. Bhardwaj, for R 3-4, for the Respondent

Judgement

J.D. Kapoor, J.—Respondent NO. 3 who is the member of the petitioner society file a claim petition u/s 60 of the Delhi Cooperative Societies Act (in short "DSC Act") with the Registrar of Cooperative Societies sometime in 1993. The matter was referred for adjudication to the Arbitrator.

2. There were three claims preferred by Respondent No. 3. Firstly that the actual cost of the flat allotted to him was escalated by 27% in comparison to the estimated cost and that the cost of the flat is not based on the basis of actual area of the flat between the main sliding door and the peripheral outside walls. Second claim was that there were number of defects in the flat allotted to him and Therefore the petitioner society may be directed to get the said defects removed and to reconcile the cost of the flat. Third grievance was against levying penal interest on call money by the petitioner society. According to the petitioner since there is no provision in the society's bye-laws in this regard nor had the society arranged any loan the question of levying penal interest did not arise.

3. The stand taken by the petitioner society was that construction was started in January, 1990 and the plans were approved by the General Body and Therefore at this stage it is not open to the respondent to raise any dispute regarding

designing of flats and that at the time of construction no member knew as to which kind of flat will be allotted to him. As regards penal interest, the petitioner-society pleaded that resolution in this regard was passed in General Body meeting on 24.2.1992 unanimously approving the revised cost estimates and penal interest @ 24% on default amount from 1.3.1992 was also approved. As regards defects in flat of respondent No. 3, the petitioner society had agreed to remove those defects after respondent No. 3 took possession of the flat.

4. The Arbitrator allowed all the three claims vide award dated 22.3.1996.

5. The petitioner-society took the appeal before the Tribunal which was dismissed vide order dated 8.7.1996. Through this petition award as well as order of the Tribunal have been challenged. however, during the course of argument it was pointed by learned counsel for the society that there are dues towards maintenance charges for six years apart from penal interest and other dues amounting to Rs. 3,55,675.48 payable by respondent.

6. Reconciliatory effort were made. However, as regards the claim of R-3 that the actual cost of flat was escalated by 25% and the cost of flat is not based on the actual area of the flat between the main sliding door and the peripheral outside walls, we find no force as the designing of the flats were duly approved by the General Body of the Society and it was not open to any member to have choice of a particular flat as the same was to be allotted after the draw of lots. R-3 did not raise any objection as to the designing of the flats and to raise it after completion of the construction is unacceptable. It was not expected from the society to provide various plans of the flats once the General Body had approved the designs and plans of the flats. This itself tantamount to furnishing of the information as to the designs and plans of the flats. Similarly, the revised cost estimate was also approved by the General Body. So was the resolution regarding the penal interest to be charged at the rate of 24% on defaulted amount w.e.f. 1st March 1992.

7. Merely because there was no provision in the bye-laws of the society to charge penal interest does not mean that the society was not entitled to the same once the General Body had passed the resolution. May be this resolution was a measure to compel the members to make the payments regularly and avoid defaults in making the payments. the members who persistently defaulted in making the payments cannot be allowed to enjoy the same fruits as those who make the payments regularly. Such a provision is to curb the tendency of the members to make the payments of the Installments as they wished and not as per the requirement. It is due to the defaulted members that the construction of the flats delayed and the interest of those who are regular in making the payments are put in jeo pardy. Thus there was nothing wrong in passing such a resolution and charging the penal interest. However, the claim of the society that it is entitled to recover the maintenance charges from the date of allotment of flat in question was rightly declined. Society has admitted that the flat in question suffered few defects which the society undertook to remove. The

member is not expected to take possession of the flat the moment it is allotted to him if it suffers from various defects. The obligation of the society is to allot the flat free of defect and in perfect condition. In the instant case there were about 43 defects. Until and unless those defects were removed the member was not expected to take the possession. Once the member takes possession of the flat then he has to keep on chasing the society for removing the defects and in that eventuality the member is always at the receiving end. Thus the society was entitled to charge maintenance charges only from the date of possession of the flat. Though the claim as to the maintenance charges is a counter claim of the society yet in order to decide the matter once for all the reconciliatory efforts made by us have made both the parties to abide by the following order:

"The society will not be entitled to claim any penal interest from R-3 and R-4. R-3 shall make payment of maintenance charges from the date of possession till date within one month of this order".

8. Petition stands disposed of in the aforesaid terms.