

**Delhi Development Authority Vs. Mohan Singh**

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**Court :** Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

**Decided On :** Mar-31-2004

**Judge :** Ms. Rumnita Mittal, Presiding Member & Mr. Mahesh Chandra, Member

**Appeal No. :** Appeal No. A-563 of 1997

**Appellant :** Delhi Development Authority

**Respondent :** Mohan Singh

**Judgement :**

Rumnita Mittal, Presiding Member:

1. This appeal is directed against order dated 14.7.1997 passed by District Forum-II, Udyog Sadan, Institutional Area, New Delhi, in Complaint Case No. 374/1996-entitled Sh. P.K. Banerjee v. Delhi Development Authority.

2. Briefly stated, the relevant facts of the case are that Sh. Mohan Singh was the original allottee of Flat No. 20-D, Pocket-A, Mayur Vihar, Phase II, Delhi and Sh. P.K. Banerjee/respondent purchased the said flat from Sh. Mohan Singh, on power of attorney basis. The flat in question was allotted on hire purchase basis and the appellant had floated a hire purchase penalty relief scheme of 1995 whereby a package deal in the form of incentive was afforded to the allottees who cleared their instalments along with interest upto date. Under the said scheme, the

relief in penalty worked out to around 66% and the said scheme was valid to the allottees making the payment during the period 1.8.1995 to 31.1.1996. The respondent received a defaulter notice from the appellant dated 18.11.1995 in respect of flat in question whereby the respondent was required to make the payment of instalments due and also penalty interest on delayed payment. On receipt of the above notice the respondent made payment of instalments on 1.2.1995 and Rs. 22,378/- towards penalty interest after calculating the rebate in terms of the penalty relief scheme of 1995. However, on account of calculation mistake the respondent paid an amount Rs. 1,222/- less which error was detected on 21.12.1996 when the second defaulter notice directing the respondent to make the payment by 31.12.1996 was delivered. On receipt of the said notice the respondent contacted the concerned official of the appellant DDA who directed the respondent to avail of the hire purchase penalty relief scheme of 1996 and as such the respondent made the payment as directed by the official of the appellant under the scheme of 1996 in which the relief in penalty provided was only upto 50% instead of 66% provided under the earlier scheme of 1995. Accordingly, the respondent filed a complaint before the District Forum praying for directions to the appellant to consider his case as covered under the scheme of 1995 and not under the scheme of 1996 and to refund/adjust the extra amount realised from him in the balance instalments.

3. The appellant in its reply/written version filed before the District Forum raised several preliminary objections and on merits stated that the respondent had not deposited the full penal interest during the validity of the scheme of 1995 and as such his case was considered under the scheme of 1996. As such respondent was not entitled to the benefits under the scheme of 1995.

4. The learned District Forum on the basis of material on record held that the case of the respondent was covered under the Scheme of 1995 and as such directed the appellant to deduct the penal interest which was paid less, from the amount of Rs. 18,355/- deposited by the respondent on 31.12.1996 and refund or adjust the balance amount against the balance instalments due from the respondent. A cost of Rs. 1,000/- was also imposed on the appellant.

5. Aggrieved by the aforesaid order the appellant has preferred the present appeal before this Commission.

6. We have carefully perused the documents/material on record, as well as, have heard the arguments advanced on behalf of the parties. In the first instance the present appeal filed by the appellant is barred by limitation as the impugned order is dated 14.7.1997 whereas the present appeal has been filed on 7.11.1997. In its application for condonation of delay the appellant has stated that the certificate copy of the impugned order was received on 30.7.1997 and thereafter the file had to travel through various departments for sanction to file an appeal. In our opinion mere tossing of file from one table to another does not constitute sufficient cause for condonation of delay. It is by now a settled law that inter-departmental consultation does not constitute sufficient cause for delay to be condoned. As such the present appeal filed by the appellant being hopelessly barred by limitation is liable to be rejected on the said ground alone.

7. On merits also the appellant has no case. It is an admitted case on the part of the appellant that the appellant had not conveyed the exact calculation of the penalty due from the respondent vide its default notice dated 18.11.1995. The respondent has further pointed out that there is discrepancy in the said notice regarding the number of instalments which have been paid and the instalments due upto March 1995. Even the calculation sheet placed on record by the appellant as Annexure-D to the appeal confirms the version of the facts as stated by the respondent that he had already paid 59 instalments by 8.3.1995 whereas the default notice mentioned above reflects the number of instalments paid upto March, 1995 as 56 instead of 59 and outstanding instalments as 51 instead of 48. Thus there is apparently a calculation mistake on the part of the appellant. Furthermore, even as per the own admission of the appellant and as is confirmed from the office order dated 14.1.1997 placed on record as Annexure-C, to the appeal, the appellant had taken into consideration, applications of the allottees even on plain paper instead of the prescribed form, under the hire purchase penalty relief scheme of 1995. Furthermore, the applicants who had deposited penalty less only upto 30% compared to the calculation made by the appellant, were covered under the scheme and were entitled to the benefits under the

scheme of 1995. The case of the respondent is that the amount short paid was only Rs. 1,222/- whereas the respondent has alleged that the said amount is Rs. 9,737/-. However, as has been pointed out above there appears to be a calculation mistake on the part of the appellant inasmuch as number of instalments has been wrongly calculated and, therefore, the case of the appellant also appears to be covered under the scheme of 1995. Furthermore, the very fact that penalty payable after affording relief under the scheme of 1995 was not calculated by the appellant itself and conveyed to the allottees/applicants in the defaulter notice but was left to the applicants themselves to make calculations, is a deficiency in service on the part of the appellant for which the allottees/respondent cannot be penalised. Accordingly we do not find any infirmity in the impugned order of the District Forum so as to call for any interference in the same in the exercise of our appellate jurisdiction.

8. Accordingly, the above mentioned appeal filed by the appellant being barred by limitation, as well as, being devoid of merit is liable to be dismissed and is dismissed accordingly. However, in the circumstances of the case the parties are left to bear their own cost.

9. The above mentioned appeal filed by the appellant stands disposed of in above terms.

Appeal dismissed.

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