

Daya Bindal Vs. Delhi Development Authority and Others

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Jun-19-1996

Judge : A.P. Chowdhri, President; the Honourable Ms. Justice S. Brar Member & Desh Bandhu, Member

Appeal No. : Case No. 26 of 1994

Appellant : Daya Bindal

Respondent : Delhi Development Authority and Others

Judgement :

A.P. Chowdhri, President:

1. Brief facts of the case are that the complainant was registered in 1981 under the Fourth Self Financing Scheme for allotment of one of the flats which were being constructed by the DDA, hereinafter referred to as the opposite party. Letter of allocation dated 8/15.1.88 was issued allocating a category-II flat in Sector B, Pocket 4, Vasant Kunj, New Delhi. The tentative cost of the flat was fixed at Rs. 2,59,600/- and various terms and conditions of allotment were set out therein. These terms included the following :

(i) The first four instalments consisting 90% cost of the flat was to be deposited on the dates specified in the letter and that the allottee was required to complete certain formalities within the given time span.

(ii) The period of completion of the project was 30 months failing which the DDA was to pay interest for the period of delay. The rate of interest was 7% for upto 6 months beyond the initial 30 months and thereafter @ 10%.

(iii) On completion of the project draw of lots were to be held to allot specific flat No. and the DDA was to send demand letter for 5th and final instalment for payment of the balance amount. Such letter was to be issued within one month from the date of draw of lots.

2. The case of the complainant is that she paid all the four initial installments towards 90% cost of the flat amounting to Rs. 2,33,560/- as per the schedule laid-down by the opposite party through receipted challans mentioned herein under and also completed the prescribed for malities within the time allowed in this behalf. The details of various payments are as under:-

Date	Challan No.	Amount
13.2.88	5984	49,036.15
(Also surrendered FDR worth)		15,813.85
15.7.88	21114	51,880.00
15.6.90	5986	64,850.00
14.1.91	53207	51,880.00
	Total :	2,33,460.00

There is no dispute regarding the above payments and the dates on which they were made.

3. Construction of the flats was completed in Feb., 92 and draw of lots to determine specific flat number of each allottee was held on 20.3.92. As a result of the said draw flat No. 3283 was allotted to the complainant. The 5th and final demand letter, which was required to be issued within 30 days was, however not issued. The case of the complainant is that such 5th and final demand notices were issued to other allottees under the same Scheme running into thousands. At the time of hearing the complainant brought eight illustrative cases of issuance of 5th and final demand notice during the year 1992 to our notice. Photostat copies of these eight 5th and final demand notices have been placed on record by the complainant. The particulars are as under :

S. No	Flat No.	Name of allottee	Date of issue of 5th cum final demand notice	Specific Flat No.
1.	F. 126/299	Lakhirsingh Sidhu	23.12.92	3185
2.	F. 126/186	Jayant Kumar Taleja	14.12.92	2314
3.	F. 125(74)	Subhange Wati	29.12.92	2241
4.	F. 126(134)	Bhola Shankar Kothari	16.12.92	2237
5.	F. 126(155)	Mrs. CD. Jakhar	16.12.92	2120
6.	F. 126(180)	Rajiv Kumar Jain	16.12.92	2042
7.	F. 125(61)	Jamalsingh Rautela	29.12.92	2174
8.	F. 125(403)	Rohit Kumar Jain	29.12.92	3088

It will be seen that these 5th cum final demand notices were issued during the period 14.12.92 to 29.12.92. The case of the complainant is that these allottees obtained possession of their flats in the first quarter of year 1993 itself.

4. The complainant has been residing in a rented accommodation and wanted the flat badly. She had, therefore, been vigorously pursuing her case for the issue of 5th cum final demand notice, pay the amount and get possession of the flat. For this purpose she met various senior officers to press her claim. She also represented her request in writing. In this behalf she wrote a letter under registered post dated 16.8.93 and other letters dated 15.10.93 and 24.12.93. The last mentioned two letters were personally delivered in the office of the OP vide diary No. 12394 and 13623 respectively. Left with no other alternative the present complaint was filed before this Commission in Feb., 94. The complainant prayed for the following reliefs :

(i) Issue of 5th cum final demand notice in her favour and delivery of flats possession.

(ii) Payment of interest on her deposits for delay beyond stipulated period.

(iii) Damages for mental torture and agony inflicted on her due to respondents inaction and deficiency of service.

(iv) Cost of litigation, and

(v) Reimbursement of rent she is required to pay due to non-delivery of this flat.

5. The OP came into action and issued 5th cum final demand notice to the complainant on 26.10.94 after more than two years of the date of which the said letter was required to have been issued. In the said demand notice the OP increased the cost of the flat from Rs. 2,59,600/- to Rs. 4,40,800/- thereby making an additional demand of Rs. 1,92,256.95. The complainant paid the said additional demand under protest vide four challans detailed below :

S. No	Challan No.	Date	Amount
1.	19922	18.2.95.	65,500/-
2.	19900	18.2.95	78,500/-
3.	99546	23.2.95	35,200/-
4.	9923	23.2.95	18,000/-
		Total	1,97,200/-

Even after making the above payments the complainant did not receive possession letter for nearly three months and she, accordingly, reminded the OP through letter delivered under their diary Entry No. 5497 dated 16.5.95. The possession letter has not been issued so far. On the other hand the O.P. issued another letter dated 30.8.95 to the complainant demanding another sum of Rs. 38,556/- from her towards interest on the amount of 5th cum final demand notice for the period 1.3.93 to 25.12.94. The complainant has objected to the said payment mainly on the ground that the opposite party is squarely responsible for the delay in issuing the 5th cum final demand notice and letter of possession which is yet to be issued and it cannot be permitted to take advantage of its own wrong and negligence. The second ground put forward by the complainant is, that the OP has neither demanded nor received any such interest from any one of the allottees who had been issued 5th cum final demand notice during the year 1992 itself and there was no justification for claiming interest from the complainant.

6. In the written statement filed on behalf of the OP a number of preliminary objections were raised. These are that the present complaint does not fall within the purview of the Consumer Protection Act; that the complainant has neither any locus standi nor any cause of action for filing the present complaint; that the complaint is barred by limitation and, that the complainant is stopped from filing the complaint by her own conduct. On merits, it was stated that 90% cost mentioned in the letter of allocation was only tentative and actual cost incurred was worked out only on completion of the construction of the flat. It was further stated that originally the complainant was allocated a flat in Wazirpur area. The complainant requested for changing the allocation to another area. The file relating to her case was misplaced and inspite of best efforts could not be traced. This accounted for delay in filing the written statement. It was further stated that the price of the flat was fixed in accordance with the pricing policy on the principle of no profit no loss. The price intimated to the complainant had been worked out according to that policy. It was further stated that the OP was not liable to pay interest claimed by the complainant and it was also not concerned with the rent paid for private premises by the complainant. The complainant filed a rejoinder reiterating her averments.

7. We have heard Mr. Suresh Chander Gupta, Authorised Representative of the complainant and Mr. R.M. Goyal, Advocate for the OP: Mr. Gupta, Authorised Representative of the complainant stated that the complainant would have her remedy separately in the appropriate Forum with regard to the enhancement of the price. In view of the statement which has been recorded, we are not called upon to go into the question of the price ultimately fixed by the OP.

8. The first question arising for consideration is whether the OP is guilty of negligence for the delay in issuing 5th and final demand notice. After carefully considering the respective contentions of the parties, we are of the view that the OP is guilty of negligence by delay in issuing the 5th and final demand notice in the facts of the present case. It is not disputed that the 5th and final demand notice was required to be issued within 30 days of the date of draw of lots. It is further not disputed that the draw of lots took place on 20.3.92. The 5th and final demand notice was, therefore, required to be issued by 20.4.92. Infact it was issued on

26.10.94. There was, thus, delay of more than two years and six months. No attempt has been made to explain this delay especially when the complainant was pursuing her case all along and had complied with her part of the action in terms of the agreement by paying the various amounts including the enhanced price and complying with other formalities required by the opposite party within the prescribed time frame. The matter does not end here. In numerous cases the opposite party actually issued 5th cum final demand letters in respect of other persons. The complainant has placed on record solid evidence in the form of eight instances by producing Photostat copies of 5th cum final demand letters issued to those allottees during the period 14.12.92 to 29.12.92. In the absence of any default on the part of the complainant on the one hand and in facts and circumstances making out a case that it was beyond the control of DDA to issue the 5th cum final demand letter in the particular case, the irresistible conclusion is that the opposite party was guilty of negligence in late issuing the 5th cum final demand notice in the case of the complainant.

9. The next question is whether the opposite party is entitled to charge interest from the complainant when it is itself guilty of negligence in causing the delay in the issue of 5th cum final demand notice. It is well settled principle that a party cannot take advantage of its own wrong. It would be ridiculous to suggest that the DDA first caused delay in carrying out its part of action and proceed to charge interest for such delay. In principle, therefore, there is no case for charging any interest for delay in issuing the 5th cum final demand notice atleast from the time that such notices were issued in respect of other cases, eight instances of which have been furnished by the complainant. It has not been denied that such interest had not been demanded or received from the allottees who had been issued 5th cum final demand notices issued during the year 1992. There is, thus, no justification for the opposite party to demand any interest from the complainant and the demand of Rs. 38,556/- vide letter dated 10.8.95 is, therefore, not supported by any provision of the agreement or any law and the same is, therefore, illegal and unjustified.

10. The last question arising in this case is, whether the complainant is entitled to interest on the money paid by her for the period of delay and whether she is

further entitled to re-imburement for the rent which she had to pay for privately hired accommodation because of the aforesaid delay. The relevant part of Condition No. 11 under the Self Financing Scheme reads as under:

11. The estimated cost of the flat as given in this letter is provisional and is subject to revision of the completion of the flat. Any price difference between the estimated cost and the cost as it works out on completion as per costing formula in vogue, would have to be paid alongwith the fifth and final instalment. No definite time by which the construction of the flats will be completed can be indicated at this stage. Normally it takes 2 years period for completion of the project. Sometimes, due to unforeseeable reasons completion of project may get delayed. For delay beyond 30th month upto 36 months till the issue of demand letter for fifth and final instalment the allottee shall be paid interest @ 7% per annum and beyond 36th month interest will be paid 10% on his/ her deposit.

A period of 2 years or 30 months referred to in the above condition expired in the present case on 15.7.90. The project was actually completed in Feb., 92. It would further be seen that for a period of six months i.e., after completion of 30 months and upto 36th month, the DDA was liable to pay interest @ 7% p.a. and beyond 36th month it was liable to pay interest @ 10% p.a. on the amount already paid by the allottee. This condition applies to cases where delay in the completion of project took place for unforeseeable reasons. The present one is not such a case. As stated above, 5th cum final demand letters were issued in favour of several other allottees includeing the eight specific instances brought on record where similar 5th cum final demand notices were issued upto the end of December, 92. It has further been held that the delay caused in the case of the complainant was squarely on account of deficiency in service on the part of DDA. According to Condition No. 8, the DDA charges interest on delay in payment of the instalments according to the schedule of payment made in the letter of allocation. The interest charged is 12% p.a., for the first month of default and @ 18% beyond period of one month of default. There is no reason why the DDA should not pay interest @18% p.a. for causing delay in issuing the 5th cum demand letter. According to the complainant she had to pay rent @ Rs. 1,700/- p.m. for delay in delivery of possession for the flat. This is relevant only in order to determine the rate of

interest which the DDA is liable to pay in the facts and circumstances of the case. There is a long list of decisions of the National Commission in which the rate of interest allowed is 18%. We have no reason to allow a different rate of interest. The complainant is, therefore, held entitled to interest @ 18% p.a. on the amount deposited by her including the additional amount from the date of deposit till the issuance of letter of possession.

11. Mr. Suresh Chandra, authorised agent of the complainant, made a statement on 4.10.95 seeking to withdraw the challenge to increase in the price from Rs. 2,59,600/- to Rs. 4,40,800/- from the present proceedings reserving his right to challenge the same in separate appropriate proceedings in the proper Forum. The statement of Mr. Dharam Pal Bindal as also Mr. S.C. Gupta, authorised agent was recorded.

12. To conclude, the complaint is allowed in the following terms :

1. The demand of DDA regarding recovery of interest amounting to Rs. 38,556/- vide letter of the OP dated 30.8.95 is illegal and the same cannot be recovered.

2. The DDA shall pay simple interest @ 18% p.a. from 20.4.92 or the date of each actual payment, whichever is later, upto the date of issuance of letter of possession.

3. The DDA shall withdraw its demand regarding payment of interest from the complainant, and pay the interest allowed to the complainant in terms of this order within four weeks of the receipt of a copy of this order.

4. Pending the above action letter of possession shall be issued as soon as possible as according to us some amount would have to be paid by the DDA to the complainant and no amount is due from the complainant to DDA. The letter of possession in any case, (sic.) be issued within four weeks of the receipt of a copy of this order.

5. The complainant shall be entitled to costs which we quantify to be Rs. 5,000/-.

13. A copy of this order be communicated to both the parties.

Complaint allowed with costs.

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