

Krishna and Another Vs. Delhi Development Authority

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Feb-25-1994

Judge : R.N. Mittal, President; the Honourable Ms. Justice S. Brar Member & the Honourable Ms. Justice Dr. a.N. Saxena, Member

Appeal No. : Case No. C-71 of 1992

Appellant : Krishna and Another

Respondent : Delhi Development Authority

Advocate for Def. : Mr. Goyal

Judgement :

Dr. A.N. Saxena, Member:

1. Briefly the facts of the case are that the Delhi Development Authority floated a scheme for allotment of shops/ stalls for the Schedule Castes/Schedule Tribes category. The complainant belonging to the Schedule Caste category applied for allotment under the said scheme vide application No. 8669 dated 15.3.88 and deposited the earnest money of Rs. 2,000/-. The complainant was declared successful in the draw of lots of allotment under this scheme which was held on 12.8.88. She was issued by the respondent an intimation-cumdemand letter dated 22.11.88 calling upon her to deposit 25% of the reserve price of the shops/ stalls amounting to Rs. 33,600/- together with documentation charges, annual ground

rent, maintenance charges amounting to Rs. 36,660/- within 60 days together with necessary documents. The complainant complied with these requirements and deposited the said amount of Rs. 36,660/- on 18.1.89 alongwith an application stating that the necessary documents were being filed alongwith the said amount and the respondent may deliver/hand-over the possession of the said shop/stall to her at the earliest.

2. According to the complainant the reserve price of shop No. 9, LSC in Block No. A-I at Paschim Puri, ground floor allotted to the complainant was Rs. 1,34,400/- carrying an annual ground rent of Rs. 1,507.50 Ps. month. The complainant executed an undertaking to pay the balance amount of 75% in 24 equal instalments alongwith 6% p.a. interest to the D.D.A.

3. The complainant had made a payment of 25% of the reserve price within the stipulated period in 1988. It is alleged that the respondent (D.D.A.) illegally and with malafide intention delayed the handing over of the possession of the shop/stall for more then two and half years. It is further stated by the complainant that the respondent issued a letter to the complainant dated 26.2.92 wherein it was stated that a demand notice dated 22.11.88 was sent to the complainant asking for a sum of Rs. 36,660/- towards part payment of the costs of the said shop. This letter further called upon the complainant to deposit Rs. 21,425/- within 15 days towards balance of 25% of cost of the shop which had become due from the complainant. On receiving this letter the complainant draw the attention of the respondent vide her letter dated 18.1.89 that she had already paid 25% of the reserve price etc. amounting to Rs. 36,660/- and that no additional amount was therefore, payable. The complainant further requested that the respondent may hand-over the possession of the shop to the complainant. In making this request the complainant again drew the attention of the respondent to the fact that the reserve price of the shop allotted to her was Rs. 1,34,400/- and the annual ground rent was Rs. 1,507.50 Ps. It was further stated that under the terms as specified in respondents letter dated 22.11.88. It was not mentioned that the price quoted was subject to revision and accordingly she paid Rs. 36,660/- as 25% of the reserve price and she was only liable to make the balance payment of Rs. 1,00,800/- together with interest at 6% p.a. as per the terms of agreement/conditions

executed between the parties. The complainant's case therefore is that the action of the respondent in increasing the sale price of the said shop to Rs. 2,20,100/- is mala fide and arbitrary and that the complainant cannot be called upon to pay anything beyond the price fixed at Rs. 1,34,400/- with a monthly instalment of Rs. 4,704/- and annual ground rent of Rs. 1,507.50 Ps. It is accordingly prayed that the demand of the respondent for the price of the shop at Rs. 2,20,100/- may be rejected and the respondent be directed to execute a lease deed in favour of the complainant after her depositing the balance amount of Rs. 1,12,896/- with interest 6% p.a. chargeable in 24 equal instalments of Rs. 4704/- p.m. It is further prayed that the respondent be directed to pay interest @ 12% p.a. on the amount of Rs. 36,660/- from January, 1989 to July 1991 together with damages of Rs. 20,000/-.

4. The respondent (D.D.A.) in their reply have taken the plea that the complainant does not fall within the definition of the word consumer as defined in Section 2(1)(d) of the Consumer Protection Act, 1986. They further contend that the complaint is barred by limitation, with regard to the facts the respondent have stated that the reserve price of the shop was fixed at Rs. 2,30,609/- and the monthly instalments were Rs. 7,316/-. It is further stated that the complainant had agreed and given an undertaking duly attested by Notary Public that she will pay 75% of the reserve price in 24 monthly instalment alongwith interest at 6% p.a.

5. The respondent have contended that the delay in giving possession of the shop/stall was due to the stay order of the Honble High Court in operation during 1988-90 and therefore, the possession letter was issued to the complainant only on 14.6.91. They have further reiterated that the reserve price of the shop in question on the date of draw was Rs. 2,20,100/- and 25% of the sale/value was Rs. 55,025/-. However, since the complainant had deposited Rs. 36,660/- a demand-cum-payment letter was issued for Rs. 21,425/- on 22.2.92 and the complainant was liable to pay this amount and that this was also agreed by the complainant in the terms/conditions as stipulated by the D.D.A. including the costs of the shop.

6. We have heard the learned Counsel of both the parties and also given due consideration to the documents on record. The three issues which need to be

decided are: (a) whether the complainant is a Consumer under the Consumer Protection Act; (b) whether the complaint is barred by limitation; and (c) whether the price of the shop could be taken as Rs. 1,34,400/- as contended by the complainant or at Rs. 2,20,100/- as demanded by the respondent.

7. As to the question whether the complainant is a consumer, we hold that the complainant falls within the definition of the word consumer as defined in Section 2(1)(d) of the Consumer Protection Act, 1986. In taking this view we are fortified by the judgment of the National Commission in U.P. Avas Evam Vikas Parishad (Housing and Development Board) v.. Garima Shukla and Others I (1991) CPJ 1 (NC), First Appeal No. 5 of 1989, decided on 27.7.89. We would also like to mention that as per the Consumer Protection Amendment Act, 1993 the term service under Section 2(1)(e) has been amended to include housing construction and as such the complaint is maintainable.

8. With regard to the issue that the complaint is barred by limitation, we do not accept the contention of the respondent since as per their own statement, they had gone to the High Court who passed a stay order which remained in operation during 1988-90. This delayed the possession of the shop to the complainant by over two years and as such the cause of action could arise only after the stay was vacated. Since the complaint was filed on 12.3.92, we hold that it is not barred by limitation.

9. With regard to the increase in the price of the shop by D.D.A. amounting to Rs. 2,20,100/- and its validity this State Commission has already held by its interim order in Ram Kishan Mehta v. D.D.A. (C-269/92) decided on 6th October, 1993, which reads as follows:

Mr. Goyal, learned Counsel for the respondent has argued that the flat has been allotted to the complainant on the Lawrence Road, where the same price was being charged from other allottees. He submits that the price of the flat was fixed according to the policy of the D.D.A. and therefore, the Commission should not interfere with the order. He further submits that after the decision in S.L. Tanejas case a similar matter came up for hearing in Smt. Sheela Wanti and Others v. D.D.A. (Civil Writ Petition No. 1121 of 1991) before another Bench and an interim

order was passed by the Bench on 29.9.93, that:

(1) the petitioners would pay the price of the respective flat allotted to them as per the date of draw of

lot;

(2) the D.D.A. will issue fresh provisional demand letters within 4 weeks allowing the allottee 6 weeks time to deposit the money;

(3) possession of the flats will be handed over to the respective allottees within one month;

(4) the petitioner will file in this Court within the period allowed to them for paying the price of the flats, affidavits by way of undertaking in this Court that they will not transfer or alienate the ownership of their respective flats in any manner till the final decision of the writ petitions;

(5) the payment of the price of the flats by the petitioners in pursuance of the provisional demand letters will be subject to final decision of the writ petitions. If any party will be required to refund or pay any amount to the other party as a result of the final judgment, such refund or payment will be made within one month of final decision alongwith interest @ 18% p.a. from the date of allotment till the date of final refund of payment.

In view of the above decision of the High Court we pass an interim order as under:

(1) The complainant should pay the price of the shop allotted to her as per the date of the draw of the lot.

(2) The D.D.A. will issue fresh demand letter within 4 weeks time to deposit the money and allow the allottee reasonable time to deposit the amount/ instalments.

(3) The complainant will not transfer or alienate the ownership of her shop in any manner till the final decision in the complaint by the Commission.

(4) The payment of the price of the shop by the petitioners in pursuance of the provisional demand letters will be subject to final decision of the complaint. If any party will be required to refund or pay any amount to the other party as a result of the final judgment, such refund or payment will be made within one month of the final decision alongwith interest @ 18% p.a. from the date of allotment till the date of final refund of payment.

10. The file be consigned to record room. The parties may apply to the Commission for restoration of the file after Smt. Sheela Wanti Case is decided finally by the High Court.

Interim Order passed.

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