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Delhi Development Authority Vs. Ravish Kumar

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Mar-13-2014

Judge : The Honourable Mr. S.a. Siddiqui, Judicial Member &Amp;amp; the Honourable Mr. S.C. Jain, Member

Appeal No. : First Appeal No. 498 of 2011

Appellant : Delhi Development Authority

Respondent : Ravish Kumar

Advocate for Def. : Dr. Bipin K. Dwivedi

Advocate for Pet/Ap. : Ms. Girija Wadhwa

Judgement :

S.A. Siddiqui, Member (Judicial):

1) This appeal has been filed against the judgment and order dt. 08.06.2012.

2) Relevant facts relating to this appeal are that the complainant was allotted a flat No. 7, Sector-23, Pocket-6, Ist Floor, Category Cat, 2 Rohini under residential scheme of OP DDA under I SFS as per draw held on 01.08.1994. It was alleged that the complainant deposited entire instalments as per schedule of DDA and nothing was due against the complainant/respondent after full payment.

Complainant/respondent requested the OP/appellant to handover physical possession of the flat. However, the officials of the appellant advised complainant/respondent to submit certain documents for taking possession. In compliance thereof, the complainant/respondent submitted required documents including affidavit, undertaking and conveyance deed duly stamped by collector of stamp Vikas Sadan vide receipt No. REC/H/07/14268 on 23.03.2007 and vide receipt No. REC/H/07/17678 on 11.04.2007 with OP/appellant and requested for delivery of possession. Even then the possession of the flat was not handed over to the complainant/respondent with the result that he had to file consumer complaint.

3) OP filed written statement and denied the allegations of the complaint. It was maintained that fifth and final letter was issued to the complainant on 09.05.2000. He failed to deposit the requisite amount within time and therefore allotment was automatically cancelled. It was further maintained that the complainant had deposited the first three instalments in time the fourth instalment was due on 18.06.1996, but the same was deposited on 19.01.1998 with considerable delay. The matter was referred to restoration committee which duly regularised. Subsequently, a draw was held on 24.12.1999 and the complainant was allotted a flat No. 7, First Floor, Sector 23, Rohini. 5thand final letter was issued on 19.05.2000, which was not timely paid, attracting automatic cancellation of the allotment. The delay was solely on the part of the complaint. There was no deficiency of any kind, on the part of the appellant/DDA and therefore, the complaint was liable to be dismissed.

4) Parties led evidence. Upon consideration of facts and evidence on record, the Ld. District Forum through its impugned order dt. 08.06.2011, allowed the complaint and directed the OP/appellant to handover possession of the allotted flat alongwith payment of Rs.10,000/- as compensation.

5) The OP DDA felt aggrieved and filed present appeal on the ground that the Ld. District Forum without appreciating the facts on record passed an erroneous order. The Ld. District Forum failed to appreciate that the complainant was required to make 90% payment of the estimated cost of the flat in four half yearly instalments

on or before 18.03.1996, the first three instalments were paid in time the forth instalments was delayed. However, restoration committee ignoring the delayed payment regularised the allotment. Subsequently, draw by allotment of the flats was held on 24.12.1999 and complainant was allotted category 1 SFS flat No. 7. The fifth and final demand letter was issued to the complainant on 19.05.2000. The payment for which was considerably delayed, since the complainant failed to deposit the fifth and final instalments within time, the allotment was automatically cancelled.

6) The Ld. District Forum further erred in passing the impugned order in as much as the complaint was filed after a gap of eleven years from the date of cause of action. Since the complaint was time barred, it was liable to be dismissed but the Ld. District Forum passed and illegal order, which deserves to be set aside.

7) Reply was filed on behalf of the respondent/complainant. It was stated therein that complainant/respondent despite making full payment and depositing the required documents was deliberately and intentionally harassed by the officials by the appellant/OP and possession was not delivered, the OP tried to delay the proceedings before the Ld. District Forum and chose not to file any evidence. The Ld. District Forum vide its well reasoned impugned order dt. 08.06.2011 directed the appellant to handover the possession of the flat No. 7 alongwith a compensation of Rs.10,000/. The complainant/respondent deposited all instalments and therefore question of any automatic cancellation did not arise. The complaint before the Ld. District Forum was not time barred. The OP/appellant was deficient in providing service and even indulged in unfair trade practice. Besides, the appeal was time barred as it was filed with 45 days delay; the delay cannot be condoned as a matter of generosity.

8) We have heard Ms. Girija Wadhwa, Counsel for the Appellant and Dr. Bipin K. Dwivedi, Counsel for the Respondent.

9) It was argued on behalf of the appellant that there was a small delay of 45 days in filing of the appeal and a proper delay condonation application was moved, the delay was duly condoned and the appeal was admitted. It was further argued that the 5thand final demand letter was issued to the complainant on 19.05.2000 for

payment of Rs.25,590/-. The amount was to be paid by 15.09.2000, but the payment was actually made on 30.10.2002 with the delay of more than two years attracting automatic cancellation clause. Hence, there was no deficiency on the part of the OP/appellant. The Ld. Counsel of the Appellant further argued that the complaint was hopelessly time barred and was liable to be rejected on this ground alone, but the Ld. District Forum did not consider this important aspect of the matter.

10) On the other hand, Ld. Counsel for the Complainant/respondent argued that the present appeal was time barred as its filing was delayed by 45 days. No generosity can be shown in the matter of condonation of delay if the delay is not satisfactorily explained and in the present case it was not satisfactorily explained. The Ld. Counsel relied upon the following ruling of the Honble Supreme Court:-

i. State Bank of India V/s B.S. Agricultural Industries II (2009) CPJ 29.

11) In this case, it was held that the delay can only be condoned if sufficient cause for the same is shown. A complaint barred by time, it decided on merits, forum would be committing illegality. Aggrieved party would be entitled to have such order set aside.

12) Respondent further relied upon two rulings:-

i. Uttar Haryana Bijli Ld. V/s Mukhtiyaar Singh and ORs.1 (2010) CPJ 127 (NC).

ii. HUDA V/s Laxmi Chand 1 (2010) CPJ 129 (NC).

13) However, these two rulings were not of any help to the respondent. The counsel for the respondent also argued that despite full payment made by him, possession of the flat was not delivered to him. All required documents were submitted. 5thand final payment of Rs.25,590/- was also made on 30.10.2002 the impugned order passed by the Ld. District Forum was well reasoned order and needs no interference.

14) We have considered all aspects of the matter and have gone through the evidence on record. We are of the firm opinion that two issues raised before the

Ld. District Forum were not adequately addressed. First and the fore most was the issue of complaint being time barred. Secondly, question of automatic cancellation. Therefore, we are fully inclined to remit back the matter to the District Forum concerned for deciding the complaint a fresh after providing opportunity to both the sides to adduce evidence and to also address all the points raised in the compliant including the issue of complaint being time barred and automatic cancellation of the allotment.

ORDER

15) Accordingly, the impugned order dt. 08.06.2011 passed by District Forum (East) Saini Enclave, Delhi-110092, in Complaint Case No. 209/2011 is set aside. The matter is remanded back to the District Forum concerned for deciding it a fresh in accordance with observation made in the body of the judgment, preferably within a period of six months.

16) Copy of the order be provided to the parties free of cost as per rule and one copy be forwarded to the Ld. District Forum concerned for compliance, thereafter, file be consigned to record room.

17) FDR if any deposited by the appellant shall be released as per rule.

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