

Director (Research), Mrtp Vs. Delhi Development Authority

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Court : Monopolies and Restrictive Trade Practices Commission MRTPC

Decided On : Jul-02-2001

Reported in : I(2003)CPJ26MRTP

Judge : C Nayar, M Mahajan

Appellant : Director (Research), Mrtp

Respondent : Delhi Development Authority

Judgement :

1. On receipt of a complaint from one Shri M.N. Ghei against the Delhi Development Authority (hereinafter referred to as respondent), for having adopted and indulged in unfair and restrictive trade practices within the meaning of Section 10(a)(iv) and Section 36B(d) of the Monopolies and Restrictive Trade Practices Act, 1969 (for short the Act), the Commission directed the Director (Research) to make a preliminary investigation against the respondent. The Director (Research) submitted its report on 23.7.1998 recommending the issuance of Notice of Enquiry against the Delhi Development Authority. This was on the facts as brought out in its report.

2. AS per the reported facts, the complainant Shri Ghei applied for an allotment of a flat under Sixth Self-Financing Scheme 1985. Neither the flat was allotted to him nor any intimation was given for non-allotment of the flat in question. In the year 1995, the respondent offered flats to the registrants of Sixth Self-Financing Scheme who were not successful originally. The complainant was even then not

offered the flat nor was given the reasons for the same. Even in the Ninth Self-Financing Scheme which had a provision for allotment of flats to unsuccessful allottees under the Sixth-B Self-Financing Scheme, the complainant was not allotted a flat, despite payment of registration amount on the application submitted. On these facts, the Director (Research) was of the opinion that non-consideration of the complainant's application for allotment on priority basis under the Ninth Self-Financing Scheme tantamount to unfair trade practice on the part of the respondent. By manipulating the conditions of delivery of flat, it has also come to impose unjustified costs on the complainant.

3. On recommendation of the Director (Research), a Notice of Enquiry was issued to the respondent who in its reply refuted the allegations as levelled against it. It is stated that unsuccessful registrants under the Sixth Self-Financing Scheme have been offered an opportunity to apply for allotment of flats in the year 1995, through advertisement issued in various newspapers making it clear that it was the last opportunity given for allotment of flats. The complainant neither applied for a flat nor asked for refund of its amount deposited with the respondent. On the other hand because of large number of applicants, it was not feasible to individually inform each applicant.

For the act of omission of the complainant, the respondent could not be held responsible for adopting restrictive trade practices.

4. Director (Research) furnished its affidavit of evidence along with the documents supporting the contention. The respondent was set ex parte vide Commission's order dated 24.12.1999.

5. The question to be addressed at is whether it was incumbent on the part of the respondent to have accommodated non-successful registrants of Sixth Self-Financing Scheme along with the remaining registrants of the Sixth-B Self-Financing Scheme when the specific provision in this regard was made only for the latter. The answer lies in the terms and conditions of a particular scheme to which the applicant agrees to be subjected to for an allotment of flat/plot. These conditions have no statutory force. They are contractual relations casting obligation at the contracting parties. Under the Ninth Self-Financing Scheme the

priority was allowed only to the registrants of Sixth-B Self-Financing Scheme who were explained to be registrants under the new pattern scheme in the year 1979. This explanation of the respondent has not been controverted by the Director (Research) and as such no obligation is cast on the respondent Authority to have accommodated the registrants who were unsuccessful under any one of the earlier schemes but the one as specified in the brochure. On the other hand it has not been shown that the applicant/ complainant applied for an allotment of house in 1995, when last opportunity was given. From the available material on record, we find that as per the photocopies of the receipts made available a sum of Rs. 15,000/- has been deposited on 14th August, 1985 under the Sixth Self-Financing Housing Registration Scheme -1985 and Rs. 50,000/- deposited vide Bank Draft No. 300492 and 300493 dated 13.9.1996 under Self-Financing Housing Scheme IX 1996/VIth B SFS. There is however no material to show that the applicant was declared successful in a draw of lots under both the schemes. As held by their Lordships of Hon'ble Supreme Court of India in Civil Appeal No. 6205 of 1994 (arising out of S.L.P. (C) No. 8506 of 1994) in the case of Delhi Development Authority v. Pushpendra Kumar Jain, "no right vests in the applicant to allotment on the drawal of lots alone. The drawal of lots is only a mode, a method, a process to identify the allottee, i.e., it is a process of selection. It is not allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of drawal of lots". In absence of any material on record, we are unable to appreciate the stand of the Director (Research) that by not allotting a flat to the complainant in this case, the respondent has indulged in restrictive trade practice within the meaning of Section 2(o)(ii) of the Act. As held by their Lordships of Hon'ble Supreme Court of India reported in III (2000) CPJ 9 (SC)=VII (2000) SLT 50=2000 CTJ 165 (Supreme Court) (MRTP), in the case of Rajasthan Housing Board v. Smt. Parvati Devi, the main ingredient requiring that a trade practice may have the effect of preventing, distorting or restricting competition in any manner is to be satisfied before it can be said that an unjustified cost has been imposed. This has not been shown.

6. In view of above, in our considered opinion, no case of restrictive trade practice has been made out against the respondent Authority.

Accordingly, the Notice of Enquiry deserves and is hereby discharged.

On the facts and circumstances of the case, there is no order as to the costs.

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