

CEO CUM SECRETARY, HIMACHAL PRADESH HOUSING & URBAN DEVELOPMENT AUTHORITY V. ANITA SHARMA

**CEO Cum Secretary, Himachal Pradesh Housing & Urban
Development Authority Vs. Anita Sharma**

**1. CEO CUM SECRETARY, HIMACHAL PRADESH
HOUSING & URBAN DEVELOPMENT AUTHORITY**

.....Petitioner(s)

Versus

1. ANITA SHARMA

.....Respondent(s)

Case No. : REVISION PETITION NO. 1027 OF 2020

Date of Judgement : 05 December 2023

Judges : JUSTICE SUDIPAHLUWALIA

For Petitioner : MR. J.P. MISHRA, ADVOCATE.

For Respondent : NEMO

Facts

- *Anita Sharma was allotted Flat 12A in Category II in a housing colony at Kasumpti, Shimla by Himachal Pradesh Housing and Urban Development Authority (HIMUDA)*
- *Specified cost of the flat was Rs. 35 lakhs. Anita paid earnest money of Rs. 3.55 lakhs*

- Anita claimed she had applied for a flat with area of 96.11 sqm but was allotted one with area of 94.64 sqm
- Anita requested HIMUDA to exchange the flat which was refused
- HIMUDA cancelled Anita's allotment, forfeited Rs 71,000 from the earnest money and refunded Rs 2.84 lakhs

Court's Elaborate Opinions District Forum

- HIMUDA failed to allot flat applied by Anita with area of 96.11 sqm and instead allotted smaller flat
- HIMUDA not justified in deducting money under Clause 12(i) of brochure as this clause not applicable
- Directed HIMUDA to refund Rs 71,000 illegally deducted with interest at 9% from date of complaint

State Commission

- HIMUDA admitted Anita applied for 96.11 sqm flat but allotted smaller one without her consent
- No interference warranted in District Forum order
- Appeal by HIMUDA dismissed

National Commission

- Brochure shows 3 sizes of Category II flats – 94.64, 96.11 and 100.90 sqm
- Anita only applied for Cat II 2BHK, did not specify any area
- Anita could only apply for category, not any specific sub-category
- District and State forums acted erroneously in disallowing HIMUDA's deduction
- Deduction was lawful under brochure
- Complaint by Anita dismissed

Arguments by Parties HIMUDA

- Anita accepted terms where 20% earnest money deductible if allotment surrendered post draw of lots

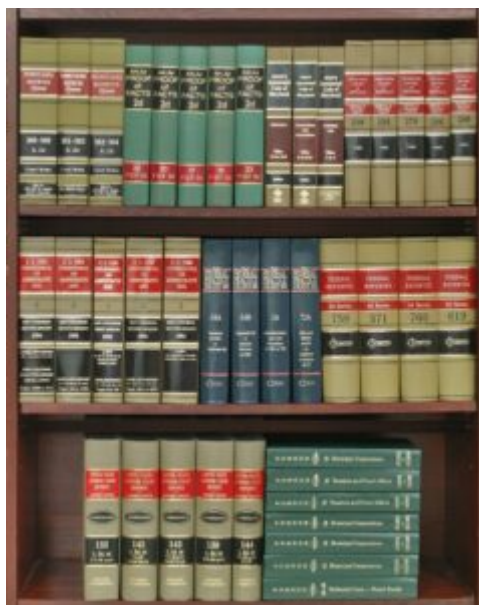
- *Anita not promised any specific flat area, only Cat II flat through draw of lots*
- *Anita did not opt to choose flat by paying 6% choice fee*
- *Cannot object to draw of lots method*

Anita

- *Applied specifically for 96.11 sqm flat which HIMUDA admitted*
- *Allotted smaller 94.64 sqm flat instead*
- *Requests to allot as per application not considered*
- *Deduction of Rs 71,000 illegal*

Referred Laws and Sections

- *Revision Petition filed under Section 58(2) of Consumer Protection Act*
- *Against order dated 27.02.2020 of State Commission in First Appeal 255/2018*



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Full text of Judgement :

1.This Revision Petition has been filed by Himachal Pradesh

Housing & Urban Development Authority under Section 58(2) against the impugned Order dated 27.02.2020 passed by the State Consumer Disputes Redressal Commission, Himachal Pradesh in F.A. No. 255 of 2018, vide which the Appeal filed by the Petitioner was dismissed.

2. The factual background in brief is that Anita Sharma, the complainant, was allotted Flat No. 12A in Category-II under a partially self-financed Scheme within a Housing Colony at Kasumpti, Shimla, H.P. The specified cost of the Flat was Rs. 35 Lacs. It is asserted that the complainant paid an earnest amount of Rs. 3,55,000/-. The complainant's argument is that she applied for a Flat with a plinth area of 96.11 m², but the Petitioner assigned a Flat with a plinth area of 94.64 m². Additionally, the complainant requested the Petitioner to exchange the Flat, which was refused. Consequently, the Petitioner cancelled the Flat, forfeiting Rs. 71,000/-, and only refunded Rs. 2,84,000/- to the complainant. The complainant contends that this deduction constitutes a deficiency in service, prompting her to file a complaint before the District Forum, Solan.

3. The District Forum vide its Order dated 23.12.2017 partly allowed the complaint. The relevant extracts of the Order of the District Forum are set out as below –

"11. Thus, from the contents of the application, it is clear that opposite party failed to allot flat in category-II, tentative unit area of which was 96.11(2BHK) against tentative cost was 35.52 lacs. Instead, opposite party had allotted a flat in category II, in Block A of which tentative area was 94.64 square meters against tentative cost of ₹35.00 lacs. Since opposite party had failed to allot a flat which was applied for by the complainant i.e. Flat in category-II, tentative unit area of which was 96.11 square meters against tentative cost of ₹35.52 lacs, therefore, opposite party was not justified in deducting 20% amount under clause-12(i) of the brochure. It is not the case of opposite party that complainant was allotted flat in category-II having plinth area of 96.11 square meters. The complainant had not

surrendered the flat which was applied for by her, but surrendered the flat which was wrongly allotted to her. Therefore, we are of the opinion that opposite party was not justified in retaining ₹71000/-. Further, we are of the opinion that clause 12(i) of the brochure, on the basis of which ₹71000/- were deducted by opposite party, is not applicable to the complainant, since under this clause, there was no condition to deduct 20% of the earnest money.

12. In view of the discussion made hereinabove, we are of the opinion that opposite party wrongly and illegally deducted ₹71000/-. Therefore, it is established on record that opposite party provided deficient services to the complainant. Hence, the complaint deserves to be partly allowed.

13. Accordingly, the complaint is partly allowed. The opposite party is directed to refund ₹71000/-" to complainant along with interest @ 9% per annum from the date of complaint till payment. Opposite party is also directed to pay ₹15,000/- as compensation for mental harassment, besides ₹3,000/- towards litigation charges. A copy of this order be supplied to the parties as per Rules and the file after due completion be consigned to the record-room."

4. Aggrieved by the Order of the District Forum, the Petitioner filed Appeal before the State Commission. The State Commission dismissed the Appeal vide the impugned Order dated 27.02.2020. The relevant extracts of the impugned Order are set out as below –

"15. Submission of learned Advocate appearing on behalf of HIMUDA that complainant did not place on record any document in order to prove that HIMUDA assured complainant to allot flat having plinth area of 96.11 square meters and on this ground appeal filed by HIMUDA be allowed is decided accordingly. HIMUDA has admitted that complainant applied for flat having plinth area of 96.11 square meters. It is well settled law that facts admitted need not to be proved. No reason assigned by HIMUDA as to why complainant was allotted

flat having plinth area of 94.64 square meters contrary to allotment application without expressed and implied consent of complainant. HIMUDA did not place on record any document signed by complainant in order to prove that complainant has accepted flat having plinth area of 94.64 square meters voluntarily.

16. Submission of learned Advocate appearing on behalf of complainant that order of learned DCF/DCC is in accordance with laws and in accordance with proved facts and does not warrant any interference by State Commission is decided accordingly. State Commission is of the opinion that it is not expedient in the ends of justice and on the principles of natural justice to interfere in order of learned DCF/DCC keeping in view the fact that complainant is female. Point No.1 is decided accordingly. Point No.2: Final Order

17. In view of findings upon point No. 1 above appeal filed by HIMUDA is dismissed. Order of learned DCF/DCC is affirmed. HIMUDA shall comply order of learned DCF/DCC within one month after receipt of certified copy of order. Ofice order issued by HIMUDA Annexure C-5 dated 30.04.2014 and cheque Annexure C-7 issued by HIMUDA in favour of complainant to the tune of Rs.284000/- (Two lac eighty four thousand) dated 10.06.2014 shall form part and parcel of order. Parties are left to bear their own litigation costs before State Commission.

18. Certified copy of order be sent to learned DCF/DCC for information forthwith and file of State Commission be consigned to record room after due completion forthwith. Certified copy of order be transmitted to parties forthwith free of costs strictly as per rules. Appeal is disposed of. Pending application(s) if any also disposed of."

5. Aggrieved by the Order of the State Commission, the Petitioner filed this Revision Petition raising the following contentions –

a. That the State Commission and the Ld. District Forum should have recognized that the Respondent explicitly acknowledged

understanding the terms and conditions and agreed to comply with them. Clause 12(i) within the terms explicitly stipulates a deduction of 20% from the Earnest Money Deposit (EMD) in situations where the allotment is surrendered subsequent to the Draw of Lots;

b. That the State Commission and Ld. District Forum should have acknowledged that the Respondent was not promised a specific flat of a defined plinth area. The Respondent applied for a Category-II Flat and was indeed allotted one. Category-II Flats encompassed three different sizes, allocated through a draw of lots, as outlined in the scheme's terms. By consenting to these terms, the Respondent cannot contest the allocation method via 'Draw of Lots'. This method ensures equal opportunity for all applicants and is a standard practice. Allowing withdrawal without deduction post-allotment would undermine the purpose of the 'Draw of Lots' allocation system. The clause regarding forfeiture of a portion of the Earnest Money Deposit (EMD) is vital for maintaining discipline, akin to commercial practices in various matters;

c. That the State Commission and Ld. District Forum should have recognized that the terms and conditions allowed for the selection of a specific flat. Clause 7(ii) stipulated the option to apply for a particular flat by paying a 6% choice fee. However, the Respondent did not exercise this option for a specific flat. As a result, the allotment was conducted via a draw of lots since the Respondent did not apply for a particular flat. Her inability to apply for a specific flat precludes her from objecting to the allotment method through a draw of lots.

6. Ld. Counsel for Petitioner has argued that the Brochure clearly and specifically stated that the allotment will be made by draw of lots and if an Allottee wants any particular flat then choice money at 6% of the cost will be levied. The other terms and conditions stated that 10% of the tentative cost is to be deposited as earnest money and 20% of the earnest money will be forfeited if the Allottee withdraws

after draw of lots; That the Respondent had applied for a flat in the Category-II where there are three types of unit area. In the application form there is no place to mention the unit area/plinth area and one can only mention the category of Flat; That the Petitioner had been allotted a Category-II Flat as per the application form having plinth area of 94.64 m². However, the Respondent vide letter dated 06.03.2014 surrendered the allotment on the ground that she had asked for 96.11 m² and requested refund. The Petitioner therefore deducted the amount as per Clause 12 (i) of the Brochure and refunded the rest of the amount; That the State Commission and District Forum passed the impugned Orders wrongly assuming that the Respondent had applied for a Flat having specific area of 96.11 m² which was not allotted to her.

7. Contention of the Respondent had been that she had specifically applied for a Flat under Category-II with dimensions of 96.11 m² which has been admitted by the Petitioner in its reply. However, instead of allotting a Flat measuring 96.11 m², the Petitioner allotted measuring only 94.64 m²; That the requests of the Respondent to allot Flat under the category applied were not considered and on withdrawal of application, a sum of Rs. 71,000/- was deducted on the pretext that the Respondent had been allotted the Flat and there was condition that the measurement was tentative; That there were different amounts of EMDs for each of three different Flat areas and therefore the Petitioner cannot under the garb of minor variations allot a Flat having lower area.

8. This Commission has heard both the Ld. Counsel of the Petitioner and perused the material available on record. Considered;

9. Both the Ld. Fora below were of the opinion that since the Flat allotted to the complainant was not in accordance with her exact demand in the application, so she could not be penalised with any deduction under Clause – 12 (i) of the brochure. Both had noted that a Flat in category II in Block A had been allotted to her of which the tentative area was 94.64 m², although the complainant had applied for a unit in the

same category with a tentative unit area of 96.11 m².

10. But the Ld. Fora have apparently overlooked the specific description in the concerned Brochure (Annexure –P1), in which it has been depicted that the Category 2 Flats in the Housing Colony at Kasumpati (Shimla) are of 3 separate tentative unit areas measuring 94.64, 100.90 and 96.11m², for which the marginal differentials in costs in accordance with the concerned sizes had also been depicted. But there is nothing in the brochure to indicate that an applicant had to be necessarily allotted only a flat of any exact specification in the concerned Category 2. Even otherwise the Complainant in her own Application Form (Annexure – P2), in the relevant Column No. 9 has only applied for a Flat of “Cat II 2BHK”, without specifying any particular unit area. It is therefore clear that even while applying for allotment, an applicant could only have applied for a Flat under the concerned category, but had no option to claim allotment of any specified sub-category within the same category, and which the Complainant in any case had not done even in her own Application Form.

11. For the aforesaid reasons, this Commission is of the opinion that both the Ld. Fora below had acted erroneously in disallowing the deduction made by the Petitioner Authority, which was lawfully permissible under the relevant Clause in the Brochure.

12. Consequently, this Revision Petition is allowed Ex-parte, and the impugned Order passed by the Ld. State Commission is set aside. The complaint filed by the Respondent stands dismissed.

13. The Petitioner is consequently at liberty to withdraw the decretal amount deposited by it with the District Forum in compliance of the earlier Order passed by this Commission on 21.12.2021. No orders as to costs.

14. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

—END—