

HAZIABAD DEVELOPMENT AUTHORITY V. AMAR NATH JINDAL

Ghaziabad Development Authority Vs. Amar Nath Jindal

1. HAZIABAD DEVELOPMENT AUTHORITY
Through Vice Chairman
HAZIABAD
U.P

.....Petitioner(s)

Versus

1. AMAR NATH JINDAL
Mandirwali Gali
RAMPUR
U.P

.....Respondent(s)

Case No. : REVISION PETITION NO. 3660 OF 2012

Date of Judgement : 04 December 2023

Judges : MR. SUBHASH CHANDRA

For Petitioner : MR. SIDDHARTH SENGAR, ADVOCATE

For Respondent : MRS. JAYA TOMAR, ADVOCATE

Facts:

- *Ghaziabad Development Authority (GDA) notified an Apartment Scheme No. 547 for residential units in Vaishali, Ghaziabad.*

- Respondent Amar Nath Jindal applied for a Type A apartment by paying Rs 46,720 as registration fees.
- A residential unit was booked for him at an estimated cost of Rs 4,67,000 to be paid in installments by 1991.
- By July 1991, Respondent paid Rs 1,89,491 towards the booking.
- In August 1994, GDA informed Respondent that a unit has been allotted to him at an enhanced cost of Rs 7,07,400.
- Possession was to be given by end 1995 after receiving 40% payment in installments.
- Respondent approached District Forum alleging deficiency in service for failing to hand over possession within 2 years as per brochure and for increasing total sale consideration.
- GDA offered an alternate flat in Yamuna Tower or full refund.

District Forum Order:

- Ordered full refund of amount paid by Respondent with interest @12% p.a. finding deficiency in service on part of GDA.

State Commission Order:

- Allowed appeal filed by Respondent and modified District Forum order.
- Directed to increase cost of flat by 20% to Rs 5,60,000.
- Directed to handover possession on enhanced cost after adjusting interest @18% within 3 months.
- Alternately allowed to provide similar flat in another scheme at same cost.

Arguments by GDA in Revision Petition:

- Failed to appreciate judgments that allotment at another location would not entitle consumer to appreciation in value.
- Being no profit no loss entity, impugned order puts

heavy burden.

- *No deficiency established to impose 18% interest and 20% cost appreciation after 20 years.*
- *Offered alternate flat in Yamuna Tower which was refused. Hence no deficiency.*
- *Timeline for possession was only estimate. Entitled to revise cost.*
- *Respondent being defaulter cannot claim benefit of own fault.*
- *Remedies claimed are civil in nature.*
- *Amount of Rs 1,66,016 already paid to Respondent in execution proceedings pursuant to District Forum order. So proceedings already complete.*

Findings by National Commission:

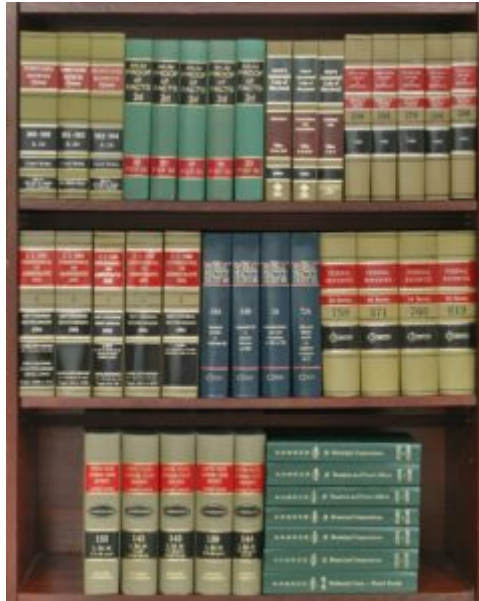
- *Fact of amount paid under District Forum order execution not denied by Respondent. So order stood executed.*
- *After accepting refund amount, Respondent ceased to be a consumer under Consumer Act. Hence appeal not maintainable.*
- *Commission does not have jurisdiction to determine flat pricing or impose 20% appreciation.*
- *In view of executed District Forum order, Respondent not a consumer anymore. Appeal not maintainable.*

Referred Sections and Laws:

- *Section 21(b) of Consumer Protection Act, 1986*
- *Referred its own judgments regarding jurisdiction on pricing*

Order:

- *Allowed revision petition filed by GDA.*
- *Set aside State Commission order.*



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Full text of Judgement :

1. This revision petition under section 21(b) of the Consumer Protection Act, 1986 (in short, the "Act") assails the order dated 06.07.2012 in Appeal No. 756/03 of the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow (in short, the 'State Commission') allowing the appeal of the respondent/complainant and modifying order dated 17.02.2003 of the District Consumer Disputes Redressal Forum, Ghaziabad (in short, the 'District Forum') dated 31.10.2014 in Consumer Complaint no. 288/1995.

2. The facts as per the petitioner/Ghaziabad Development Authority (GDA) are that it notified an Apartment Scheme No. 547 for residential units in Vaishali, Ghaziabad in which the respondent/complainant applied for a residential unit by paying Rs 46,720/- as registration. On 10.05.1989 a Type A apartment was booked at an estimated cost of Rs 4,67,000/- to be paid in 4 instalments by 31.03.1991 with 40% payment to be made prior to the delivery of possession. Rs 1,89,491.12 was paid by 22.07.1991 and a balance of Rs 1,31,800/- was due by 01.08.2000. On

15.08.1994 the petitioner conveyed that House no. SARYU/04 was allotted to the respondent and that the cost had been enhanced to Rs.7,07,400/-. It was stated that the delivery was likely by end 1995. 40% of the payment was to be done in 3 instalments and the balance 60% in 10 annual instalments was to be paid at the time of possession. Petitioner contends that instead of making payment as per this letter, complainant approached the District Forum claiming deficiency in service in not handing over possession in two years as promised in the brochure and increase in the total sale consideration. The petitioner therefore, offered an alternate flat in Yamuna Tower for which consent of respondent was sought with the option of full refund in the alternative. The District Forum vide order dated 17.03.2003, however, decreed full refund with interest @12% p.a. In appeal, the State Commission, vide order dated 06.07.2012 upheld the order of the District Forum with some modification. This order is impugned by way of this revision petition.

3. The order of the District Forum held as under:

After considering the facts, records and written arguments of the parties and district forum has reached the conclusion that this has been proved beyond doubt that the complainant has deposited Rs.1,89,451.12/- by 22.07.1991 against the flat reserved in his favour in 1989. But the opposite party was unable to deliver the possession of the flat in Vaishali to the complainant for one or the other pretext. Since this is established by the record that the opposite party could not able to deliver the possession to the complainant hence that is deficiency in service on part of the opposite party and therefore, liable to pay the interest to the complainant @ 12% on his deposited amount. It is also settled principle of this learned forum the further relief claimed civil in nature therefore District Forum does not have jurisdiction equivalent civil court to direct the opposite party to give possession of the questioned flat in the scheme to the complainant on the estimated cost moreover the opposite party has legal right to revise the tentative cost of the flat. All other reliefs

sought by the complainant are civil in nature which can be granted by the civil court only. The forum is decided to give @12% interest per annum relying upon the judgment which are delving by the Supreme Court and NCDRC. Apart from his the rate of interest is also reducing. In view of above circumstances the present complaint of complainant can only be decreed for refund of the amount.”

4. The State Commission vide the impugned order dated 06.07.2012 ordered as below:

“In the instant matter appellant/ complainant has not given his consent to refund his money, instead he has been requesting for the allotment of the house/flat. In the above circumstances we are of the view that cost of the disputed house/ flat in Vaishali Apartment is Rs.4,67,000/- will be increased by 20% and will receive from the complaint within three months from the date of the judgment thereafter as per the terms of the brochure will hand over the possession of constructed disputed flat to the complainant. As per the order of the District Forum the interest @ 18% on the deposited amount of complainant and the amount will be calculated together and adjusted with the new amount. If after calculating the amount of the complainant along with the 18% interest any amount is due on the opposite party that will be refunded. This is also directed that if it is not feasible for opposite party to give hand the possession of the disputed house/ flat in Vaishali Apartment, Ghaziabad Development Authority is given option to hand over a house of the flat of same class to the complainant in their Indirapuram or other scheme at the same above mention cost within the same above-mentioned time.

Appeal is allowed and the order of the District Forum being baseless is amended as follows:

Appeal is allowed. The judgment of final order no.88/1995 passed by the District Forum, Ghaziabad is amended and Ghaziabad Development Authority is directed that the cost of

the disputed house/ flat in Vaishali Apartment, Rs.4,67,000/- may be increased by 20% and revised amount may be received from complainant within three months from the date of judgment and as per the terms of the brochure the possession of the furnished flat may be handed over to the complainant within three months thereafter. As per the order of the District Forum the interest @ 18% on the amount of the complainant may be calculated and total amount may be adjusted in the revised amount and if after calculating the interest, any amount is due on the opposite party that will be refunded to the complainant. This is also directed that if it is not feasible for opposite party. This is also directed that if it is not feasible for opposite party to hand over the possession of the disputed house/ flat in Vaishali Apartment, Ghaziabad Development Authority is given option to hand over a house/ flat of same class to the complainant in their Indirapuram or the other scheme at the same above mentioned cost within the same above-mentioned time.

5. I have heard the learned counsel for both the parties and given thoughtful consideration to the material on record.

6. The petitioner has challenged the order of the State Commission on the ground that the impugned order failed to appreciate that in view of its inability to allot an alternate flat at another location, the allotment of a flat at another location would not be entitled to any

appreciation in value as was held in the judgments of the Hon'ble Supreme Court in Bangalore Development Authority Vs. Syndicate Bank, SCC 2007 (6) 711 and Ghaziabad Development Authority Vs. Shakuntala Rohtagi, CA No. 6051 of 2002. It is also contended

that the petitioner was an organization working on a "no loss, no profit" basis and that the impugned order would put it to heavy financial burden. It was contended that the impugned order did not establish deficiency in service while imposing penalty of interest @ 18% or

allotment of a flat in another locality on the basis of a 20% appreciation in price after 20 years whereas it is far more.

The petitioner contended that it had been submitted that it was not in a position to offer possession of a flat in Vaishali Scheme and that it had accordingly offered an alternative flat in Yamuna/Krishna Tower which was not acceptable to respondent/complainant; hence, there was no deficiency in service and he was entitled only to refund with interest. The timeline for possession was only an estimate and the petitioner was justified to levy cost enhancement due to revision in cost of inputs. It was also contended that the petitioner was a defaulter and as such could not claim the benefit of his own fault. It was denied that the petitioner had been negligent. It was also argued that the remedies claimed were civil in nature as also held by the District Forum and that the State Commission failed to appreciate that the respondent had accepted an amount of Rs.1,66,016/- in execution proceedings and therefore the proceedings of the District Forum were complete.

7. It is admittedly not in dispute that the respondent/complainant booked a flat in the Vaishali Scheme of the petitioner, which was revised, after receipt of Rs 1,89,491.12 by 22.07.1991, to cost Rs 7,70,000/-. The unit was to be handed over as per a revised timeline of delivery by end 1995. Against this letter, the respondent's complaint before the District Forum was allowed and a full refund with interest @12% and Rs 400/- as litigation cost was ordered. The appeal against this order was not allowed by the State Commission; however,

the order was modified and the rate of interest was ordered to be 18% to be adjusted in the overall cost. The State Commission ordered the option to the petitioner herein to provide a flat of similar category in Indirapuram or any other scheme at the same cost.

8. The contention of the petitioner that the respondent/complainant had pressed the execution of the order of the District Forum and had been paid Rs.1,66,016/- would amount to there having been a finality to the order of the

District Forum. However, no steps were taken thereafter by the respondent who instead accepted the amount paid by the petitioner. The order of the State Commission, however, is silent on this aspect.

9. The petitioner complied with the order of the District Forum and refunded the amount deposited by the respondent. However, the State Commission ordered to increase the amount of the flat and directed the respondent to pay the amount and take possession the flat ignoring the fact that the amount deposited by the respondent was refunded by the petitioner and hence, he was not a consumer. Therefore, the first appeal filed before the State Commission was not maintainable.

10. In view of the fact that the order of the District Forum stood executed, as is evident from the submissions of the petitioner which is not contested, the appeal before the State Commission did not lie as the respondent was no longer a consumer qua the petitioner/

Development Authority. The State Commission in its impugned order dated 06.07.2012 amended the order dated 17.02.2003 and directed the authority after 20 years of the demand notice that the cost of the disputed flat, i.e., Rs.4,67,000/- may be increased by 20% and

revised amount may be received from the respondent within three months from the date of judgment. The State Commission has entered the domain of fixing of the price of the flat by way of an increase of 20%. The Hon'ble State Commission has held in DDA vs Ashok

Kumar Behal and Ors., (2002) 7 SCC 135 that consumer fora are not expected to determine pricing and have held as under:

"that the consistent view taken by the Hon'ble Supreme Court is that fixation in prices of flats under different schemes cannot be challenged under Article 226 of the Constitution and laid down the principle that pricing of flats lies only within the domain of the Housing Authority. As pricing of flats by housing authority cannot be questioned even under Article 226, it is clear that the scope of judicial review, with respect to fixation of prices, under the Consumer Protection Act, 1986,

is very limited. This Commission, therefore, refrain from going into the final cost as disputed by the complainants. However, not fixing 'Final Tentative Cost' is certainly a lapse on the part of the opposite parties which is one of the main reasons leading to the present litigation."

11. The State Commission did not mention about the refund of the deposited amount in compliance of District Forum's order. This fact has been accepted by the respondent in his reply before this Commission. Once the amount had been refunded the deposited amount and the same was accepted by the respondent, the decree stood executed. Therefore, the respondent is not a consumer any more under the Consumer Protection Act, 1986. Accordingly, the contention of the appellant/ respondent that the appeal was not maintainable before the State Commission has merits and is accordingly upheld.

12. In view of the foregoing and in the facts and circumstances of the case, the revision petition filed by the petitioner is allowed. The order of the State Commission is set aside. There shall be no order as to costs. Pending IAs, if any also stand disposed of with this order.

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