

NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY (NOIDA) V. RACHNA SAJWAN

New Okhla Industrial Development Authority (NOIDA) Vs. Rachna Sajwan

1. NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY (NOIDA)

.....Petitioner(s)

Versus

**1. RACHNA SAJWAN
W/O. SRI DEVENDRA SAJWAN, R/O. HOUSE NO. 306,
MAGADH MAISION, SECTOR – 70
NOIDA
UTTAR PRADESH**

.....Respondent(s)

Case No. : REVISION PETITION NO. 233 OF 2022

Date of Judgement : 01 December 2023

Judges : DR. INDER JIT SINGH

For Petitioner : MR. ADARSH SRIVASTAV, PROXY COUNSEL

For Respondent: IN PERSON

Facts

- Rachna Sajwan had applied for an EWS category flat in Noida Authority's residential scheme and paid Rs. 85,000***

as registration amount

- *She was allotted an unspecified 40 sqm flat via provisional allotment letter dated 16.01.2007 which asked her to pay remaining Rs. 6,99,000 within 60 days*
- *The letter did not specify flat number, hence bank refused to provide loan for balance payment*
- *Rachna requested refund of her registration amount on 20.03.2007, within the 60 days deadline*
- *Noida authority did not refund the amount and forfeited it instead*
- *Rachna filed a consumer complaint against the forfeiture before the District Commission but it was dismissed*
- *She appealed to the State Commission against the District Commission's order*

Court's Observations and Order

- *State Commission held that not mentioning flat number in allotment letter was a deficiency by Noida Authority which made it difficult for Rachna to obtain loan*
- *Rachna acted within time by requesting refund within 60 days*
- *Forfeiture of her registration amount was illegal since the deficiency was on Noida Authority's part*
- *Allowed Rachna's appeal and directed Noida Authority to refund her Rs. 85,000 with interest @6% p.a. from date of deposit*
- *Also awarded cost of Rs. 5,000 to Rachna for the revision petition hearing*

Sections and Laws Referred

- *Appeal filed under Consumer Protection Act 1986*
- *Revision petition filed by Noida Authority under Section 58(1)(b) of Consumer Protection Act 2019 against State Commission's order*
- *Supreme Court judgments in Rubi Chandra Dutta Vs. United India Insurance and Sunil Kumar Maity Vs. State Bank of*

***India & Ors relating to scope of revision petitions
referenced***

So in summary, State Commission found deficiency by Noida Authority in Rachna's flat allotment, held forfeiture of her registration amount as illegal, allowed her appeal and directed refund with interest. Noida Authority's revision petition against this order was dismissed.



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Full Judgement Text :

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 58 (1) (b) of Consumer Protection Act 2019, against the order dated 09.11.2021 of the State Consumer Disputes Redressal Commission Uttar Pradesh (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 1886 of 2011 in which order dated 20.08.2011 of Gautam Budh Nagar District Consumer Disputes Redressal Commission (hereinafter referred to as District Commission) in Consumer Complaint (CC) no. 396 of 2007 was challenged, inter alia praying for setting aside the order dated 09.11.2021 of the State Commission.

2. While the Revision Petitioner (hereinafter also referred to as OP) was Respondent and the Respondent (hereinafter also referred to as Complainant) was Appellant in the said FA No. 1886 of 2011 before the State Commission, the Revision Petitioner was OP and Respondent was Complainant before the District Commission in the CC no. 396 of 2007. Notice was issued to the Respondent on 12.05.2022.

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that Complainant applied for a flat under the residential scheme of the OP by depositing Rs.85,000/- as registration amount and chose to pay the cost of the house in half-yearly installments. Letter of allotment dated 16.01.2007 was received by the complainant on 14.02.2007 and by means of aforesaid letter, the complainant was ordered to deposit the entire money as single lump sum payment. Complainant tried to take loan but could not succeed. The Complainant requested the OP on 13.03.2007 to return the registration amount but OP did not take any action and registration amount was forfeited. According to complainant, the allotment letter was intentionally sent to her with considerable delay and payment method was arbitrarily changed to single lump sum payment instead of half yearly installments. Being aggrieved, the Complainant filed CC before the District Forum and the District Forum vide order dated 20.08.2011 dismissed the complaint. Being aggrieved, the Complainant preferred an appeal before the State Commission and State Commission vide order dated 09.11.2021 allowed the complaint. Hence, the OP is before this Commission now in the present RP.

4. Petitioner has challenged the said Order dated 09.11.2021 of the State Commission mainly on following grounds:

i. Document relied upon by the respondent to substantiate the averments in the complaint was a fabricated one and same has been duly recorded by District Commission in its order.

ii. In the said scheme, there were two modes of allotment of flat, one was to allot flats after carrying out construction and other mode was self finance scheme and the applicants who were successful in draw of lots were issued provisional letters allocating the particular category of flat in a locality and zone, however, no specific flat number was assigned at that stage because flats had not yet been constructed at the time and when the flats were almost ready for allotment, draw of lots were to be held allotting specific flat numbers.

iii. State Commission did not consider that in provisional letter itself it was clearly mentioned that specific flat numbers will be allotted through draw of lots which will take place after completion of flats

iv. Respondent did not deposit the remaining amount i.e. Rs.6,99,000/- within 60 days of issuance of provisional allotment letter and, therefore, registration was cancelled and payment was forfeited in terms of conditions of brochure.

v. State Commission did not consider the terms and conditions for payment option-1.

5. Heard the proxy counsel for the petitioner and respondent, who argued the case in person. Contentions/pleas of the parties, on various issues raised in the RP, and Oral Arguments advanced during the hearing, are summed up below.

5.1 It is argued on behalf of the Petitioner that complainant had not chosen the payment method of half-yearly instalment but had chosen the option of single lump sum payment. She even failed to deposit the cost of the flat and there was no provision of extending the time beyond 60 days. Counsel further argued that due to default in payment as per the prescribed terms and conditions, the allotment of the complainant was cancelled and registration amount was forfeited. The reason for forfeiture of the amount of

complainant is that complainant did not inform the authority about the surrender of allotment in time and intimation of surrender was given after expiry of 60 days.

5.2 Respondent, who appeared in person argued that allotment letter itself was issued late by the OP, in which number of allotted house was not even mentioned and hence the bank refused to give the loan and due to this, payment could not made on time.

6. We have carefully gone through the orders of the State Commission, District Forum and other relevant records. Extract of relevant paras of State Commission is given below:

"7. It is the contention of the appellant's Pairokar that the application was filed by the Appellant / Complainant for half yearly instalments, but from the perusal of the application it is evident that the application has been submitted by her under the single lump sum payment scheme and not under half yearly installments. Therefore, the contention of the learned counsel for the respondent stands confirmed / proved that the application has been submitted by the complainant under the single lump sum payment scheme and therefore the payment should have been made within 60 days of the issue of the allotment letter.

8. Keeping in view the above facts, the main considerable question arises as to whether the complainant was given an opportunity by the Authority to pay the cost of the house allotted to her by single lump sum payment. The application under the EWS category, so it cannot be imagined that the complainant would have kept the entire cost of the house at her home. Certainly she would get a loan from the bank for purpose of depositing this amount in the Authority and only after getting the loan the said lump sum amount could be deposited in the Authority. The provisional allotment letter was issued by the Authority on 16.01.2007 and this document is available on record as paper no.15. It is only

mentioned in the said letter that an EWS Flat measuring 40 sq. mtr. Under Scheme Code No.2006-07(II) (02) has been allotted, whose cost is Rs.7,84,000/- Out of which Rs. 85,000/- has been deposited at the time of registration and the balance amount of Rs.6,99,000/- is to be deposited at the time of registration and the balance amount of Rs.6,99,000/- is to be deposited within 60 days of the issue of the allotment letter. It is not mentioned in this letter as to what is the flat number. Therefore, there is sufficient force in the contention of the appellant's pairokar, who is a senior citizen, that since the flat number was not mentioned in the allotment letter by the

Authority, the loan was not sanctioned by the bank. This commission is also of the opinion that it was a necessary condition to mention the flat number in the allotment letter. It was not possible to sanction bank loan without quoting the flat number and hence unreasonable allotment letter was issued by the officials of the Authority. Due to this unfair allotment letter, the complainant could not get the loan from the bank and deposit it in the Authority on time and hence the error/ mistake has been committed by the Authority itself, for which the complainant cannot be punished by forfeiting the registration amount of Rs.85,000/- deposited by her.

9. From the perusal of Paper No.17 it is evident that a letter was written by the complainant Smt. Rachna Sajwan to the Chief Executive Of icer, Noida Authority, in which it has been mentioned that attempt was made to take the loan from but it was informed by the bank on 20.03.2007 that the loan was not being sanctioned on the ground that the flat number, sector number was not mentioned in the allotment letter. Therefore, it was requested that fresh allotment letter be issued with a specific flat number and 25% of the value of property should be received till the loan is fully disbursed. It was also requested that alternatively Rs.85,000 be returned to the complainant.

10. It has also been mentioned in this matter that the office was closed on 17th, 18th and 19th March 2007 and therefore the request for refund of the amount already deposited was made on 20.03.2007 which is well within 60 days. Therefore, through this letter, a request was made to refund the deposited amount. It is illegal in itself to issue a letter to an ordinary person belonging to a poor section to deposit lump sum value of an un-numbered flat within 60 days. Having caused this illegality, the Authority has no right to forfeit the registration amount of Rs. 85,000/- deposited by the complainant. The complainant is an EWS category applicant while the Authority has educated, skilled and experienced personnel. These Authority personnel must have the basic knowledge that the allotment letter of a flat implies that it is mandatory to mention the flat number in the allotment letter. Therefore, when the flat number was not mentioned in the allotment letter, the complainant could not be able to get the loan from any banking institution and hence due to the mistake/deficiency on the part of the Authority, the complainant failed to pay on time the cost of the un-numbered flat allotted to her. There is no fault of the complainant herself. The fault lies only with the Authority and its employees and therefore the order of forfeiture of the registration amount of Rs. 85,000/- deposited by the complainant is unlawful and illegal. The learned District Consumer Forum/Commission has given its conclusion on technical grounds but did not consider the situation that the Authority did not determine any number of the flat allotted to the complainant and as a matter of fact it cannot be assumed that the Authority ever issued any allotment letter to the complainant. Therefore, in case of non-deposit of the entire value within 60 days, the registration amount will not be considered as forfeited under the law. Consequently, the appeal is liable to be allowed."

7. We are in agreement with the observations and findings of the State Commission. As was held by the Hon'ble Supreme Court

in **Rubi Chandra Dutta Vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269]** that the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In **Sunil Kumar Maity Vs. State Bank of India & Ors. [AIR (2022) SC 577]** held that “the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity.” We find no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, Revision Petition is dismissed with cost of Rs.5000/- to be paid by Petitioner herein to Respondent herein. All payments as per orders of the State Commission i.e. refund of Rs.85,000/- with interest @ 6% p.a. from the date of deposit till the date of actual payment, along with cost as per this order, to be paid by Petitioner herein to Respondent herein within 45 days from today, failing which it will carry interest @ 12% p.a.

8. The pending IAs in the case, if any, also stand disposed off.

—END—