

CASE NO.:
Appeal (civil) 3967-3968 of 2004

PETITIONER:
Chief Administrator PUDA and Another

RESPONDENT:
Mrs. Shabnam Virk

DATE OF JUDGMENT: 23/03/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in these appeals is to the order passed by the National Consumer Redressal Commission, New Delhi (in short the 'Commission'). The Commission held that as delay in handing over the possession was clearly established and the reasons in price escalation of the house was not proved or established, the respondent was entitled to get the house at Rs.6.3 lacs instead of Rs.7.44 lacs as demanded by the appellants.

Background facts in a nutshell, as projected by the appellants are as follows:

On 15.8.1995 the appellants floated a scheme for allotment of 784 four story MIG (SUPER) flats on hire purchase basis at SAS Nagar, (Mohali). The scheme opened on 15.8.1995 and was to close on 14.9.1995. As per the advertisement inviting applications for allotment under the said scheme, the tentative cost of the flat was fixed at Rs.6.3 lacs. However, condition (2) therein clearly specified that the price quoted is purely tentative and based on the present cost of construction and that it was likely to be revised on the higher side by the time houses are completed. The said clause reads as under:

"The price quoted is purely tentative and is based on the present cost of construction. It is likely to be revised on the higher side by the time houses are completed."

The advertisement further stated that the allotment shall be governed by PUDA under rules and regulations framed/amended from time to time.

On 27.3.1996 pursuant to the aforesaid advertisement, a large number of applicants (including the respondent) applied for a MIG Super Category flat under the scheme in the prescribed Proforma Clause 12(ii), (iii) & (iv) of the said Proforma read as under:

"(ii) I have carefully gone through and understood the terms and conditions of the scheme applied and do hereby

undertake to abide by the same.

(iii) I also undertake to pay higher cost due to fluctuations in the prices of building material or due to any other reason.

(iv) I shall abide by the terms and conditions of the allotment made by the PUDA as amended from time to time and shall enter into such agreement in any manner and at any time, as stipulated by PUDA."

Prior to the construction of the flats, the first draw for allocation of flats, was held on 7.12.1995. On the basis of this draw held prior to the construction of flats, allocation letters (including allocation letter dated 27.3.1996 issued to respondent) were issued. In the said allocation letters, the tentative cost of each flat was stated to be Rs.6.30 lacs. The said figure was purely provisional, as was made explicit by Note (i), (ii) & (iii) contained in the said allocation letter, which read as under:

"(ii) The aforesaid price is purely tentative. The actual price shall be determined on completion of House/Flat and you shall be liable to make payment of the revised price of these Houses/Flats, if any, at the time of allotment.

(iii) Earnest Money already deposited with the Board will be adjusted with the instalments required to be deposited before taking over possession."

Note (i) contained in said allocation letters gave the tentative date when the flats were expected to be completed. The said note stated:

"Houses/Flats are likely to be completed by April 1997. This date is however tentative and may change."

The applicants accepting the allocation were required to submit affidavits to the effect that they would abide by the terms and conditions of allocation and the respondent submitted the required affidavit dated 15.4.1996. 784 MIG (Super) flats were completed in the years 1998 and second draw was held for allotment of specific flat numbers to applicants successful in the first draw, including the respondent and allotment letters dated 21.8.1998 were issued to the applicants including the respondent.

On 16.10.1998 the respondent accepted the terms and conditions of the allotment letter by tendering an affidavit dated 16.10.1998 to abide by the terms and conditions of the allotment letter as well as of the provisions of the Punjab Regional and Town Planning and Development Act, 1995 (in short 'the Act') and rules framed thereunder.

On August, 1998 at the time of issue of the allotment letter the base price of the flats in question was calculated to be Rs.7,67,000/-. Further a slab system was fixed for different

floors which is as follows :

Ground Floor - Rs. 8,05,400 (5% extra on the base price)

First Floor - Rs. 7,67,000 (the base price)

Second Floor - Rs.7,51,600 (2% less than the base price)

Third Floor - Rs. 7,44,000 (3% less than the base price)

Upon receipt of the respective allotment letters, the applicants, including the respondent who opted to accept the allotments, furnished affidavits clearly stating that they would abide by all the terms and conditions of the allotment and by the provisions of the Act and the rules framed thereunder from time to time.

On 21.10.1998 upon depositing 25% of the price of the flat as stipulated in the allotment letter, the respondent took possession of the flat. On 12.5.1999 the respondent filed complaint No. 486 of 1999 dated 12.5.1999 before the District Consumer Disputes Redressal Forum, Chandigarh (in short 'the District Forum') claiming, inter alia, that he was not liable to pay any amount over and above the price which was advertised while inviting applications for allotment much prior to the construction of the houses. The District Forum by order dated 17.10.2001 held that the price quoted was purely tentative and it was likely to be revised on the higher side by the time the houses are completed as there was clear condition to that effect in the advertisement. However, it directed the appellants to pay interest at the rate of 12% on the amount of Rs.1,03,000/- for a period of 1 year and 4 months on the ground that houses were likely to be completed by April, 1997 but the possession was handed over in August, 1998. Both the appellants and respondent preferred separate appeals before the State Commission, Chandigarh. The said Commission dismissed the appeal filed by the appellants and allowed the other appeal. The State Commission directed the appellant No.1\026Authority to charge only the price which was advertised while inviting the application for allotment and to pay interest at the rate of 12%. A revision petition was filed before the National Commission under Section 21(b) of the Consumer Protection Act, 1986 (in short the 'Consumer Act'). The Commission held that there was no delay on the part of the appellant No.1\026Authority in handing over the possession. However it held that only the price which was advertised while inviting application for allotment could be charged. The Review Application filed was dismissed.

In support of the appeals, learned counsel for the appellant submitted that the complaint was thoroughly misconceived as the allotment was made on 21.8.1998 and the price indicated was Rs.7.44 lacs. Same was accepted by letter dated 16.10.1998 and the terms of acceptance were contained in the accompanying affidavit. It was clearly stated in the affidavit dated 16.10.1998 that the allotment of the MIG (Super) house was accepted and the deponent undertook to abide by all the terms and conditions of the allotment letter. With reference to the undertakings learned counsel for the appellants submitted that the order of the National Commission is clearly erroneous. The clause which has been used to fasten liability on the appellants clearly stipulates that the price quoted is purely tentative and is based on the

present cost of construction and likely to be revised by the time the house was completed. It was, therefore, submitted that the demand raised by the appellants was justified and the National Commission did not appreciate the position correctly and held that the respondent was liable to pay at the earlier rate.

Learned counsel for the respondent on the other hand submitted that price quoted could be changed only if there was escalation in the cost of construction. As the details filed would go to show, there was no increase in the cost of construction, rather there was decrease.

It is to be noted that the respondent herself had accepted in the undertaking that she accepted the allotment of the house and undertook to abide by all the terms and conditions of the allotment letter. It is not in dispute that in the allotment letter the figure as demanded has been reflected. That being so the respondent was liable to pay the amount as stipulated in the allotment letter.

As there is no dispute that the respondent had in fact filed an affidavit clearly indicating that she undertook to abide by all the terms and conditions of the allotment letter, the amount indicated in the allotment letter was the amount in respect of the allotment of the house. We find nothing in the quoted clause to show that the increase was possible only when there was an increase in the cost of construction. The clause quoted above does not reflect any such intention of the parties.

Above being the position the National Commission was clearly in error granting relief to the respondent. The appeals are allowed. No costs.