

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 788 OF 2020

(Against the Order dated 03/03/2020 in Appeal No. 1160/2009 of the State Commission Uttar Pradesh)

1. GHAZIABAD DEVELOPMENT AUTHORITY
THROUGH VICE CHAIRMAN,

.....Petitioner(s)

Versus

1. SURESH CHANDRA SHARMA
R/O. SE-383, SHASTRI NAGAR DUPLEX
GHAZIABAD
UTTAR PRADESH

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONER : MR. SHASHANK SINGH, ADVOCATE
(VC)

FOR THE RESPONDENT :

FOR RESPONDENT : MR. SUBHAN SHANKAR GOGOI,
ADVOCATE
MR. AKARSH GARG, ADVOCATE

Dated : 07 November 2024

ORDER

1. This Revision Petition has been filed under Section 58(1)(b) of the Consumer Protection Act, 2019 (the "Act") against Order of the State Consumer Disputes Redressal Commission, Uttar Pradesh ('State Commission') dated 03.03.2020 in First Appeal No. 1160/2009. In the impugned Order, the State Commission partly allowed the OP's appeal while setting aside the order of District Consumer Disputes Redressal, Forum, Civil Station, Ghaziabad ('District Forum') dated 06.06.2009 in CC No. 566/1996.

2. As per report of the Registry, there is 86 days delay in filing the RP. The delay is condoned for reasons stated in 1593/2021.

3. For the convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

4. Brief facts of the case, as per the complainant are that he was allotted Duplex House No. SE383 under the Shastri Nagar residential scheme of the OP. Rs. 4,26,022/- was the cost of the house, which the complainant paid by 16.11.1994. The OP handed over possession of the allotted house to him on 13.03.1995, but at the time of possession, there were no facilities of sewer line, water line, electricity, road or park. It is the case of the complainant that the possession of the allotted house should have been given by 07.11.1994. It was delayed and

ultimately delivered on 13.03.1995. Despite paying the full consideration, vide letter dated 10.11.1995, OP demanded increased final price of Rs.5,25,603/-. The OP had no right to increase the cost of the house. Thus, citing deficiency in service, he filed a complaint before the District Forum, and sought to set aside the letter increasing the cost, payment of delay interest @ 21%, execution of freehold registry at original price, award Rs.80,000/- for repairs, Rs.15,000/- as compensation and Rs.5,000/- as costs.

5. In reply before the District Forum, OP contended that the estimated cost of the house in question was notified on 23.06.1994 to the complainant as Rs.4,26,022. The final cost was determined as Rs.5,25,603 after the construction was completed and he was informed on 10.11.1995. The authority to decide final cost is the Deputy Chairman of the OP, and this cannot be challenged before the District Forum. He received possession of the house in full satisfaction, but as of 30.10.1996, a balance of Rs.2,16,584 had remained unpaid. The delay in transfer was due to his failure to deposit the amount on time, and for this, he was liable. Since the final cost of the house was fixed at Rs. 5,25,603, the complainant was not entitled to any interest or costs from the OP.

6. The learned District Forum vide Order dated 06.06.2009, partly allowed the complaint with the following directions:

“Relief and costs: - (Final order)-

On the basis of aforementioned over all analysis this complaint filed on behalf of complainant is partly accepted and demand of enhanced amount made by opposite party by demand letter dated 10.11.1995 document 5C/09 stands rejected and now the complainant is not bound to pay any enhanced amount to opposite party. The opposite party shall got done registry of house No.SE -383 Shastri Nagar allotted to complainant in his favor as per rule within 2 months from the date of judgment. The opposite party shall bear its own costs and also shall pay

Rs. 1000/- to complainant as costs of litigation.”

7. Being aggrieved by the District Forum order, OP filed Appeal No. 1160/2009 and the State Commission vide Order dated 03.03.2020 partly allowed the appeal of the OP and set aside the Order passed by the District Forum, with the following directions: -

“ ORDER

The present appeal stands partly accepted.

The impugned judgment and order dated 06.06.2009 passed by the District Forum is set aside.

The respondent/complainant is directed that he shall pay 10% of estimated cost Rs. 4,26,022/-of property in question to appellant and shall also pay simple interest on this amount at the rate of 9% per annum from the date of payment to him till the date payment within two months from the date of judgment.

The respondent/ complainant is also directed that he shall ensure making payment of interest payable as per rule for delay in payment of instalments of estimated cost of house in question to appellant within two months from the date of judgment. The appellant is also directed that after making above total payment by respondent/ complainant, it shall ensure execution of sale deed of property in question in favor of respondent/ complainant within two months.

Both parties shall bear their own appeal costs.”

8. Dissatisfied by the Order of the State Commission, OP filed the present Revision Petition before this Commission praying:

A. To quash and set aside the order /judgment dated 03.03.2020 passed by the State Commission Lucknow, in the Appeal No. 1160 of 2009.

B. Any other order or direction, which this Hon'ble court may deems fit, just and proper in the circumstances, of the case, may also be passed, in the interest of justice.

C. to award the cost of the appeal.”

9. The learned Counsel for petitioner/OP reiterated the arguments presented before both the fora and asserted that the complainant failed to adhere to the payment schedule, making payments towards the estimated cost of the unit in installments after the due date. He argued that since the complainant was in default for not depositing the balance cost along with miscellaneous expenses towards the final payment as determined by the OP, no order could be passed against the OP under the Consumer Protection Act. The brochure for the OP's scheme did not specify any fixed date for the delivery of possession of the house, nor was any agreement was entered into between the parties that stipulated a time for delivery. He relied on ***GDA v. V.K. Shahi*** and ***BDA v. Vrinda Girati***, wherein it was held that an allottee/complainant is not entitled to relief under the Consumer Protection Act, 1986, if the balance amount demanded is not paid. It was also held in these cases that development authorities could recover penal interest from the allottees on the outstanding balance. Therefore, he prayed for the dismissal of the complaint.

10. The learned counsel for complainant reiterated the grounds of the complaint and relied upon the letter dated 12.09.1994. He argued that OP's assertion regarding the complainant's knowledge of the duplex price being an estimated cost was incorrect. The OP had repeatedly

assured the complainant that Rs. 4,26,022/- was the total cost payable for the unit. The demand for additional costs was erroneous, as the unit was allotted under the instant allotment scheme, meaning the construction was already complete and no further costs were incurred by the OP in completing the unit. He relied on *Mohan Khanna v. Ghaziabad Development Authority*, III (2003) CPJ 27 (MRTP) and *Shri Satyendra Singh v. GDA, 2018 SCC Online CCI 17*. Additionally, he asserted that the OP failed to present any documentary evidence to justify the increased cost by proving additional expenses incurred after the allotment of the unit. Accordingly, they prayed for the dismissal of the present petition with costs and requested that the impugned order be quashed and their relief as per the original complaint be granted.

11. I have examined the pleadings, associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

12. Admittedly, the allotment letter under the 'Instant Allotment Scheme' mentioned Rs.4,26,022/- for the property in question and the complainant made the payment of Rs. 4,26,022/-. Additionally, it is not disputed that possession of the property was handed over to him on 13.03.1995. After about eight months thereafter, he was notified vide letter dated 10.11.1995 to pay enhanced price of Rs. 5,25,603/- for the same property. Thus, the primary issue for determination is whether such demand for further payment eight months after handing over the property constitutes unfair trade practice by the OP?

13. It is the contention of the complainant that Rs. 4,26,022/- mentioned in the allotment letter was final, no other payment needs to be made, and he was reassured of the same time and again. On the other hand, OP contended that the said Rs.4,26,022/- mentioned in the allotment letter was only a rough estimate. In this regard, careful perusal of the allotment letter reveals that it refers to an 'estimated cost' and not the 'cost' which is final. However, there was delay in determining the final cost and notifying the same to the complainant and collecting the dues. Thus, the excess amount demanded by OP was Rs. 99,581/- (Rs.5,25,603 - Rs. 4,26,022). Clause 9(c) of the allotment letter stipulates that the possession could be taken by the allottee after paying 50% of the 'final cost' towards the house. This would imply that in order to hand over the possession, the 'final cost' would first have to be determined and informed to the allottee so that 50% of the final cost is determined and possession is handed over. Thus, ideally, the final cost should have been determined and conveyed to the complainant by 13.03.1995 itself. However, the same was done about eight months later vide letter dated 10.11.1995. Further, as also held by the learned State Commission, there is neither anything on record to justify this delay nor anything to show the expenses which led to the increase in the final cost.

14. In view of the above discussion, in the absence of anything on record showing the actual expense, allowing substantial upward revision of the cost of the house as demanded by the OP, would be arbitrary and without justification. However, considering that the said property was a part of an 'Instant Allotment Scheme' wherein the ready and leftover flats were being allotted and the fact that the counsel for the complainant agreed that the complainant was ready to pay 10% of Rs.4,26,022/- as enhancement of the estimated cost, we do not find any irregularity in the findings and direction of the learned State Commission.

15. The present Revision Petition No. 788/2020 is, therefore, dismissed.

16. There shall be no order as to costs. All pending Applications, if any also stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER