

# SUPREME COURT OF INDIA

S.Srinivasa Murthy

Vs.

Karnataka Housing Board

C.A.No.5584 of 2012

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya,JJ.)

22.08.2012

## JUDGMENT

### **G.S.Singhvi,J.**

1. This appeal is directed against order dated 14.3.2008 of the National Consumer Disputes Redressal Commission (for short, 'the National Commission') whereby the application filed by the appellant for review of order dated 9.9.2004 was dismissed.

2. In response to an advertisement issued by Karnataka Housing Board (respondent), which was published in the Times of India dated 14.7.1993, the appellant applied for allotment of a HIG flat in Vth Phase, Yelahanka under the self-financing scheme. He was allotted under S-HIGA Flat No.37, First Floor. In the allotment letter issued on 29.11.1993, the tentative cost of the flat was shown as Rs.3,40,000/-.

3. As per the advertisement, the flat was to be ready for occupation by December, 1994 but the construction of the flat was completed only in 1998 and possession thereof was delivered to the appellant on 19.5.1999.

4. In the meanwhile, the appellant sent letter dated 14.12.1998 to the Executive Engineer of the respondent with the request that he may be permitted to change the mode of purchase from lease-cum-sale basis to outright sale basis. He also conveyed his willingness to pay the balance amount required for that purpose. That letter reads as under:

“From S.Srinivasa Murthy, Qr 9/Type Iv, Telecom Quarters, C.T.O. Compound, Juhu Road, Mumbai-400054

To,

The Executive Engineer,

Karnataka Housing Board, Khb Metro No.1 Dn, Bangalore-560064.

Dear Sir,

Sub: Allotment of House at Yelahanka-5 Phase- Shig-Ff Bangalore Metro Division I Allotment Code: 210-288-37: Request To Purchase The Above Under Absolute Sale Deed. This is to request you kindly permit me to change the purchase of the above allotment from LEASE-CUM-SALE to ABSOLUTE SALE. I am willing to pay the balance amount required for this purpose on receiving a letter from you for this purpose. Please note that I require a letter indicating the balance amount to be paid so that I can avail loan from my office and send you the payment.

I shall await an early action on my request.

Thanking you,

Yours faithfully,

Mumbai,

14-12-98 (S.Srinivasa Murthy)”

5. The respondent accepted the request of the appellant and allotted a flat to him in 3500-Multi-tenements at Vth Phase, Yelahanka on outright sale basis. The cost of that flat was shown to be Rs.5,23,232/-.

6. Upon receipt of the revised allotment letters dated 22.1.1999 and 25.1.1999, the appellant sent communication dated 15.2.1999 to the Housing Commissioner of the respondent and protested against the alleged failure of the concerned authority to take cognizance of the fact that he had already deposited Rs.3,75,750/-. Thereafter, the respondent issued letter dated 6.4.1999 indicating therein that the appellant is required to pay the balance amount of Rs.1,57,482/-.The appellant accepted the revised allotment and deposited the remaining amount.

7. During the interregnum, the respondent suggested to the appellant that for the purpose of registration of the sale deed, the price of the flat be shown as Rs.4,31,918/- so that he will be required to pay registration charges on 81% of the total cost. The appellant conveyed his acceptance vide letters dated 22.8.1998, 27.11.1998 and 15.5.1999. The English translation of the last letter is reproduced below: “(Translation) Karnataka Housing Board Consent Letter

I have been allotted by the Karnataka Housing Board Flat No.37-S-HIG 'A' F.F. on full price basis and I have paid the full value of Rs. 533232.00.

I am agreeable to the decision of the Board that the registration value should be 81% of the sale price namely Rs.43198.00 and the stamp duty should be paid over the said amount.

If the remaining 19% of the value is included in the registration value the registration charges will be higher. Hence I agree to have the registration done at 81% of the sale price and I will not ask for refund of the remaining 19% of the sale price under any circumstances.

Name of The Allotted

Sd/-

S.V. Srinivasa Murthy Date: 15.05.1999”

8. After taking possession of the flat, the appellant filed complaint under Section 17 of the Consumer Protection Act, 1986 (for short, ‘the Act’) and claimed the following reliefs:

- “1. Interest on basis cost of Rs.340000/- from 9.2.95 to 18.5.99 310675-00
2. Refund of amount paid on 31.7.95 23840-00
3. Interest on 2 above for the period from 31.7.95 to 18.5.99 19435-00
4. Refund of amount paid on 13.1.96 11910-00
5. Interest on 4 above for the period from 13.7.96 to 18.5.99 7255- 00
6. Refund of amount paid on 29.4.99 157482-00
7. Interest on 6 above for the period from 29.4.99 to 18.4.99 1890- 00
8. Compensation for delay deficiency in specification and mental tension 50000-00
9. Costs of the complaint 2000-00”

9. In the counter filed on behalf of the respondent, the following pleas were taken:

“(i) The cost of the flat mentioned in the allotment letter issued on 29.11.1993 was tentative and the same was revised keeping in view the relevant factors including the cost of construction.

(ii) The appellant is stopped from questioning the demand of additional cost because he had accepted the terms and conditions embodied in letter dated 29.11.1993 without

any objection and, later on, he voluntarily sought change of the mode of purchase from lease-cum-sale basis to outright sale basis.

(iii)The time schedule fixed for completion of the flat was also tentative and possession of the flat was handed over after completion of construction and ancillary works.”

10. The State Commission rejected the appellant’s plea for award of interest on the amount deposited by him and observed: “Since the amount has been fixed as provisional at the time of issuing advertisement and subsequently cost has been raised on account of the escalation and the said amount has been paid by the complainant, the complainant is not entitled to get interest on the said amount as claimed in the complaint.”

11. The appellant’s grievance that there were deficiencies in the flat was also rejected by the State Commission by assigning the following reasons:

“The complainant has contended in his complaint and in his affidavit and his written arguments that the OP has handed over the flat not as per the specification- but with one bath room less. This fact has not been disputed by the OP. But however, OP contended that it has been changed as per the advise of, Expert body. The learned advocate Mr.Venkataramaiah submitted that in so far as violating the specification is concerned, the Board being a Public Institution works under special schemes and the notification is according to the scheme works out under a Special Committee constituted for that purpose. Therefore, the contention with regard to alteration of the specifications in the building is not open to the complainant as the Board has reserved its right subject to the scheme approved by the committee while notifying the allotment itself.”

12. On the issue of delay in the delivery of possession, the State Commission partly ruled in favor of the appellant and directed the respondent to pay compensation of Rs.25,000/-. This is evident from paragraph 11 of the State Commission’s order, which is extracted below: “As far as the delay in handing over the possession of the flat is concerned, the OP has contended that the delay in handing over the possession is not on account of deficiency in service, but on account of various acts of nature administration and various other problems which do not amount to deficiency in service. The explanation offered by the OP cannot be easily accepted. According to the original advertisement and the brochure issued by the Board the flat will be ready and has to be handed over by the end of 1994 but actually the flat was handed over to the complainant on 19.5.99. There was no fault on the part of the complainant. Under those circumstances we are of the opinion that ends of Justice will be

met if we direct the OP to pay a sum of Rs.25,000/- as compensation to the complainant for the delay in handing over the flat.”

13. The appeal preferred by the appellant against the order of the State Commission was dismissed by the National Commission vide order dated 9.9.2004. The National Commission agreed with the State Commission that the cost indicated in the allotment letter was tentative and the respondent had the right to revise the same and further that the appellant was not entitled to complain against the cost mentioned in the revised allotment letters because he had voluntarily sought change in the mode of purchase. The National Commission also held that the compensation awarded by the State Commission was just and proper.

14. The application filed by the appellant for review of order dated 9.9.2004 was also dismissed by the National Commission vide order dated 14.3.2008, the relevant portion of which is extracted below:

“Undisputedly, the tentative cost of the flat booked was Rs.3,40,000/- . It was enhanced from Rs.3,40,000/- to 4,35,000/- and further to Rs.4,83,000/-. Though the Petitioner had paid the amount as per allotment letter dated 6.4.99 a further amount of Rs.1,57,482/- was demanded which was also paid by him on 29.4.99 and the sale deed was registered. He took the possession on 19.5.99 which was promised to be given in 1994 Since the State Commission had already awarded interest @ 12 p.a. which was in tune with the decision of the apex court in the case of *GDA Vs. Balbir Singh*<sup>1</sup>. The Appellant could not clam interest @ 18% p.a. on the basis of earlier decisions of this Commission.”

15. The appellant reiterated the grievance made in the complaint and argued that the demand of additional price by the respondent was only unjustified and the State Commission and the National Commission committed serious error by declining to entertain his prayer for award of interest on the amount already deposited by him and the additional cost. He further argued that the respondent was not entitled to arbitrarily change the mode of allotment from self-financing scheme to outright sale scheme and charge higher price without paying interest on Rs.3,40,000/- deposited by him in furtherance of the initial allotment. He further argued that the State Commission and the National Commission committed grave error by refusing to direct the respondent to refund the excess amount of Rs.1,57,482/- with interest. In the end, he argued that the respondent should be directed to refund Rs.1,01,314/- which was charged in excess of the cost of the flat mentioned in the sale deed.

16. Learned counsel for the respondent argued that the cost of the flat mentioned in the allotment letter issued on 29.11.1993 was tentative and was liable to revision till the completion of construction and the respondent did not commit any error by revising the cost

from Rs.3,40,000/- to Rs.4,35,360/- and then to Rs.4,83,000/-. He further argued that the appellant cannot complain against the demand of total cost of Rs.5,23,232/- because he had voluntarily sought change in the mode of purchase and accepted the cost indicated in the revised allotment letters issued on 22.1.1999 and 25.1.1999. Learned counsel further argued that the appellant is stopped from questioning the cost of flat indicated in revised allotment letters because the same cost has been charged from other allottee of HIG house under the outright sale scheme.

17. We have considered the respective arguments/submissions and carefully scanned the record. In our view, the appellant cannot make any grievance against the cost specified in the revised allotment letters issued on 22.1.1999 and 25.1.1999 because he had voluntarily sought change in the mode of purchase and unequivocally agreed to pay the cost i.e. Rs.5,23,232/-. The appellant's plea that the cost of the flat cannot be more than what was specified in the registered sale deed sounds attractive but lacks merit. A careful reading of letters dated 22.8.1998, 27.11.1998 and 15.5.1999 sent by the appellant to the respondent makes it clear that he had conveyed his unequivocal willingness for registration of the sale deed showing the cost of the flat as Rs.4,31,918/- although the actual cost was Rs.5,23,232/-. Having taken advantage of the offer made by the Board to get the deed registered at a price less than the actual cost of the flat, the appellant cannot turn around and demand refund of Rs.1,01,314/-.

18. The appellant's grievance against the quantum of compensation awarded by the State Commission also merits rejection because the complaint filed by him was not bona fide.

19. In the result, the appeal is dismissed.

*Judgment Referred*

*I(2004) 5 SCC 0065*