

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C) 5684/2007**

SUSHIL KUMAR ...Petitioner
Through: Mr. G. S. Chaturvedi, Advocate.

Versus

D.D.A. & ANR. ...Respondents
Through: Mr. Arun Birbal, Advocate for
DDA

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
10.04.2017

1. Being aggrieved by the order dated 16.05.2006 passed by the Monopolies and Restrictive Trade Practice Commission (hereinafter referred to as 'the Commission') in Compensation Application No. 08/2002 the petitioner has preferred the present writ petition with the following prayers:

"i) Issue a writ of certiorari or any other writ, order or direction in the nature thereof setting aside the order dated 16.5.2006 passed by Monopolies And Restrictive Trade Practices Commission, in Compensation Application No.8/2002.

ii) Issue a writ of certiorari or any other writ, order of direction in the nature thereof directing the respondent no.1 to refund the excess amount of Rs.2,22,000/- paid towards the cost of flat with 18% interest w.e.f. date of excess payment till the date of realization.

iii) Issue a writ of certiorari or any other writ, order or direction in the nature thereof directing the respondent no.1 to make payment of interest on the installment paid as per demand notice dated 1.2.2000 being Rs.2,74,890/- along with further interest and pendent elite @18% p.a. from 1.8.2000 till realization.

iv) Issue a writ or certiorari or any other writ, order or direction in the nature thereof directing the respondent No.1 to refund the amount of Rs.12,500/- charged for restoration of cancellation with interest @18% p.a. till the date of realization.

v) Pass such other and further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case."

2. The facts of the case have been set out in detail by the Commission in the impugned order dated 16.05.2006. The relevant facts may be reproduced hereunder for ready reference:

"2. In response to a Self Financing Scheme-VII, 1994 announced by the respondent, the applicant made a deposit of Rs.50,000/- while making the application for becoming beneficiary in the scheme in question. The respondent had issued a comprehensive brochure spelling out the location of flats, number of flats, eligibility, manner of application and documentations to be completed by the applicant and also the method of making payment at different stages for different categories of flats. The brochure also spelt out conditions relating to surrender/cancellation and also the handing over of possession etc. The offer made by the respondent was towards mixed category of flats in different localities and the flats were of different designs which were in different stages of construction. It was also stated in the brochure that those who are successful for a flat where the work is already in progress, such applicants would be asked to deposit within 30 days a specified percentage anything up to 90 % of the estimated disposal price representing the expenditure already made and the amount required for construction of flats in next 3-4

months. There were different terms for payments for those where the construction was yet to begin.

3. XXX XXX XXX XXX

4. Vide letter dated 01.02.1995-10.02.1995, the respondent issued a demand-cum-allocation/allotment letter to the applicant. Vide that letter the respondent allotted a Type-II flat on the second floor in Pocket/Block-II Sector-19, Dwarka, New Delhi to the applicant. The estimated cost of the aforesaid flat was shown as Rs. 7 Lacs in the said letter. According to the applicant, in violation of the terms and conditions of the payment plan, the installments were demanded by the respondent on/before 10.05.1995. Though the demand-cum-allocation/allotment letter was dated 01.02.1995-10.02.1995, due dates of payment of instalments were shown as between 31.01.1992 and 31.07.1993. Thus the applicant was required to pay a sum of Rs.6,30,000/- + Rs. 100/- for membership charges within a short span and, according to the applicant, this was in violation of the terms and conditions of the scheme. It has been stated by the applicant that similarly placed allottees not only were given allotment letters where the cost of the flat was not only less but also they were given a payment plan strictly in accordance with the payment-schedule mentioned in the brochure spreading over a period of 18 months. Thus, according to the applicant, it was discriminated against.

5. Notwithstanding the above, the applicant arranged to make a payment of 5,64,000/- by making different deposits on different dates spread over from 09.05.1995 to 05.01.1996 (The payment as per the demand-allocation/allotment letter should have been completed by 10.05.1995). The total payment made above remained short by Rs.16,000/- approximately because the applicant adjusted the interest that should have accrued on initial payment deposit of Rs. 50,000/-. Nevertheless, 97% of amount as demanded by the respondent was made by the applicant. Though the applicant had been approaching the respondent for adjustment of interest as understood by the

applicant, there was no response from the respondent authority. The respondent, on the other hand, without any notice or personal hearing, cancelled the allotment of the flat to the applicant. The Applicant was forced to make the payment of Rs. 12,500/- towards restoration fee which, according to the applicant was illegally charged by the respondent. The applicant also deposited the balance amount of Rs. 16,000/- on 18.10.1996.

6. Finally, a draw was held on 11.01.1997 and the respondent vide its letter dated 04.05.1998 required the applicant to pay fifth and final installment of Rs. 2,63,495 on 31.05.1998. In this demand letter, the cost indicated was Rs.8,74,533/- against the original estimated cost of Rs. 7,00,000/-. The applicant prayed to the respondent authority to re-consider the case as the respondent had already overcharged the applicant. The respondent vide its letter dated 02.11.1998, reduced the cost of the flat in question to Rs.8,02,739/- and issued a revised demand letter.”

3. Thus, alleging that the respondent/Delhi Development Authority (DDA) has indulged in unfair trade practices, the petitioner herein filed an application under Section 12-B and Sections 2(o) & 36-A of the Monopolies and Restrictive Trade Practices Act 1969 (for Short “MRTP ACT”) seeking compensation under different heads from DDA on account of the alleged unfair trade practices adopted by it. The said application was rejected by the Commission by the impugned order dated 06.05.2006. Hence this petition.

4. We have heard the learned counsel for both the parties.

5. A perusal of the impugned order dated 16.05.2006 shows that the Commission had framed two issues *firstly*, whether the respondent has been indulging in unfair trade practices as alleged in the Compensation Application and *secondly*, whether the applicant has suffered any loss or

damages as a consequence of the alleged unfair trade practices. In the light of the arguments and counter arguments advanced by both the parties, the Commission rejected the claim by the impugned order, holding as under:

"13. There is no dispute regarding the making of an application in the prescribed time with the prescribe initial deposit of Rs.50,000/- as required under the Scheme of which the brochure is available on record. There is, however, perceptual discordance regarding the mode of making payment when the applicant is offered a demand-cum-allocation/allotment letter. On a careful scrutiny of the brochure, it comes out that the flats on offer were at different stages of construction. It had also been mentioned that those flats where the work was already in progress, the allottees would be asked to deposit within 30 days a specified percentage anything upto 90% of the estimated disposal price representing the expenditure already made and the amount required for construction of flats in next 3 to 4 months. In the instant case, the demand-cum-allocation/allotment letter was issued under this category and, therefore seeking of payment of all the four outstanding installments against the work started earlier within shorter span was within the terms and conditions of the scheme indicated in the brochure. This also explains the discordance with the date of demand-cum-allotment letter and also the dates of the different installments, which were clubbed together, having been predated. The beneficiaries of the Scheme where the construction as yet to commence in their case, the mode of payment was altogether different. Therefore, the contention of the applicant that in his case, he was given discriminately a shorter span for making four installments is unfounded on the facts of the case. He also did not protest as per the records requiring him to make the payment in such a short span. It is an admitted fact that the applicant could not make some payments in the time-frame prescribed and the part of the payment was made about 5 months later and the final part was made 14½ months later. Though the applicant had

been making representations to the respondent for allowing him to make payments in extended time and/or seeking reconciliation of the deposits made, the respondent was well within its rights to cancel the allotment in case the payment was not received by it as per the demand-cum-allocation/allotment letter. Therefore, the charging of the restoration amount for restoring the allotment after the same had been cancelled was also as per the scheme prescribed. The applicant cannot claim any refund on this account. The last and final demand letter would have been issued by the respondent only after it had received the full payment in regard to the earlier installments including the late-fee charges and interest etc. on account of late payment of part amounts. The respondent did not take unduly long time for issuing the demand letter for the 5th and final installment after its earlier dues were cleared by the applicant. The cost of the flat earlier indicated by the DDA was an estimated cost and as is customary, the final cost was indicated only at the time of 5th and final demand/allotment letter. A finer point has been missed by the learned counsels for the parties in not stating that the final cost indicated at this stage also included the cost for converting the allotment to freehold basis. Therefore, an escalation on this account later on would have been included in the final demand letter. On a representation made by the applicant, the final cost of the flat including the cost of converting the flat from the lease-hold to freehold was brought down. The offer of possession etc. was made to the applicant within two months of the completion of the formalities as required of the applicant.

14. Another contention taken by the applicant has been that the cost of the flat has been fixed higher than similarly situated flat. The applicant has cited the case of one Major Sanjay Anand. The two flats are not comparable as they are not only situated in different sectors but also there is a substantial difference in the plinth area of those flats. The flat being allocated to the applicant was already in the advanced stage of construction and if he had shown full diligence as required of him in making the payments etc., he would have been in a

position to get the allotment well ahead of Major Sanjay Anand. The contention of the applicant is that while Major Anand was given about 18 months to make the payment, he was given a much shorter time-span has already been answered in the order above because the two flats were at different stages of construction and the demand letter would be issued on different footings as far as the mode of payment is concerned in terms of the brochure. Therefore, the contention of the applicant, on this count, does not give any scope for seeking any relief from the respondent.

15. In support of his case, the applicant has relied on a judgment passed by Delhi High Court in the matter of **Harpyari Sodani Vs. DDA reported in 2002 VII AD (Delhi) 665**. The facts and circumstances of the instant case, when compared to the facts of the above-cited case, do not offer any scope for arriving at a different conclusion in favour of the applicant than what has been arrived at in the preceding paragraphs.

16. The Commission, therefore, does not find any substance in the allegation being made by the applicant that the respondent had indulged in unfair trade practices as alleged and thus the applicant is not entitled to any compensation as prayed for by him. Accordingly, the Compensation Application No.8 of 2004 fails. There shall be no order as to costs on the facts and in the circumstances of the case."

6. Assailing the said order, it is contended by Shri. G.S. Chaturvedi, learned counsel appearing for the petitioner that the Commission failed to appreciate the fact that neither the petitioner was given the benefit of making payment in short span of time nor was given the benefit in respect of pricing which is different in case of petitioner in comparison to other allottees/neighbours.

7. To substantiate his arguments, learned counsel for the petitioner has placed reliance upon *Delhi Development Authority vs. Joint Action Committee, Allottee of SFS Flats & Ors.*; AIR 2008 SC 1343. The learned counsel also relied upon the order of the National Consumer Disputes Redressal Commission in First Appeal No. 222/2005 dated 13.03.2008 titled *Delhi Development Authority vs. Mr. R. K. Sewal*.

8. On the contrary, Shri Arun Birbal, learned Standing counsel appearing on behalf of the respondent/Delhi Development Authority (DDA) submitted that the final price demanded by the DDA was neither arbitrary nor unreasonable and was based on the actual cost which the DDA had to incur under the Scheme. It is sought to be explained by the learned Standing Counsel for DDA that as per its policy, according to the stage of construction and the size and the location of the flat, different rates are charged by the DDA and since the flat of the petitioner was in early stage of construction and at a prime location, he was charged accordingly.

9. It is also submitted by the learned Standing Counsel for DDA that difference in cost between similar flats depends upon the year of allocation of flat. It is pointed out that the petitioner was allocated Flat No.709 in the year 1995 whereas Mohd. Ilyas was allocated Flat No.699 in the year 1991 much prior to petitioner. Consequently, there is a difference in the two sets of costing since land cost is charged as prevailing on the date of allocation. The counsel further clarified that the land cost in the year 1991 was Rs.975/- per sq.mtr. whereas, the land cost in the year 1995 was Rs. 2035/- per sq.mtr. and the same has resulted in the difference in costing between the two flats.

10. It is also explained by the learned Standing Counsel for the DDA that since the petitioner was a late entrant, DDA invested money on his behalf and the first four installments were demanded in the year 1995 and that the restoration charges and interest on delayed payment received from the petitioner were strictly as per the policy of the DDA.

11. As we could see, the limited grievance of the petitioner is with regard to the excessive payment made by him in relation to the payment as determined by the Scheme. In the affidavit filed on behalf of the respondent/DDA, the basis of costing on determining the cost of flat has been explained as under :

“BASIS OF COSTING

Under the SFS costing method the date of allocation is the relevant date for charging land premium. The date of allocation is the date when the demand cum-allocation letter is issued demanding the first four installments from the allottee. Thus, a person whose date of allocation is prior in point of time will usually start paying installments earlier and will have to pay a lower price for a comparative flat even if, the date of draw is the same and the possession is handed over at about the same time since there would be a difference in the land cost between the two sets of allottees.

Under the SFS costing method, the date of draw is basically relevant for indicating the bulk date on which, the major percentage of the demand letters are issued.

DIFFERENCE IN COSTING BETWEEN SIMILAR FLATS

Difference in cost of land (land premium) is an important reason for difference in costing between two similar SFS flats other than changes which are peculiar to specific flats like interest on belated payment of installments, Actual Period

Interest (API), restoration changes etc.”

12. The above-noticed costing method makes it clear that the difference is bound to be there in the costing between similar flats on the basis of the land cost as prevailing on the date of allocation. The record also shows that the case of the petitioner differs from Mohd. Ilyas as he was allocated the flat in the year 1991 and did not default in the payment of any installment whereas the allocation of the flat to the petitioner was in the year 1995.

13. With regard to the contention of the petitioner that the cost of the flat allocated to him was fixed higher than similarly situated flat i.e. the flat allotted to Maj.Sanjay Anand, we found that the said issue was considered in detail by the Commission and it was held in the para 14 of the impugned order:

"14. Another contention taken by the applicant has been that the cost of the flat has been fixed higher than similarly situated flat. The applicant has cited the case of one Major Sanjay Anand. The two flats are not comparable as they are not only situated in different sectors but also there is a substantial difference in the plinth area of those flats. The flat being allocated to the applicant was already in the advanced stage of construction and if he had shown full diligence as required of him in making the payments etc., he would have been in a position to get the allotment well ahead of Major Sanjay Anand. The contention of the applicant is that while Major Anand was given about 18 months to make the payment, he was given a much shorter time-span has already been answered in the order above because the two flats were at different stages of construction and the demand letter would be issued on different footings as far as the mode of payment is concerned in terms of the brochure. Therefore, the contention of the applicant, on this count, does not give any scope for seeking any relief from the respondent."

14. We are entirely in agreement with the reasoning of the Commission and we do not find any infirmity to interfere with the same.

15. The law is well-settled that the control which is exercised by this Court under Article 226 of the Constitution of India to interfere by issuing writs of *certiorari* over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. Admittedly, it is not the case of the petitioner that the impugned order is vitiated on account of violation of the principles of natural justice. There is also no allegation that the decision of the Commission is vitiated by *mala fides* or that it was passed disregarding the provisions of law. So far as the conclusions arrived at by the Commission are concerned, we are of the view that the same cannot be held to be based on no evidence. Therefore, even on that ground, the interference by us is unwarranted.

16. For the aforesaid reasons, absolutely no case is made out to interfere with the impugned order. The writ petition is without any merit and the same is accordingly dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

APRIL 10, 2017

gr/pmc