

107

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1187 OF 2015

(Against order dated 05.02.2015 in Appeal No. 250/2014 of the
Tamil Nadu State Consumer Disputes Redressal Commission)

1. D. Thiruvateeswaran,
L 13 A, Sarvamangala Colony,
Ashoknagar,
Chennai-600083
 2. Shivkumar K Iyer,
14 F2, Guru Brindavan Jeevan Nagar 4th Street,
Adambakkam,
Chennai-600088
- ... Petitioners

Versus

The Chief Executive Officer,
Central Govt. Employees' Welfare Housing Organization,
6th Floor, "A" Wing, Janpath Bhawan,
New Delhi-110001

... Respondent

BEFORE:

**HON'BLE MR. JUSTICE D.K. JAIN, PRESIDENT
HON'BLE MRS. M. SHREESHA, MEMBER**

For the Petitioners : In person
For the Respondent : Mr. Abhijeet Sinha, Advocate

ORDER

(Pronounced on 5th day of August, 2016)

D.K. JAIN, J., PRESIDENT

1. This Revision Petition, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), has been filed by the Complainants, against the order dated 05.02.2015, passed by the Tamil Nadu State Consumer Disputes Redressal Commission at Chennai (for short "the State Commission")

R.P.No. 1293 of 2015

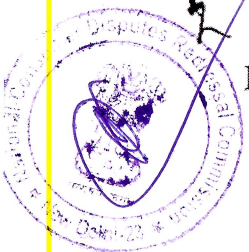


Page 1 of 7

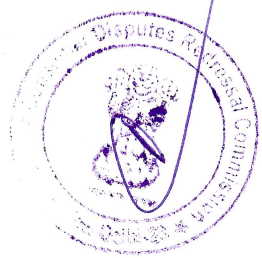
in First Appeal No. 250 of 2014. By the impugned order, while affirming the order passed by the District Consumer Disputes Redressal Forum at Thiruvallur (for short "the District Forum"), the State Commission has dismissed the said Appeal with liberty to the Complainants, the Petitioners herein, to approach the Civil Court or any other appropriate forum for redressal of their grievances.

2. The Appeal before the State Commission had been filed by the Petitioners against the order dated 29.04.2014 passed by the District Forum in Consumer Complaint No. 29 of 2012. By the said order, while holding that there was no unfair trade practice and deficiency in service on the part of the Respondent, viz., Central Government Employees' Welfare Housing Organization, the District Forum had dismissed the Complaint.

3. Succinctly put, the relevant facts giving rise to the present Revision Petition are that on the launch of a housing Scheme, christened as "Chennai Phase -II Housing Scheme" by the Respondent, an organization formed to provide affordable houses to the serving and retired Central Government Employees, at Paruththippattu, Avadi - Poonamallee High Road at Chennai, on their applications, the Petitioners were allotted Type 'D' and Type 'B' dwelling units respectively in February, 2006. As per the allotment letters, the sale consideration of the said units was to be paid in six installments as per the payment schedule, reflected in the Rule Book supplied. The Petitioners paid all the installments as well as the escalation cost, as demanded by the



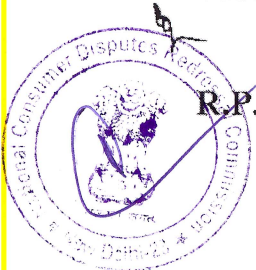
Respondent. As per para-8 of the said Rule Book, the Respondent was under an obligation to deliver possession of the said units to the Petitioners within 30 months of the commencement of the construction, slated for 2006. The Respondent did not adhere to the said stipulation and offered possession only on 16.01.2012, that too before getting the completion certificate from the Chennai Metropolitan Development Authority (CMDA) and with defects in the dwelling units. Allegedly, till the date of filing of the Complaint, the CMDA had not issued the completion certificate in respect of 10 out of 37 blocks and perhaps, for the said reason, the last date for paying the final installment and taking possession of the units was fixed as 30.09.2012. As per Para-7, Part-A, Note (iii) of the payment schedule in the Rule Book, the buyers were obliged to pay an amount equal to 1.5% of the total cost of the dwelling units towards a reserve fund called Contingency Reserve Fund (CRF), along with the sixth and final installment. The said fund, which was meant for all projects, was created by the Respondent to cater to unforeseen requirements/expenses. Initially, the first Petitioner resisted the demand on that account but, on rejection of the request made in this regard, both the Petitioners paid the amount demanded towards CRF. According to the Petitioners, all the housing schemes of the Respondent were self-financing schemes, to be carried out at "no loss and no profit" basis, under which it was obliged to spend the money collected for a particular project and then distribute the total cost on pro-rata basis amongst all the buyers. It was



alleged that though the Contractor had quoted the rate for the construction of the dwelling units @ ₹896/- per sq. ft. but the Respondent, after accounting for 2% of this amount towards "contingency", 1.5% towards "reserve fund" and 2% towards "CGEWHO overheads", initially at the time of announcement of the scheme, fixed the cost of the dwelling units @ ₹1041/- per sq. ft. and subsequently on final costing at ₹1352/- per sq. ft.

4. In the aforesaid background, the Petitioners contended that allottees' liability being restricted to paying only for the cost of land, infrastructure, construction and common amenities and having charged the said amounts, the Respondent had no moral or legal authority to further levy 1.5% of the total cost towards CRF. Alleging that the levy and collection of the said additional amount amounted to deficiency in service and unfair trade practice on its part, the Petitioners filed the afore-noted Complaint before the District Forum, *inter alia*, praying for a direction to the Respondent to refund to them the amount collected towards CRF with interest @ 18%; compensation of ₹1,50,000/- to each of them towards unfair trade practice; further compensation of ₹1,00,000/- towards physical loss, mental agony etc.; and ₹10,000/- towards litigation costs.

5. The Respondent contested the Complaint. In its Written Version, it was pleaded that two blocks, wherein the Petitioners' flats were located, had already been approved by CMDA and they had also taken possession thereof. Subsequently, the Respondent had also received the completion certificate

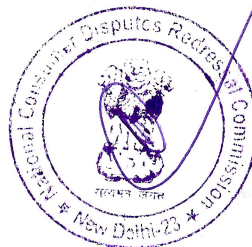


R.P. No. 1293 of 2015

Page 4 of 7

from the CMDA for the remaining 10 blocks and at the stage of demand of second installment, the Respondent had informed all the allottees that the project would be completed in September, 2010, perhaps the triggering point for the first Petitioner to file a Consumer Complaint, No. 40/10, in October, 2010 before the District Forum. In an earlier Complaint, the District Forum had awarded compensation to him on account of the delay in delivery of possession of the flat and, therefore, there was no occasion for the Petitioners to go on filing Complaints on the same issues. It was asserted that the Petitioners had no legal right to question the policy decisions taken by the Respondent relating to the pricing of the flats etc., more so, when uniform systems and procedures were being adopted to work out the cost of the flats.

6. On consideration of the evidence adduced by the parties before it, the District Forum, *inter alia*, observed that the main prayer of the Petitioners was to direct the Respondent to refund ₹33,900/- and ₹21,400/- to the first Petitioner and the second Petitioner respectively but since there was no evidence to show that the Respondent had collected the said amounts, it was not possible to order refund thereof. As regards delay in delivery of possession, the first Complainant had already been compensated by the District Forum in Consumer Complaint No. 40/10 and accordingly for the same cause of action, he could not file a second Complaint along with the second Petitioner. Consequently, while holding that there was no unfair trade practice

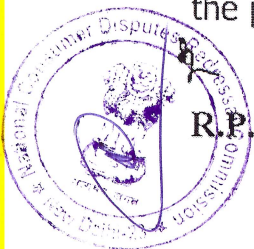


and deficiency in service on the part of the Respondent, as noted above, the District Forum dismissed the Complaint.

7. Aggrieved, the Petitioners filed the afore-noted Appeal before the State Commission. As stated above, the State Commission has also dismissed the Appeal *albeit* with liberty to the Petitioners to approach the Civil Court or any other appropriate forum for redressal of their grievances. In the opinion of the State Commission, apart from the fact that the Complaint had been filed by two individual consumers without obtaining the permission of the District Forum, as contemplated under Section 12(1)(c) of the Act, it also involved complex issues, which could not be adjudicated in summary proceedings under the Act. Hence, the present Revision Petition.

8. Having heard Petitioner No.1, who argued the case on behalf of Petitioner No.2 as well, and perused the documents on record, in particular the tabulated statement projecting the final costing of the flats in "Chennai Phase-II Housing Scheme", we are of the opinion that in the very first instance the Complaint filed by the Petitioners under the Act, questioning the inclusion of 1.5% of the cost of the dwelling units towards the Contingency reserve fund, termed as CRF, was *per se* misconceived.

9. It is trite law that price fixation is neither the forte nor the function of the Courts. It is not within the province of the Court, much less a quasi-judicial Body, like the Consumer Fora, constituted under the Act, to examine the price structure of the goods, flats in the instant case, in minute detail, like

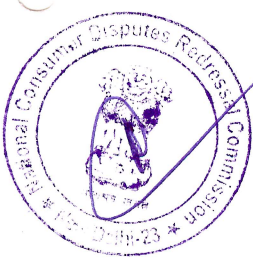


a Chartered Accountant. Though it is true that the scope of the expression "deficiency", as defined in Section 2(1)(d) of the Act, is very wide but unless it is established that the price fixation is arbitrary or is in respect of application of a wrong principle, a bonafide and reasonable decision relating to pricing/costing, by a public authority or body, constituted to provide affordable housing to its employees, cannot be termed as a deficiency on its part.

10. In the present case, on Petitioner's own showing, the said levy is a part of final costing of the flats meant for creating a reserve to meet unforeseen eventualities for the benefit of the owners/occupants of the flats. Indubitably, it is not the case of the Petitioners that the said levy has been diverted by the Respondent for the purpose other than on the housing for its staff.

11. In view of the afore-going discussion, we do not find any jurisdictional error in the impugned order, warranting our interference in revisionary jurisdiction. Consequently, the Revision Petition fails and is dismissed accordingly, with no order as to costs.

Sd/-



Free Certified Copy

Serial No. of the application..... 3519
 Date of receipt of application..... 21/8/16
 Case No..... Op 11187/15
 Name of the applicant..... Mr. Abhijeet Sinha
 Date of disposal..... 2/2/16
 Date of preparation of copy..... 2/2/16
 Date of dispatch of Free Certified copy of order:
 By hand..... 2/2/16
 By Post.....

(D.K. JAIN J.)
PRESIDENT

Sd/-

(M. SHREESHA)
MEMBER

YD

(Handwritten signature)

Assistant Registrar/ Section Officer
National Consumer Disputes
Redressal Commission

R.P. No. 1293 of 2015

Page 7 of 7

(Handwritten signature)
2/8/16