

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

REVISION PETITION NO. 1293 OF 2015

(Against order dated 05.02.2015 in Appeal No. 319/2013 of the
Tamil Nadu State Consumer Disputes Redressal Commission)

D. Thiruvateeswaran,
L 13 A, Sarvamangala Colony,
Ashoknagar,
Chennai-600083

... Petitioner

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 Petitioner : In person
For the Respondent : Mr. Sandeep Kapoor, Advocate

ORDER

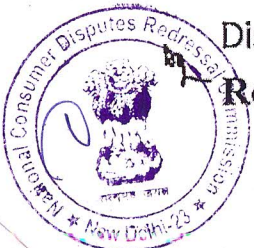
(Pronounced on 5th day of August, 2016)

D.K. JAIN, J., PRESIDENT

1. The Complainant, a retired Central Government Employee, has preferred this Revision Petition, questioning the legality and correctness of the order dated 05.02.2015, passed by the Tamil Nadu State Consumer Disputes Redressal Commission at Chennai (for short "the State Commission") in First Appeal No. 319 of 2013. By the impugned order, while affirming the order passed by the District Consumer Disputes Redressal Forum at Tiruvallur (for short "the District Forum"),

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dated 02.09.13 in Consumer Complaint No.8 of 2012, the State Commission has dismissed the Appeal, preferred by the Complainant. By the said order, the District Forum, while holding that the Complainant had failed to establish any deficiency in service and unfair trade practice on the part of the Respondent, viz., Central Government Employees' Welfare Housing Organization, had dismissed the Complaint.

3. Sometime in November, 2005 the Respondent launched a housing Scheme, known as "Chennai Phase - II Housing Scheme" at Paruththippattu, Chennai, for the serving and retired employees of the Central Government. The Petitioner applied for and was allotted a Type D flat in February, 2006, on the terms and conditions spelt out in the Rule Book issued to the Petitioner. On 8th and 9th of November, 2011, draw of lots for allotment of a specific flat was conducted by the Respondent, wherein Unit No. 45 in Block III, came to be allotted to the Petitioner. Covered Car Parking (CCP) was to be allotted later. However, prior to it, in response to Respondent's letter dated 01.07.2011, inviting options for a CCP at an additional cost of ₹1,50,000/-, the Petitioner protested to the charging of extra amount for the CCP. Armed with the decision of the Hon'ble Supreme Court in Nahalchand Laloochand Private Ltd. v. Panchali Cooperative Housing Society Ltd., CA No. 2544 of 2010,

wherein it was, *inter alia*, held that stilt spaces are common areas and

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cannot be sold as CCPs at a cost for the exclusive use of any apartment owner and any undertaking given by a flat purchaser, will not bind him/her as the promoter has no right to sell stilt spaces, which are neither appurtenant to nor accessory to a flat, he requested the Respondent for allotment of the CCP at the stilt floor at no extra cost. The said prayer did not find favour with the Respondent and was rejected vide its letter dated 12.12.2011. It appears, CCP was not allotted to him as he refused to pay the amount demanded towards its cost.

4. Apparently, upset with the rejection of his view point, alleging unfair trade practice on the part of the Respondent in denying him a CCP, on the ground of his refusal to pay its price, in violation of the aforesaid decision of the Apex Court, the Petitioner filed the afore-noted Complaint before the District Forum, *inter alia*, praying for directions to the Respondent not only to pay compensation of ₹1,50,000/- for demanding the said sum for CCP, he also demanded a compensation of ₹1,00,000/- on account of unfair trade practice, viz., collecting consideration money in April, 2006 before getting the statutory permissions; additional compensation of ₹1,50,000/- towards mental agony suffered; litigation costs of ₹10,000/-; and to allot CCP in the

by



same Block in which he had been allotted a flat and to put on hold the demand of sixth/final instalment.

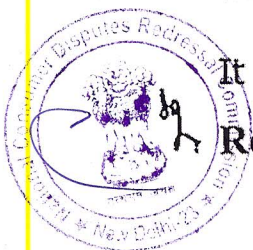
5. At the outset, we may note that the issue canvassed before us in this Revision Petition pertains only to the question of allotment of CCP, free of cost.

6. The Complaint was contested by the Respondent on diverse grounds. Insofar as the question of allotment of CCP, without charging any additional amount, is concerned, it was pleaded that out of 572 allottees 230 had paid all the instalments and, as a matter of fact, out of the said 230 allottees, 80 had taken physical possession of their respective premises and the remaining allottees, except the Petitioner, had also shown interest in paying the final instalment, including the cost of CCP. It was stated that subject to availability and payment of cost, a CCP could be allotted to the Petitioner. As regards the applicability of the decision of the Supreme Court in Nahalchand Laloochand Private Ltd.'s case (Supra), it was urged that as the said decision was rendered in the context of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale Management and Transfer) Act, 1963, the same was not applicable to the Respondent's housing scheme at Chennai, which was governed by the Tamil Nadu Apartment Ownership Act, 1994.

It was pointed out that in para 5(iv) of the Scheme brochure, it was

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stated that few car/scooter parkings under the stilt might be provided and options for the same would be invited at the end of the project and allotment would be made through a computerized draw at extra cost, to be intimated then. It was asserted that the parties were bound by the terms of agreement and having agreed to pay the charges for CCP, if allotted, the Petitioner could not seek allotment of the same free of cost, particularly when the Respondent was operating its affairs on "no profit & no loss" basis and non-payment of the cost against CCP would severely affect the completion of the project.

7. On consideration of the evidence adduced by the parties before it, and relying on the decisions rendered in Sri Lakshmi Saraswathi Apartments Welfare Association v. G. Shiva Narayana & Ors, 2012 (4) CPR (NC) and Nahalchand Laloochand Private Ltd. (Supra), the District Forum, *inter alia*, observed that the Petitioner could not demand CCP free of cost and since limited CCPs were available, the Petitioner may be allotted the same on his paying extra cost. Consequently, while holding that there was no deficiency in service on the part of the Respondent in not allotting the CCP, the District Forum dismissed the Complaint.

8. Aggrieved, the Petitioner filed the afore-noted Appeal before the State Commission. However, as noted above, the State Commission has

also dismissed the Appeal. While doing so, the State Commission has



observed that the Petitioner had already filed Complaint Case No. 40 of 2010, which had been disposed of by the District Forum, awarding compensation for delay in delivery of possession of the flat. Since the substantial issues, raised in the second Complaint, had already been decided in the earlier Complaint, nothing survived for fresh adjudication and the second Complaint would lead to multiplicity of proceedings and piecemeal orders. It has been held that having agreed to pay for the CCP, the Petitioner was estopped from claiming the same free of cost. Hence, the present Revision Petition.

9. The short question falling for consideration is whether demand of additional amount from the Petitioner for allotment of a Covered Car Parking (CCP) at the stilt level by the Respondent amounts to unfair trade practice and/or deficiency in service on its part?

10. The Respondent, a society registered under the Societies Registration Act, 1860, was created as Central Government Employees' Welfare Housing Organization, a body of the Ministry of Urban Employment and Poverty Alleviation, Government of India, for execution of housing projects for the Central Government retired and serving employees, on all-India basis. According to the Respondent, the organization runs its affairs on no-profit-no-loss basis and its main

object is to provide affordable housing to the Central Government



employees. It is also not in dispute that while furnishing the tentative details of Dwelling Units, in Part-A of the Brochure, which included the cost of the Unit, a note was appended, which reads as follows:

"(iv) Few car/scooter parkings under stilts may be provided. Options for the same will be called towards end of the project and allotments made through a computerized draw (in case of higher demand), at extra cost to be intimated then. Cost of parking space(s), if allotted, would be called and become payable at the time of final instalment."

11. It is, thus, evident that at the time of applying for allotment of flat under the said Scheme, in the year 2005, the Petitioner was not oblivious of the fact that he would be charged for the CCP if he was to opt for a designated parking place. If the Petitioner had held the view that the afore-extracted note tantamounted to unfair trade practice on the part of the Respondent, it was open to him to challenge its validity at the relevant point of time and not wait till the year 2011, when options for allotment of CCP, on payment basis, were actually invited by the Respondent. In our opinion, therefore, the cause of action to question the legality of the said additional demand having arisen at the time of making an application for allotment of a dwelling unit on the terms and conditions stipulated in the brochure supplied to all the applicants in the year 2005, when the Scheme was launched or at least

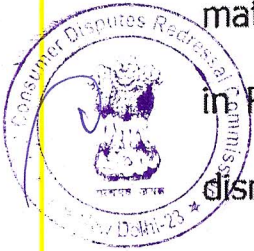
in February, 2006, when he was found eligible for allotment of flat, the



Complaint filed by the Petitioner sometime in the year 2012, on the issue before us, was clearly barred by limitation.

12. Having arrived at the said conclusion, we deem it unnecessary to examine the validity of the said demand on the touchstone of the afore-noted precedents and the decision of the Supreme Court in DLF Limited v. Manmohan Lowe And Ors., (2014) 12 SCC 231. Even otherwise, the said decision is clearly distinguishable on facts, inasmuch as the Respondent organization having been set up for the welfare of the employees of the Central Government, cannot be equated with a real estate developer or a realtor undertaking, established with the sole object of earning profits.

13. For the afore-going reasons, we do not find any illegality or material irregularity in the impugned order, warranting our interference in Revisional Jurisdiction. Resultantly, the Revision Petition fails and is dismissed accordingly, leaving the parties to bear their own costs.



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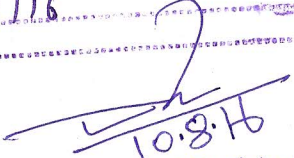
Serial No. of the application..... 3556
Date of receipt of application..... 10/8/16
Case No..... 1293/15
Name of the applicant..... Mr. bhijeet Sinha
Date of disposal..... 5/8/16
Date of preparation of copy..... 10/8/16
Date of dispatch of Free Certified copy of order.....
By hand..... 10/8/16
By Post.....
YD/

Sd/-

(D.K. JAIN J.)
PRESIDENT


Sd/-

(M. SHREESHA)
MEMBER


10.8.16
Assistant Registrar/ Section Officer
National Consumer Disputes
Redressal Commission

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