

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1083 OF 2020

(Against the Order dated 06/08/2020 in Appeal No. 1191/2019 of the State Commission
Rajasthan)

1. RAJASTHAN HOUSING BOARD & ANR.Petitioner(s)

Versus

1. RAMESH CHAND CHATURVEDIRespondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

FOR THE PETITIONER : MR NAVEEN KUMAR CHAUHAN, ADVOCATE
WITH MR MOHIT RAWAT, ADVOCATE

FOR THE RESPONDENT : MR RAKESH RAJWANIA, ADVOCATE

Dated : 03 August 2023

ORDER

The present revision petition has been filed against the judgment dated 6th August 2020 of the Rajasthan State Consumer Disputes Redressal Commission, Bench No.1, Jaipur (in short, 'the State Commission') in First Appeal no.1191 of 2019.

2. The brief facts of the case are that the petitioner Housing Board launched a housing scheme viz., "Kalpataru" in the year 1998 for allotment of various categories of houses in urban areas of Rajasthan according to the income group of the applicants on payment of monthly installments. On 29th April 1989 the respondent applied for a residential house in Jaipur city in the category of Lower Income Group (in short, 'LIG') vide application no. 40220 after depositing the registration amount of Rs.2000/- in the above said scheme, wherein the seniority of the respondent was fixed at P 32/G-1/ LIC/HP/89.

3. On 6th November 1993, the Housing Board issued a reservation letter dated 5529 demanding seed money of Rs.10,000/- in three instalments, of which the first two instalments were of Rs.3500/- each and the third instalment was of Rs.3000/-. The respondent deposited the first instalment on 04.12.1993 and submitted the copy of the challan to the Housing Board. The Housing Board included the name of the respondent in the lottery draw held on 23.12.1993 and allotted house no. 37/174 Mansarovar, Jaipur, vide allotment letter no.1003 dated 28.04.1994 on out right sale basis on deposit of the sale amount with the petitioners. The Housing Board has stated that as the loan facility was discontinued by the Government on the recommendation of HUDCO for the scheme, letters were issued on out right sale basis. The petitioner has stated that the respondent failed to deposit the sale consideration as per allotment letter no. 1003 dated 28.04.1994 and a final opportunity was given to the respondent by way of a notice no.1387 dated 10.07.1995 to pay the sale consideration and take possession of the said house by 25.07.1995. However, the respondent failed to pay the sale price and thus the allotment as well as the registration of the

respondent was cancelled vide letter no.3624 on 16.11.1995 asking the respondent to submit the fourth original copy of the challan to refund the amount deposited.

4. On 26.02.2002 respondent approached the petitioner with a letter seeking benefits of the special scheme for defaulters to relax violation of payment terms since registration and allotment of respondent had been cancelled as there was no provisions under the Rules and Regulations of the petitioner Board to restore a registration which was cancelled after the allotment of unit due to non-payment of the sale consideration. The respondent submitted an application through FAX for restoration of his registration. In response the petitioner Housing Board issued letter no.1186 dated 06.09.2003 informing the procedure for refund with request to submit necessary papers including receipt for refund of the amount deposited by the respondent. The respondent submitted letters dated 24.05.2005, 28.10.2005 and 23.01.2006 seeking allotment of same house no. 37/174 on out right sale basis. This request was rejected by the Housing Board vide letter no.3460 dated 02.03.2006. On 13.10.2006, it amended the provisions for restoration of cancellation and re-considered the application of the respondent and restored the same. The Housing Board states that after restoration, a new seniority was required to be fixed as per the year in which the registration was restored. Accordingly, the petitioner Housing Board informed the respondent vide letter no.1777 dated 13.10.2006 of his new priority no. P.01/Alp/G-01/HP/06 seeking restoration fees of Rs.10,000/- which was done on 21.11.2006.

5. The Petitioner/Housing Board thereafter issued reservation letter no. 2646 on 23.12.2010 demanding seed money amount of Rs.30,000/- in three instalments of Rs.10,000/- each as per schedule provided in the letter. Respondent deposited the first instalment on 04.01.2011 but failed to deposit the second and the third instalments. Consequently, the respondent was not included in the lottery draw of allotment due to default. On 12.12.2012, the respondent submitted a letter with the Housing Board for physical possession of house no. 37/174 Mansarovar, Jaipur. The Housing Board clarified vide letter no. 2403 dated 29.01.2013 that the house allotted in 1993 stood cancelled and had been allotted to some other applicant and that as the respondent's registration was restored in 2006, re-allotment would be as per the new priority based on 2006 seniority, subject to availability of houses. The respondent, however, represented on 22.03.2013 for physical possession of house no. 37/174 Mansarovar, Jaipur. On 06.05.2013, the Housing Board issued letter no. 335 to the respondent reiterating its position. On 31.05.2016, the Housing Board decided to allot flats/ houses in Pratap Nagar, Sanganer Scheme, Jaipur to allottees after taking their consent as land was not available in Mansarovar Scheme, Jaipur for further allotments of flats. Accordingly, vide letter no. 320 dated 31.05.2016 it sought the respondent's consent for transfer of registration to the new scheme. The respondent failed to give his consent for allotment in Pratap Nagar, Sanganer Scheme, Jaipur and remained adamant on allotment under Mansarovar Scheme despite another letter no.739 dated 03.08.2016.

6. Thereafter, the respondent filed consumer complaint no. 467 of 2016 dated 11.08.2016 before the District Consumer Disputes Redressal Forum, Fourth, Jaipur (in short, 'the District Forum') praying for delivery of possession of the previously allotted house no. 37/174 or, alternatively, to allot any other house/ flat of LIG in Mansarovar, Jaipur with compensation of Rs.50,000/- towards mental agony.

7. On 22.08.2016, the respondent submitted a reply to letter no.739 alleging that he was forced to take a flat in Sanganer during the pendency of the above consumer complaint.
8. On contest the District Forum vide order dated 10.05.2016 allowed the complaint and directed as under:

“Resultantly, the complaint of complainant is allowed against opponents hereby directing that the opponents to issue the allotment letter and deliver the possession of house in question no. 37/174, Mansarovar Scheme, Jaipur to complainant as per the costing on dated 28.04.1990 for after adjusting the amount of Rs.14,000/- + Rs.2000/- and Rs.10,000/- for total amount of Rs.26,000/- deposited towards allotted house no. 37/174. Mansarovar Project, Jaipur with interest as per rules, within two months from today. In case, if the house no. 37/174 Mansarovar Project, Jaipur is not available then the house/ flat of same dimensions (46.08 m²) in Mansarovar project, Jaipur only at the same rate shall be provided within 2 months from today. If it is not possible to provide the house/ flat in Mansarovar project, Jaipur then the house/ flat of same dimensions (46.08 m²) shall be provided in the any other equivalent project at the same rate within 2 months.

Further, the opponents are also liable to pay the amount of Rs.10,000/- as compensation towards mental agony and Rs.5,000/- towards litigation expenses to the complainant.

The opponents will comply with this order within two months otherwise the opponents will be liable to pay interest at the rate of 9% per annum on the above amount of Rs.15,000/- from the date of this order till the actual payment.”

9. The Petitioner Housing Board’s appeal no.1191 of 2019 before the State Commission was allowed vide order dated 06.08.2020 with the following directions:

“The complainant got registration under LIG by depositing Rs.2000/- deposited the amount of Rs.13,680/- from 07.10.198 to 08.09.1994, the house no.37/174 was allotted on 28.04.1994, the demand of Rs.93,937.27 was raised from complainant, the amount of Rs.9228/- was adjusted out of Rs.13,680/-, the complainant deposited difference amount on 27.11.2006 then the priority was fixed, thereafter it was intimated that house is not available in Mansarovar, so take house in Pratap Nagar, Sanganer. The District Forum allowing the complaint directed to calculate the amount and allot house no.37/174 Mansarovar Scheme, Jaipur and if not available then directed to allot house in any other similar scheme. It is further directed to allot the house at the rates on dated 29.04.1994. The Consumer Forum is not having jurisdiction to interfere in the costing.

Therefore, the appeal of appellant is partly allowed by directing that the date will be 10.05.2019 when the judgment was passed by lower forum instead of 28.04.1994, the remaining order is upheld.”

10. Hence, the present revision petition.

11. I have heard the learned counsel for the parties and perused the records carefully.

12. Learned counsel for the petitioner Housing Board argued that the State Commission has wrongly changed the date of costing to 28.04.2019, i.e., the date when the complaint was decided, contrary to the facts and circumstances of the case, without going into the question that the respondent was not eligible for participation in any lottery draw due to non-payment of seed money in compliance of reservation letter no.2646 dated 23.12.2010, as the respondent failed to pay the second and third instalments. He further states that the impugned order of the State Commission was against the principles of natural justice and biased and that the orders of the *fora* below be quashed/ set aside. According to the petitioner the State Commission has ignored the facts on record that possession cannot be delivered to the respondent as he was not eligible to draw of lots due to non-payment of instalment of seed money and that respondent cannot be allotted the house at the prevailing rate on 10.05.2019. It is also stated that the State Commission and District Forum failed to appreciate that the respondent was not entitled to the reliefs granted by the District Forum without there being any valid ground for allotment and that both the *fora* below have granted reliefs which were not even prayed for by the respondent. Petitioner Housing Board argued that respondent did not pray for allotment of a house/ flat of the same size of 46.08 sq meters; rather it was only prayed for allotment of house/ flat of same denomination, i.e., LIG. Learned counsel for the petitioner submitted that the State Commission failed to appreciate that the petitioner Housing Board has repeatedly sought consent of the respondent for transferring his choice to Pratap Nagar, Sanganer due to non-availability of houses/ flats in Mansarovar which was not given. It is contended that the *fora* below failed to appreciate that there was no deficiency in service on the part of the petitioner Housing Board. He states that the Hon'ble Supreme Court and this Commission in a catena of judgments have held that the Consumer *Fora* have no jurisdiction to direct delivery of possession and costing of house.

13. It is argued that petitioner is a non-profit department and public money was involved in the development of lands and construction of houses, subject to the availability of the land by the State Government. Therefore, respondent was not a 'consumer' of the petitioner as defined under section 2 (d) of the Consumer Protection Act. Reliance was placed upon judgment of the Hon'ble Supreme Court in ***Ghaziabad Development Authority vs Balbir Singh*** II 2008 CPJ 13 SC (2008) 7 SCC 686.

14. It is argued that the *fora* below failed to appreciate that the ratio of judgments in ***DDA vs Puspendra Singh Jain*** (1995) AIR SC 1 - JT 1994 SC 292, in ***Mukund Damodar Raghav vs CIDCO Ltd.***, [III (2015) CPJ (NC)]; and in ***Bareilly Development Authority vs Ajay Pal Singh*** (1989) 2 SCC 116, wherein it had been settled that the Consumer *Fora* cannot go into the question of pricing of house/ flat; that mere registration does not entitle the applicant to get the house allotted at a price mentioned in the booklet and that allotment of house has to be at the price applicable when the house was allotted. Therefore, in view of the above settled legal position, the impugned orders are totally contrary to the legal as well as factual position, and thus liable to be set aside.

15. Learned counsel for the respondent stated that the respondent was a retired army person and a senior citizen. In the year 1988, the respondent applied for an LIG Kalptaru Residential Scheme, Mansarovar, Jaipur and deposited Rs.2000/- as registration and payment mode of rent/ hire purchase method was opted for. According to the respondent, the price of the LIG

hose was stated as Rs.25,000/-. The respondent paid a total amount of Rs.13,680/- during the period 07.10.1089 to 08.09.1994 under the rent/ hire purchase method which has not been disputed by the petitioners. Learned counsel for the respondent stated that a house bearing no. 37/174 was allotted to the respondent on 28.04.1994 in Mansarovar Scheme but it was allotted on out right purchase method instead of rent/ hire purchase method. The petitioner Housing Board demanded a total amount of Rs.83,937.27 vide its allotment letter dated 28.04.1994, whereas the respondent has already paid Rs.13,680/- to the petitioner. According to the respondent, the petitioner Housing Board's calculation was per the allotment letter wherein Rs.9228/- was deducted instead of Rs.13,680/-. The respondent raised objections vide letter dated 18.07.1994 and sought clarification relating to arbitrary deduction of amount as well as change of payment method from Hire Purchase to outright purchase method but no reply was provided by the petitioner to the respondent. He further states that the allotment of House no.37/174 was neither cancelled nor the amount was refunded back to the respondent till 2002. As there was no reply from the Housing Board, the respondent showed willingness to make outstanding payment under Special Concession Scheme, 2002 but no action was taken upon such application produced under the Special Rebate Scheme. As the Housing Board did not consider the written request of the respondent, the respondent once again sent his consent letter vide communication dated 20.01.2006 and showed his willingness to make the payment on outright basis instead of Hire Purchase Method. The respondent was directed to deposit a total of Rs.10,000/- as revival of the allotment. The respondent deposited the amount and intimation of the same was conveyed to the petitioner vide letter dated 27.11.2006.

16. Respondent further stated that he sent a legal notice on 05.12.2006 to the petitioner Housing Board seeking possession of the allotted house and also willingness to make the payment of the remaining amount. However, no response to the said legal notice was received. It is alleged that the petitioner Housing Board acted in an arbitrary manner and intimated the respondent that they are unable to provide the house in Kalptaru Yojna and forced the respondent to furnish a consent letter to take a flat in Pratap Nagar, Sanganer Yojna. The respondent has sought a house in the Mansarovar Scheme as committed at the time of booking. Hence, the learned counsel for the respondent prays that the revision petition be dismissed on the ground that the same is barred by limitation. Learned counsel for the respondent states that there is a delay of 18 days, and there is no documentary evidence adduced to substantiate the delay in filing the present revision petition. He further states that the delay in filing the revision petition has been calculated wrongly whereas the instant petition has been filed with a delay of 33 days, without explaining the reasons. He has relied upon the judgment of the Hon'ble Supreme Court in (i) ***Oriental Aroma Chemical Industries Ltd., vs Gujarat Industrial Development Corporation and Anr.*** – (2010) 5 SCC 459; (ii) ***Ludhiana Improvement Trust vs Ms Harpreet Kaur*** – 2013 (40 CPR 848 (NC) ; and (iii) ***Anshul Aggarwal*** (supra) reiterated in ***Cicilly Kallarackar vs Vehicle Factory*** – IV (2012) CPJ 1 (SC), with regard to applicability of limitation.

17. Learned counsel for the respondent also submitted that neither an intimation regarding cancellation of allotment was ever sent to the respondent, nor the amount was refunded back along with accrued interest. Respondent was forced to accept a flat in Pratap Nagar Yojna instead of Mansarovar scheme which was far from the main city and lacked amenities. Learned counsel for the respondent submits that there was no documentary proof filed by the

petitioner Housing Board that the said flat/ house no. 37/174 was allotted to someone else. He further states that no cancellation of allotment was ever sent to the respondent and the said purported cancellation letters have been filed at the revision stage. He further states that the District Forum has rightly dealt with the issue and allowed the complaint. Learned counsel further states that the present revision petition be dismissed and the order of the District Forum be upheld.

18. From the foregoing it is evident that the respondents' allotment in the Mansarovar scheme was cancelled due to non-payment of the instalments by him. He subsequently applied for restoration of his application under the restoration of allotment scheme and was allotted a fresh priority number. The respondent's insistence on allotment under the Mansarovar Scheme is contrary to facts as the petitioner had closed the scheme due to exhaustion of sites and commenced a new scheme in Sanganer.

19. In the light of the foregoing and in view of the facts and circumstances of this case, I find no illegality or infirmity or perversity in the impugned order warranting any interference of this Commission. The present revision petition is, therefore, found to be without merits and is accordingly dismissed and the order of the State Commission is affirmed. There shall be no order as to costs.

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**SUBHASH CHANDRA
PRESIDING MEMBER**