

# IN THE STATE COMMISSION

(Constituted under section 9 of the Consumer Protection Act, 1986)

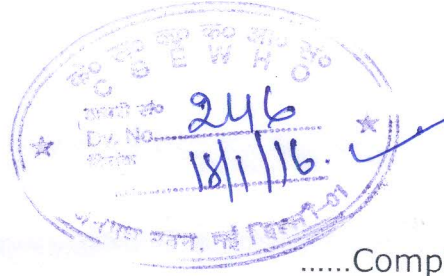
Date of Argument: 15.12.2015

Date of Decision: 23.12.2015

## Complaint Case No. 267/2014

### In the Matter of:

P S Sawhney  
130 Sector 45-A,  
Chandigarh-160047  
Tel: 0712660130



.....Complainant

### **Versus**

Chief Executive Officer  
Central Govt. Employees Welfare Housing  
Organisation, 6<sup>th</sup> Floor, "A" Wing,  
Janpath Bhawan Janpath,  
New Delhi-110001

.....Opposite Party

### **CORAM**

**Salma Noor, Member**  
**O.P. Gupta, Member (Judicial)**



1. Whether reporters of local newspaper be allowed to see the judgment?
2. To be referred to the reporter or not?

### **O.P. Gupta, Member (Judicial)**

1. The complainant booked one type "C" flat in Noida Ph.I on 02.08.1994, the flats were to be completed and handed over in two years i.e. by end of 1996. The complainant being a Govt. employee was entitled for house building advance. He superannuated on 31.10.1996 without getting the house building advance. The OP intimated that his allotment

220/sc  
14/1/16

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had been cancelled. His allotment was intact as on 19.02.2007 and his name does not appear in the list of cancellation. OP constructed 79 flats in Noida Phase II. Out of these 44 flats were allotted to wait-listed applicants of Noida Phase I and remaining 35 flats were sold to non applicants without considering his claim. Order dated 06.03.2009 of Information Commission reflects that OP did not have any letter of cancellation. OP had vacant flats in Mohali scheme and complainant agreed to the same but OP backed out. OP was still allotting vacant flats on 23.08.2010 in Noida Phase-III to wait-listed applicants. The OP failed to produce cancellation letter of the complainant in spite of order of the National Commission copy of which is annexure -02 & 03. The complainant prayed before National Commission to strike out defence of OP vide application annexure 25. The National Commission was defrauded. All his efforts has been frustrated including SLP and its Review in Hon'ble Supreme Court. Both the Fora below dismissed his complaint based upon reminder, when original cancellation letter does not exist. Hence, this complaint for directing OP to compensate him with the present day market price of one type 'c' flat in Noida Phase-I, to compensate rent @ 3,500/- per month which complainant had to spend for all these years, exemplary costs for indulging in unfair trade practice, costs of litigation.

2. The opposite party filed a reply. It took preliminary objection that present complaint is barred by judicial discipline. Complainant is a chronic litigant who is holding the opposite party to ransom. He had been

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abusing the process of law by filing one false case after the other for years. Earlier he filed complaint case no. C-9/1999 against cancellation of allotment of flat which was refused to be entertained. However, the State Commission vide order dated 11.01.2007 directed the OP to refund the forfeited earnest money. Complainant and OP both filed appeals before National Commission. The National Commission confirmed the order of the State Commission on 09.05.2011 in first appeal no. 138/2007. The said order was confirmed by Hon'ble Supreme Court vide order dated 27.02.2012 in SLP (Civil) No. 403/2012. Review Petition No. 1458/12 was dismissed by Supreme Court on 23.08.2012. The complainant filed review petition no. 319/13 before National Commission which was dismissed on 01.04.2014. The complainant also filed cases against OP before Chief Information Commissioner, before District Forum, New Delhi which were decided against him.



3. The complainant filed rejoinder supported by affidavit but did not file evidence by affidavit. Rather, he submitted that fraud was played by OP before National Commission. He drew our attention to copy of order dated 16.11.2010 passed by National Commission in the previous appeal which is available at pages 66 and 67 of this file. The National Commission directed the respondent to produce communication dated 17.04.1998, letter dated 26.02.1997, letter dated 26.06.1997 and 28.08.1997 along with proof of sending the same to the complainant. According to him despite said, order the OP did not produce said document. Thus, a fraud was played by the OP on the National

Commission. He relied upon decision of Hon'ble Supreme Court in Ramji Gupta & Another Vs. Gopi Krishan Aggarwal (Deceased & Ors. Civil Appeal No. 629/2004 and 630/2004 decided on 11.04.2013 to make out that in case of fraud independent suit is maintainable.

4. We have gone through the material on record and heard the arguments. In para 20 of decision in Ramji Supra, it has been observed that where fraud has been committed upon Court, court cannot investigate such a factual issue, and in such an eventuality, party has a right to get the said judgment or order set aside, by filing an independent suit.

5. As we have been able to understand from the said judgment is that fraud can be challenged by way of separate suit only so long as the order is not challenged by way of appeal. Otherwise, once order merges in appellate order, the same becomes immune from being challenged before Trial Court. Otherwise, there would be no end to litigation. It would amount to abuse of process of law. A Trial Court cannot be expected to sit in appeal over the decision of appellate Court and reach at a different conclusion.

6. Over and above all it appears that the whole grievance of the complainant centres around non service of cancellation letter dated 26.06.1997 and non production thereof by the OP in National Commission despite specific directions. The same falls to the ground in view of annexure P-13 filed by the complainant himself along with the present

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complaint which is available at Page 22. If the complainant had not received the said letter, it is not clear as to how he filed the same in the present case. Mere fact of filing of the said letter by the complainant himself shows that he received the said letter.

7. Thus, we are of the considered view that complaint is abuse of process of Court. The same is dismissed with costs of Rs. 10,000/-.

Copy of this order be sent to the parties free of cost as per rules.

File be consigned to record room.



Sd/-  
(Salma Noor)  
Member

Sd/-  
(O.P. Gupta)  
Member (Judicial)

Certified True Copy  
to Rammanoj  
13/10/16  
Registrar  
State Consumer Disputes  
Redressed Commission  
New Delhi-110002

Rakeeba