

IN THE COURT THE SPECIAL REGISTRAR COOPERATIVE SOCIETIES
GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI-110001.

F.No.: Spl RCS/VIC-31/13/2022/882-885 Dated.: 04/05/2022

IN THE MATTER OF:-

Anurag Jain
Flat No.: 363
Skylark CGHS Ltd.,
Plot No.: 35, Sector-6,
Dwarka
New Delhi-110075

.....Appellant

Versus

The President/Secretary
Skylark CGHS Ltd.,
Plot No.: 35, Sector-6,
Dwarka
New Delhi-110075

.....Respondent

ORDER

This Order shall dispose off the appeal dated 05.10.2018 filed by the appellant under section 91 of DCS Act 2003. The appeal has been filed by the appellant aggrieved by the non action of the respondent society within mandated time period of 30 days after receipt of transfer application dated 28.08.2108 of the appellant posted to the respondent society on 29.08.2018 via Speed Post No.:ED600350127IN and received by the respondent society on 30.08.2018.

FACTS OF THE CASE:-

The appellant has stated in his appeal that Ms Mangla Bhyran Bhotia (referred to as allottee) was allotted flat no.: 363 in the respondent society (hereinafter referred to as property) vide allotment letter dated 30th September 2013. The said allotment letter stated that the allottee will get the physical possession of the flat after payment of the entire dues pending against the allottee. The payment of the entire dues of Rs. 7,05,956/- was paid by the allottee vide cheque no.559424 and the possession of the flat was handed over to the allottee on 20.10.2005.

On the same date i.e. 20.10.2005 the said property was purchased by the appellant herein vide registered Agreement to Sell and GPA dated 20.10.2005, copies of which have been annexed by the appellant with the appeal. Subsequent to the



purchase the appellant also paid Rs.1,50,000/- to the society on 12.03.2006 as consideration for purchasing the parking space and also requested the society to issue membership certificate in his favour. The society management on one pretext or the other kept delaying the transfer of membership in favour of the appellant.

The society on 04.01.2010 issued two notices mentioning the names and flat nos. of members who had defaulted in payment of dues despite the demand made vide notice dated 30.09.2003. The name and flat number of the appellant was not mentioned in the said notice as there was no dues pending against the said flat. However, on 23.05.2011, the society issued another notice whereby the appellant was directed to make payment of Rs. 6,59,868/- on account of past dues. The said notice was duly countered by the appellant vide reply dated 21.06.2011 sent through his counsel.

It is submitted by the appellant that in 2011 the society also came out with a list, on the basis of audited financial accounts, of all those members who had duly paid the amount of construction money and the name of the allottee appeared at serial no.6 against whom a sum of Rs. 15,03,878/- was shown as paid.

The said demand of Rs. 6,59,878/- was duly objected to by the appellant during the GBM held on 30.10.2011 and in response to the said objection the appellant was assured the same would be checked by the society. On 16.12.2012 a notice was again issued by the society directing the appellant to pay the amount of Rs. 6,59,868 /- due from the appellant as on 31.03.2005. The said notice dated 16.12.2012 was once again replied back by the appellant through his counsel stating that the demand is false, frivolous and baseless.

On 26.08.2014 the society once again came out with a list, based upon audited financial accounts, of all those members who had duly paid the construction cost and the allottee was shown to have paid the amount of Rs.15,03,878/-. On 25.02.2015 a notice (for the third time) was issued by the society whereby the appellant was once again directed to pay an amount of Rs. 6,59,878 /- allegedly due from him as on 31.03.2005.

The appellant has stated that he lost some of the records including the demand letter of society, payments receipts issued by the society, house insurance policy and medical insurance policy and a police complaint was duly registered by the appellant regarding the loss of his records in P.S. Delhi Cantt on 07.12.2009.

Finally an application dated 28.08.2018 was sent by the appellant seeking transfer of membership in his name. The said application was duly received by the society on 30/08.2018. Since the same was not disposed off by the society within the prescribed period of 30 days, the present appeal has been filed by the appellant.

REPLY OF THE SOCIETY:-

The respondent society has stated in its reply dated 24.01.2019 that no cause of action has arisen to file the present appeal. The appeal is time barred as the appellant



has not stated as to when he applied to the society for transfer of membership. The appeal is also pre mature. The appellant first applied for the transfer of membership vide application dated 06.05.2006 and after waiting for a response within 30 days the appellant should have filed an appeal within the next 30 days. Repeated application after expiry of limitation for filing the first appeal will not revive any cause of action or the limitation.

The society has further stated that the said property has been transferred by the allottee to the appellant in violation of Section 79 of DCS Act 2003 according to which no transfer of share or interest of a member or the occupancy right except the transfer to an heir or nominee shall be effective unless the previous permission of society has been obtained by the transferor and the dues of the society have been duly paid by the transferor.

Further the sale in the present case has also been done in violation of Rule 29 of DCS Rules 2007 which prescribes that no transfer shall be effective unless a clear 15 days notice in writing is given to the society indicating there in the name of the proposed transferee, the consent, application for membership and where necessary, the value proposed to be paid by the transferee and in this case no such clear 15 days notice has been given to the society and therefore the said transfer is in violation of Rule 29 of DCS Rules 2007.

Permission has not been obtained by the transferor and the dues of the society have not been paid as on 31.10.2018 a sum of Rs.40,69,931/- is due and payable. The society has filed proceedings under section 70 of the Act and the same are pending adjudication being arbitration case no.: 122/GH/DR/ARB/2018-2019.

The society has further stated that flat in question has not been legally allotted to original member namely Mrs Mangala Bhyran Botla as she got the papers prepared without paying the dues on the flat and when the society asked for proof of payment of the cost of the flat in accordance with the date of demands made by the society from time to time, the said member has failed to provide and produce the proof of payment and receipt and even original share certificate. The name of allottee member was included in draw of lots when she was not eligible for the same as her alleged payment was short from the eligible amount of 85% of the then total demand made by the society. The allottee had not complied with eligibility criterion. The society is entitled to recover use and occupation from the present appellant.

The society has further stated that the appellant connived with Mr Ashok Sharma and got purchase one car parking whereas membership was not transferred in the name of appellant. The then Administrator had declared Mrs Mangla as a defaulter vide notice dated 05.12.2009 and her name was kept in membership ceased u/s 91 by the then Administrator on 05.02.2010. The NCR for loss of documents seems false. The status of Mr Mangla, the allottee of flat, seems questionable. The society has annexed various documents with its reply. The society has prayed for dismissal of appeal.

(Handwritten signature)
20/10/2022



REJOINDER OF APPELLANT TO REPLY OF RESPONDENT SOCIETY

The appellant has submitted a rejoinder dated 16.07.2019 to the reply of the Respondent Society. The appellant has denied all the assertions of the Respondent Society.

WRITTEN ARGUMENTS OF RESPONDENT SOCIETY

The Respondent society submitted written arguments dated 31.03.2021. The Respondent Society has argued in the written arguments that there has been a violation of Section 79 of DCS Act 2003, the society is bound to maintain and limit its membership as per section 75 of DCS Act 2003 and that there has been violation of Rule 29 of DCS Rules 2007 as not clear 15 days notice was given to the society in writing.

Hearings were held various dates from 29.11.2018. Arguments were heard on 21.04.2022 and the case was kept for orders. Ld counsel for the appellant submitted a Judgment of Hon'ble High Court of Delhi in the matter of Delhi Dayalbagh Coop. Housing Building Society Ltd., versus RCS and others in WP(Civil) No.: 3368/2012 decided on 05.12.2012.



I have gone through all the pleadings and documents and have heard the arguments of both the parties at length.

DECISION

This is an appeal filed by the appellant against the society for non response by the respondent society within 30 days on the transfer application dated 28.08.2018 received by the society on 30.08.2018 for transfer of membership in favour of the appellant.

The respondent society's main contentions opposing the transfer of membership in favour of the appellant is the appeal being time barred, violation of Section 79 of DCS Act 2003 and Rule 29 of DCS Rules 2007, membership of original allottee Mrs Mangala Bhyran Botla being disputed and the original allottee namely Mrs Mangala Bhyran Botla being a defaulter.

The society has not denied at any point of time having received the application dated 28.08.2018 of the appellant for transfer of membership in his favour. From the copy of Speed Post Tracking placed on record by the appellant, the application dated 28.08.2018 has been received by the society on 30.08.2018. The society was to take a decision within 30 days of 30.08.2018 i.e. 29.09.2018 which it failed to take. The time limit for filing of the appeal was within 30 days of 29.09.2018 i.e. till 29.10.2018. The appeal has been filed on 05.10.2018. Hence the appeal is within period of limitation.

The contention of the society that repeated application after expiry of limitation for filing the first appeal will not revive any cause of action or the limitation is legally not tenable and is hereby rejected. I hold the appeal to be within period of limitation and any contentions of the respondent society as regards limitation are hereby rejected.

The appellant has purchased the flat in question through a registered agreement to sell dated 20.10.2005 and registered power of attorney dated 20.10.2005. These documents are sufficient for transfer of membership in favour of the appellant as per the provisions of Section 91 of DCS Act 2003. In view of these documents, original allottee Mrs Mangala Bhyran Botla ceases to be a member of the society w.e.f. 20.10.2005. Contention of the respondent that the original allottee is still a member of the society is ill founded and legally untenable.

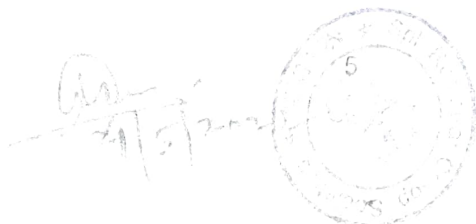
Further, the appellant has annexed copies of allotment letter dated 30.09.2003 to original allottee Mrs Mangala Bhyran Botla and of possession letter dated 20.10.2005 issued to Mrs Mangala Bhyran Botla in respect of flat in question i.e. flat no.: 363 in the society. These are sufficient to prove membership of Mrs Mangala Bhyran Botla in the society.

This is not the forum where the society can raise any objections or challenge the membership of original allottee Mrs Mangala Bhyran Botla and that too after more than 15 years of allotment of the flat to her. The society has not produced any document to show that it has challenged the membership of original allottee Mrs Mangala Bhyran Botla before any Competent Court of Law. All the objections raised by the respondent society as regards membership of the original allottee Mrs Mangala Bhyran Botla are rejected outright.

I am in agreement with the argument of the appellant in view of Rule 104(2) of DCS Rules 2007 the provisions of section 79(a) of DCS Act 2003 are not applicable in the present case as the agreement to sell and general power of attorney in favour of the appellant have been registered on 20.10.2005 and date of commencement of Amending Act 2006 is 13.01.2007. I am further guided in this regard by the judgment of Hon'ble High Court of Delhi in the matter of Delhi Dayalbagh Coop. Housing Building Society Ltd., versus RCS and others in WP(Civil) No.: 3868/2012 decided on 05.12.2012 placed on record by the appellant.

Further, as regards issue of the allottee/appellant being a defaulter, the society has itself stated that it has already filed an arbitration case no.: 122/GH/DR/ARB/2018-2019 under section 70 of the Act for recovery of an amount of Rs. of Rs.40,69,931/- and the same is pending adjudication. During the pendency of arbitration proceedings, issue of the appellant being a defaulter does not arise till a final award is passed and the award becomes final. Transfer of membership cannot be withheld on this count for years altogether.

The society has not pointed out any disqualification incurred by the appellant for becoming a member of the society nor it has been able to justify as to why it has not



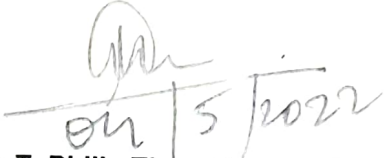
disposed off the application dated 28.08.2018 filed by the appellant for transfer of membership in his favour within 30 days of the date of its receipt.

Transfer of Membership should not be refused without sufficient cause. The society does not have an unfettered right to admit, deny or refuse membership.

In view of the above discussions, all the contentions raised by the respondent society opposing the membership of the appellant are hereby rejected. The appeal deserves to be allowed and is hereby allowed.

The society is directed to transfer membership of flat No-363 in favour of the appellant within 15 days from the date of payment by the appellant to the society of transfer fees, share money and admission fees as per the provisions of bye laws of the society.

It is ordered accordingly.


on 15/10/2022

(Dr. T. Philip Thanglienmang)
Special Registrar Cooperative Societies

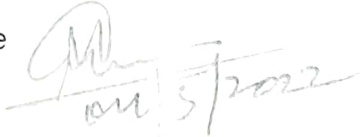
Copy to:-

1. President/Secretary, Skylark CGHS Ltd., Plot No.: 35, Sector-6 Dwarka, New Delhi-110075

2. Sh Anurag Jain, Flat No.: 363, Skylark CGHS Ltd., Plot No.: 35, Sector-6, Dwarka, New Delhi-110075

3. AR(Section-7)

✓ 4. In-charge (Computer Cell) for uploading on website


on 15/10/2022

(Dr. T. Philip Thanglienmang)
Special Registrar Cooperative Societies

