

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

F.No 47/AR/SEC-III/84-GH/RCS/2020/6108-6111

Dated: 21/09/2023

ORDER

In the matter of:-

Sh.V.P.Rao

.....Complainant

Versus

IFUNA CGHS LTD.
(Through President/Secretary)

.....Respondent

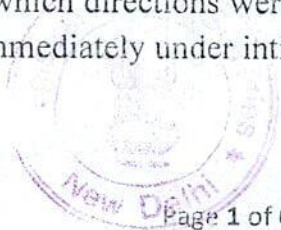
This order shall dispose of the proceedings initiated vide Show Cause Notice dated 06.06.2018 issued u/s 37(1) of DCS Act, 2003 against the Managing Committee of the society.

Whereas, Sh. V.P. Rao, M.No. 498, filed his dispute u/s 70c of DCS Act, 2003 against the society in Arbitration regarding repair of his flat and allotment of parking space.

Whereas, the above Arbitration case has been decided u/s 71 of DCS Act, 2003 vide Award dated 28.03.2018 in favour of claimant on following points:

1. Refund of interest amount only @18% per annum on Rs. 49,000 /- (deposited by the claimant in 1990 and already received by the claimant) since the date of payment till the date of adjustment of Rs. 49,000/- being the difference amount from 3BHK to 2BHK.
2. Refund the amount of Rs. 1,77,070 to the claimant within interest @10% as per DCS Act, 2003 since 20.07.2016 till its realization.
3. Allot the parking/garage space to the claimant within 15 days of issuance of award.
4. Repair the flat to habitable condition within 3 months of issue of this order or will have to bear the cost of repairs got done by the claimant himself.

And, whereas, a letter dated 25.04.2018 was issued to the President/Secretary of the society vide which directions were issued by this office to implement the above said award immediately under intimation to this office.



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And whereas, the society has neither implemented the said award nor submitted any reply for non-compliance. Accordingly, Show Cause Notice u/s 37(1) was issued to the Managing Committee of the society.

Thereafter, society filed reply dated 11.06.2018 wherein the society submitted that the society has already filed an Appeal before the DCT against the Award dated 28.03.2018 vide appeal no. 126/18.

Further, society filed letter dated 27.06.2018 regarding the allotment of parking right to Sh. V.P. Rao, also enclosed the copy of letter dated 18.06.2018 of society addressed to Sh. V.P. Rao regarding the allotment of parking lot. However, the society mentions that it reserves its rights to recover the balance cost of parking from Sh. V.P. Rao as per letter dated 15.04.2018.

Whereas, Sh. V.P. Rao filed a letter dated 08.08.2018 informing therein that because of the Misbehaviour and misconduct by the society, he had sold his flat to Mrs. Preeti Gulati W/o Sh. Sumit Gulati. However, when she visited the society the guard obstructed her on the instructions of the M.C. of the society. He further informed that said award dated 28.03.2018 has been challenged by him as well as by the society. Hence, the matter is subjudice and in the circumstances the M.C. has no right to obstruct a lawful owner to visit/repair her flat.

Whereas, DCT vide its order dated 16.04.2019 has disposed of the appeal filed by both Sh. V.P. Rao and the society wherein the DCT ordered as under:

"41. There is no dispute that the Mr. V.P. Rao had deposited the sum of Rs. 3 lacs for a 3 BHK flat with the society in the year 1990 but the flat was not allotted to him for about 25 years for which the society has not given any proper explanation which indicates that certainly there was mis-management in the society and the appellant Mr. V.P. Rao deserves to be compensated who has been harassed and made to suffer economic loss. Although he was allotted a 2 BHK flat for which his option was obtained at the behest of the then president and for which he had unwillingly opted. Even the said flat was not habitable and required expenditure of about Rs. 6 lacs as per the member Mr. V.P. Rao, as such he could not spilt and enjoy the flat. It is also apparent that the said flat was being used by some other person before its allotment to Mr. V.P. Rao which ought not to have been done by the society because every member of a Cooperative Group Housing Society is entitled for a newly constructed flat. Keeping in view these facts we are of the view that the appellant Mr. V.P. Rao should be adequately compensated. Ld. Arbitrator allowed interest @18% pa. on the maintenance charges illegally collected by



the society. However, the society's witness (the Secretary) in the cross examination has admitted the difference in the cost escalation of 2 and 3) BHK flat on the date of recording evidence to be around Rs. 45 lacs and the said loss has been caused to the appellant Mr. V.P. Rao, Keeping in view the totality of the circumstances we feel that managing committees of the society for the relevant period responsible for not sending case of appellant earlier Mr. V.P. Rao to RCS for allotment of flat for 25 years, should be burdened with a compensatory cost of Rs 45 lacs less (Rs.49,000/- already adjusted towards the difference of cost between 2 & 3 BHK flats) which should be paid by the society to Mr. V.P. Rao within three months from the date of order, failing which they shall pay interest 6% pa. till date of payment.

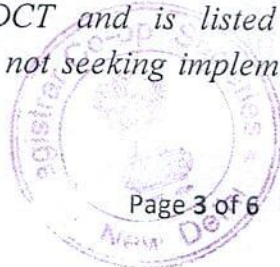
42. The said amount shall be collectively paid by office bearers of the managing committees of the society, who were at the helm of affairs of society from 1990 to 2016.

43. Since at the time of framing of rules, such situations could not have been envisaged, the ld. RCS should take necessary action for initiating amendment in Rule 32 of DCS Rules, 2007 for payment of compensation in such cases. If required, amendment in the DCS Act, 2003 could also be initiated.

44. In our considered view, there is no illegality, infirmity or impropriety in the impugned award. The appeal No.126/2018 preferred by the society is dismissed. However, the appeal No.146/2018 of the appellant Mr. V.P. Rao partly allowed and the impugned award is modified incorporating the relief as passed in para nos. 41 & 42."

Sh. S.K. Sharma, Advocate filed written arguments dated 11.09.2019 on behalf of Sh. V. P. Rao submitting that:

- (I) The respondent society has tried its level best to create a smoke screen and misguide this Hon'ble Court into believing that the underlying issue is the non-implementation of Award passed in Arb. Case no.85/GH/DR/Arb./2016-17 dt 28-03-2018. Nothing could be further from the truth.
- (II) It is categorically stated that the Award in question is subject matter of Review no.13/2019 in Appeal no.146 of 2018 which is pending before the Hon'ble DCT and is listed for hearing on 19-09-2019. The complainant is not seeking implementation of the said Award from this



Hon'ble Court and would have logically resorted to Sec. 105 of the Act, otherwise.

- (III) *The crux of the issue is the harassment meted out to the complainant by the management of the Society which has been harassing Sh. VP Rao even after allotment of used 2 BHK flat that too in non-habitable condition, for deposition of maintenance charges for which notices were issued by the Society on different dates i.e. 13.02.18, 08.03.18, 15.04.18, 05.06.18 and on 22.07.18 slapped on him with interest at the rate of @ 12% per annum for delay in payment, though he was prevented from the use of premises on account of being its non- habitable condition and non-availability of parking space. It is pertinent and noteworthy that the flat was never repaired forcing the complainant ultimately to sell off the flat.*
- (IV) *The Management of the Society has shown scant or no respect to the Judicial Orders from various Courts /Forum. Repeated orders passed by the Ld. Dy. Registrar under Sec. 139 of the DCS Act 2003. The society has not complied with even one of the three such orders and has chosen to pay the fine imposed but still not provided the information.*
- (V) *By its very conduct the society does not deserve any relief. The society continues its inimical attitude towards Sh.V.P.Rao. Despite a penalty being imposed by the RCS on the society in appeals U/s. 139 of the DCS Act, 2003 which has been paid, it still refuses to furnish the information/documents sought by the member. This kind of attitude of the society which is totally in violation of the cooperative spirit must not go unpunished.*
- (VI) *The directions to the society not to charge the enhanced parking charges of Rs.3,50,000/- as the complainant had already paid Rs.7,000 in 1992 itself, has also been ignored as the society continues to raise a demand for Rs.3.50,000/- plus interest on account of parking charges. It is pertinent that though the Arbitrator had directed the handing over of the parking. there was no directions regarding quashing of the demand which needs to be done*

Whereas, society filed written submissions dated 24.06.2023 wherein the society submitted that:

- (i) The alleged complainant who was member of the society vide membership no. 498 had filed an Arbitration Case in 2016 before the court of Hon'ble Registrar, Co-operative Societies, Govt. of NCT Delhi in which an Award No. 85/GH/DR/ARB/2016-17/311-12 dated 28.03.2018 had been passed.



- (ii) Sh. V.P. Rao and the Society both had filed the appeals bearing no. 146 of 2018 (V.P. Rao Vs. IFUNA CGHS Ltd.) and 126 of 2018 (IFUNA CGHS Ltd. Vs. V.P. Rao) before Hon'ble Delhi Co-operative Tribunal, NCT of Delhi. The appeals were decided by Hon'ble Tribunal vide order dated 16.04.2019.
- (iii) Sh. V.P. Rao has filed a Review Petition and IFUNA Society has filed two Review Petitions against the said order dated 16.04.2019 before Hon'ble Delhi, Co-operative Tribunal, Govt. of NCT Delhi which are still pending. The impugned award 28.03.2018 is still under challenge by both the parties.
- (iv) Sh. V.P. Rao had been allotted the Flat No. A-508 by the Society which he had already sold to Ms. Preeti Gulati on 27.07.2018 vide registered Sale Deed No. 4440, Book No. 1, Vol. No. 1351, Pages 166-171 and as per Section 91 of DCS Act, 2003 ceased to be a member of the Society but with mala fide intention and ulterior motive concealed the said fact from this Hon'ble Court and asking for allotment of parking space/ garage and renovation of the Flat as alleged. It is submitted that since Sh. V.P. Rao is no more member of the Society nor owner of the said Flat allotted to him, he has no locus-standi and cause of action to file the present application U/s 37(1) DCS, Act and same has become infructuous.
- (v) Qua to other two reliefs, the Hon'ble Tribunal vide its order dated 16.04.2019 has already modified the relief and the Society is nowhere liable to pay the compensation. Moreover, said order dated 16.04.2019 is still under challenge as both the parties have already filed the Review Petitions before Hon'ble Delhi Co-operative Societies Tribunal and fixed for 20.08.2023.
- (vi) Without prejudice to other contents, it is submitted that the alleged complainant Sh. V.P. Rao, who ceased to be member of the Society, seems to be a chronic litigant as on one had he is seeking compensation/ money and additional one room Flat beyond scope of DCS Act on other hand filed an application before Hon'ble Financial Commission in a matter filed by Ms. Guljhuli Lamba against the Society for allotment of 3-bedroom Flat in the society. The complainant himself has on one hand challenged the impugned award dated 28.03.2018 by filing appeal before Hon'ble Delhi Co- operative Tribunal on other hand filed present application on basis of very said award. The said award had also been challenged by the Society. The Ld. Predecessor of this Hon'ble Office vide order dated 04.03.2021 was pleased to stay the proceedings till

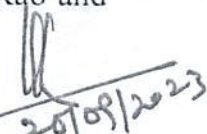


outcome of the order by Ld. Delhi Co-operative Tribunal as Review Petitions filed by both the parties are sub-judice.

- (vii) Without prejudice to other contentions, it is submitted. that as per Section 37(1) DCS, show cause notice can be issued to committee of society for its suppression and to hold election of the committee with in a period of thirty days by calling a special general body meeting; in present case the show cause notice U/s 37(1) DCS, Act was issued on 06.06.2018 and after that election of the committee has been held twice in 2019 and 2022 thus the said show cause notice has become infructuous and not tenable.

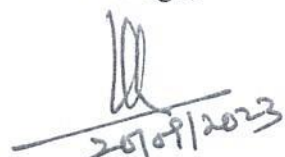
In view of the above, and after perusal of the submissions made by the parties, I am in view that as Sh. V. P. Rao, complainant has been sold out his flat to Mrs. Preeti Gulati and as per section 41 (1) (c) of DCS Act 2003 and Rule 2007, a person ceases to be a member of cooperative society on transfer of all of his share or interest in that cooperative society. Further on the point of the difference of Rs 45 lacs between 2 & 3 BHK, the undersigned go through the DCS Act and Rule and it is noted that there is no such provision regarding the same. Further, it has been noted by the undersigned that the both the parties had filed review petitions on the Order of the Ld. DCT dated 16.04.2019 which is presently sub-judice. Therefore the current proceedings may be kept in abeyance till the outcome of the review appeals filed by the Sh. V.P. Rao and of the society. Ordered accordingly.




20/09/2023
Krishan Kumar
Registrar Cooperative Societies

Sent To:-

1. The President/Secretary, IFFUNA CGHS Ltd. Plot No. 55 I.P Extension Patparganj, Delhi-110092.
2. Sh. V.P Rao, Flat No. 202, Tower No. 08, Commonwealth Games Village, Delhi-110092, Near Akshar Dham Temple.
3. ARCS, Housing Section-3, O/O RCS
4. Incharge Computer cell.


20/09/2023
Krishan Kumar
Registrar Cooperative Societies