

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
U.T., CHANDIGARH**

<b>Appeal No.</b>	:	40 of 2019
Date of Institution	:	27.02.2019
Date of Decision	:	16.03.2022

1. Indian Railway Welfare Organization through its Managing Director, Railway Offices Complex, Shivaji Bridge (Minto Bridge), New Delhi-110001.
2. General Manager, Northern Zone, Indian Railway Welfare Organization, Chandigarh Railway Station, Chandigarh.

...Appellants/opposite parties

**V e r s u s**

Ashwani Kumar son of Shri Raj Kumar, resident of House No.594-E, RCF Complex, Kapurthala, Punjab.

.....Respondent/complainant

**BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT.  
MRS.PADMA PANDEY, MEMBER.  
MR.RAJESH K. ARYA, MEMBER.**

**Present through Video Conferencing:-**

Sh.A.K. Tewari, Advocate for the appellants.  
Sh.Karan Singla, Advocate for respondent.

**PER JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT**

This appeal has been filed by the opposite parties (in short the appellants), feeling aggrieved by the order dated 18.01.2019 passed by the District Consumer Disputes Redressal Commission-I, U.T., Chandigarh (in short the District Commission), whereby the consumer complaint bearing no.170 of 2017 filed by the complainant (respondent before this Commission) was partly allowed against them in the following manner:-

*“.....In view of the above discussion, the present consumer complaint deserves to succeed and the same is accordingly partly allowed. The OPs are directed as under:-*

- i. *The issuance of notice by the OPs raising additional demand of Rs.65,954/- need not be complied with by the complainant and the OPs are restrained from raising such a demand once the possession of the dwelling unit was delivered to the complainant;*
- ii. *To pay Rs.15,000/- to the complainant as compensation for deficiency in service and mental agony and harassment caused to him;*
- iii. *To pay to the complainant Rs.5,000/- as costs of litigation.*

*This order be complied with by the OPs within thirty days from the date of receipt of its certified copy, failing which, they shall make the payment of the amount mentioned at Sr.No.(ii) above, with interest @ 9% per annum from the date of this order, till realization, apart from compliance of other directions.....”*

2. The facts necessary for disposal of this appeal are that the complainant (now respondent in this appeal) was working as an employee of the Indian Railways. It has been stated that, in the year 2009, the Indian Railway Welfare Organization (IRWO) had setup a society in the name of style-“Group Housing Scheme”, which was registered under the Registrar Societies Act XXI of 1860, with the sole purpose to provide houses for serving and retired employees of Indian Railways, purely as a social welfare measure on ‘no profit no loss basis’. Under the said scheme, flats/dwelling units were to be provided to the said employees at Rail Vihar, Zirakpur, Punjab. As such, the complainant applied for allotment of a dwelling unit Type-Z-II. Consequently, vide letter dated 16.10.2015, Annexure C-1, he was provided with the possession letter for residential unit bearing no.Type-Z-II/C-8/2DU in Rail Vihar, Zirakpur, near Chandigarh, Group Housing Scheme, Phase-1. The complainant was also issued handing/taking over certificate dated 27.10.2015, Annexure C-2.

3. It is the case of the complainant that the opposite parties had issued letter dated 11.01.2013, Annexure C-3, to the complainant whereby demand in increase of price of the dwelling unit was raised to the tune of Rs.4,05,000/- plus additional cost of Rs.75,000/-, towards compulsory car parking for each dwelling unit. It was specifically stated that in the letter Annexure C-3 that the above said escalated cost does not include the subsidy for EWS economical weaker section, as till then, no decision was taken by the Municipal Council, Zirakpur.

4. It is further alleged that on 30.05.2014 another letter raising demand of Rs.1,31,000/- and additional cost of Rs.75,000/- in terms of Annexure C-3 was demanded by the opposite parties. It is also the case of the complainant that since, in the possession letter Annexure C-1 and handing/taking over certificate Annexure C-2, it has been specifically stated that the entire amount has been paid, therefore, raising demand of subsequent amounts by the opposite parties, vide Annexure C-3, is illegal and arbitrary.

5. It has been further stated that in para nos.8 to 12 of the complaint as under:-

*“.....That the complainant has been aggrieved now after he making all the payments and clearing all the dues from the letter dated : 24/10/2016 whereby the OP has again raised an additional demand of Rs.65,954/- towards demand for escalation plus an additional cost of Rs.11,046/- towards subsidy for EWS houses.*

*It is submitted here that in the said letter dated 24/10/2016 the complainant is aggrieved with the additional demand of Rs. 65,954/- which was nowhere in the picture is the handing over of the possession of the house to the complainant. From the bare perusal of the letter dated 24/10/2016 it becomes amply clear from the residents/owners of Type-II houses this additional demand is being made towards providing additional fire safety provisions in*

*Type-II, EWS and Community Centre on directions of fire authorities. It is not an exaggeration to mention here that such an action illegal, whimsical & uncharitable on the part of the OP raising additional demand time and again is highly irrational, illegal, whimsical and burdensome on the complainant and the complainant as well as the other residents of the society cannot be put to the receiving end time and again due to gross lapse on the part of the OP.*

*Further submitted, that no proper expenditure detail has been provided to the complainant or other residents towards the breakage of the expenditure on the additional demand of Rs.65,954/- which would have the genuineness & legitimacy of justify demand for providing additional fire facility in TYPE-II, EWS and Community Centre. Copy of the letter dated 24/10/2016 is attached as Annexure C5.*

*That it would be relevant to mention here your that the complainant admitted liability for the payment of Rs.11,046/ towards subsidy for EWS houses, however, the additional demand of Rs.65,954/- raised by the OP is bad, illegal, unjustified and the same amounts to an unfair trade practices and sheer deficiency of the services for not providing adequate firefighting facilities at the premises which has led to the raising of such illegal, arbitrary & unjustified demand at the hands of the OP towards the complainant. This is against the law of Consumer Protection Act and in violation of the Section 12 of the CPA, 1986.*

*That it would be relevant to submit your that providing adequate firefighting facilities is a primary job of the OP who should have taken all possible measures and steps to provide adequate safety measures which are in the interest of the residents and should have floated the scheme after taking into consideration all the relevant factors and safety measures. That the persistent demand of the OP towards escalation charges or for providing additional facilities at the cost and expense of the complainant without there being any fault on their part and due to the lapse of the OP is highly illegal, unjustified and should be discouraged.....”*

**6.** The complaint was contested by the opposite parties, by way of filing written reply, wherein, it has been stated that the Indian Railway Welfare Organization (IRWO) had setup a society in the name of style “ Group Housing Scheme”, which was registered under the Registrar Societies Act XXI of 1860, with the sole purpose to provide houses for serving and retired employees of Indian Railways purely as a social welfare measure on ‘no profit no loss basis’. It was averred that no financial aid is provided by the Govt. of India or Ministry of Railways, for welfare activities under this scheme, albeit, IRWO generates funds under the said scheme from its registrants, allottees and borrowing from Nationalized banks/Public Financial Institutions.

**7.** It was stated that dwelling units in the said project were set up with the cost of the allottees. However, due to escalation of the prices of labour and other building material, revised tentative cost of the dwelling units was conveyed to the allottees before issuing them the letter of allotment, with the rider that after completion of the project if the expenditure increased the receipt of funds, a supplementary demand will be sent to them (allottees). It



was further asserted in the reply that IRWO purchased land measuring 7.463 acres in Zirakpur in August 2008. It was further specifically stated in para nos.IV, V and VI of the reply as under:-

*“.....IV. After consideration and recalculation of the effective cost of dwelling units, the "Revised Group housing Scheme 2009 Rail Vihar, VIP Road Zirakpur (Punjab) near Chandigarh" Ann. R-1 was opened from 20-04-2009 to 10-07-2009 and extended till 11.9.2009). Due to poor booking, only 173 DUs against 399 DUs as originally planned were taken up for construction for which a contract was awarded to a contractor after competitive bidding. Unfortunately, due to non-availability of stone aggregate from the crushers, in pursuance of Ban Order issued by Punjab Govt. as affirmed by the Punjab & Haryana High Court & the Supreme Court of India for a long time, the contractor could not carry out the job as per requirement of the tender since sand, aggregate and bricks were not available. Therefore, the contract was terminated.*

*A new tender for 399 DUs including balance work of 92 units were floated to complete the job. Apart from the non-availability of the main building material as mentioned above, there was a substantial increase in the prices of materials, labour cost and the cost of construction.*

*V. As per rules of allotment of IRWO, while applying for a dwelling unit in IRWO's Zirakpur Group Housing Scheme, the Complainant, submitted 5.9.2011 submitted an undertaking Ann. R-2 (Annexure B to the Application Form) and a declaration Ann. R-3 dated 10.9.2009 to abide by all the terms and conditions, rules, regulations and instructions of the IRWO, Project brochure as amended from time to time. The complainant further undertook to pay the estimated cost, revised cost including the escalated charges demanded by IRWO. These undertakings and declarations form a part of the Revised Scheme cum Technical Brochure of the IRWO's Revised "Rail Vihar, VIP Road Zirakpur (Punjab) near Chandigarh.*

*VI. The present complaint is not maintainable in view of Rule 36 of the IRWO's General Rules of which the complainant is fully aware:*

#### *36. LEGAL PROCEEDINGS.*

*36.1. In case of disputes, the allottee may take recourse to court only after exhausting all avenues of Redressal including Arbitration as provided in the Rules.*

#### *35. ARBITRATION*

*35.1. All disputes relating to registration, booking, allotment, refunds or such other matters as are incidental to these and are likely to affect the mutual rights, interest, privileges, claim of the allottee vis-à-vis the Organization, may referred to the Managing Director(IRWO) who shall appoint an arbitrator to adjudicate in the matter. The award of the Arbitrator shall be final and binding on the allottee as well as the Organization. For the purpose of Para 3 of the*

*Arbitration and Conciliation Act 1996 the Arbitrator shall be considered to have entered into reference, when he has called upon the party seeking arbitration to file his 'Statement of Claim'. Arbitration hearing will be held in Delhi only regardless of where property under dispute is situated....."*

**8.** The contesting parties led evidence by way of affidavits and numerous documents before the District Commission.

**9.** The District Commission after hearing the contesting parties and on going through the material available on record, partly allowed the consumer complaint, in the manner, stated above. Hence this appeal.

**10.** We have heard the contesting parties and gone through the material available on the record; including the written submissions/arguments.

**11.** Counsel for the appellants vehemently contended that under condition no.9.5 of the said scheme, it was made clear to the respondent that he will be advised regarding final actual cost and the difference between the final actual cost and the cost recovered will be payable by him, even after occupation of his unit. Relevant part of condition no.9.5 aforesaid is reproduced hereunder:-

*"..9.5 The Project accounts may not be closed at the time of occupation of houses by the allottees. The last instalment payment shall, therefore, be considered tentative. As and when the accounts are closed, the allottees will be advised of the final actual cost and the difference between the final actual cost and the cost recovered will be payable by the allottees concerned...."*

**12.** It may be stated here that the complainant has applied for allotment of dwelling unit under the aforesaid scheme and as such he is bound by the terms and conditions thereof. Condition no.9.5 *ibid* of the said scheme clearly states that the project accounts were not to be closed at the time of allocation of houses to the allottees and that the last installment payment was therefore to be considered tentatively. Since, it has been specifically stated in the said condition that as and when the accounts are closed, the allottees will be advised of the final actual cost and the difference between the final actual cost and the cost recovered will be payable by the allottees; therefore, in our considered opinion, the complainant cannot wriggle out of the same.

**13.** The houses above-said were constructed and allotted to the complainant/allottees on 'no profit no loss basis'. IRWO is not a Government undertaking rather it has been set up by the employees and the officers of the Railways. It has directly no concern with the Indian Railways. It is pertinent to mention here that earlier also, the complainant had filed a consumer complaint bearing no.184 of 2013 before the District Consumer Commission (earlier

known as District Forum)-II, U.T., Chandigarh, alongwith connected complaints. In that case also, the complainant has questioned letter dated 11.01.2013, vide which demand against revised tentative amount in the sum of Rs.75,000/- was raised from him. While relying upon condition no.9.5 of the scheme in question, the District Commission-II, U.T., Chandigarh, dismissed the said complaint filed by the complainant alongwith other allottees, vide order dated 30.10.2013, by observing in para nos.8 to 10 as under:-

"8. Annexure C-6 is the letter dated 8/11.1.2013 whereby the opposite parties increased the rates of the dwelling units as under :-

Type of dwelling unit	Estimated cost given in brochure in 2009 (in lacs)	Revised cost in estimated in Dec. 2012 (In Lacs)	Increase in Rs. (Lacs)
Type II	15.59	19.64	4.05
Type III	26.18	32.95	6.77
Type IV	32.36	40.43	8.07

9. In this regard, the plea of the opposite parties is that the price mentioned in the brochure, as well as in the letter dated 7.3.2011 (C-2), whereby the dwelling unit in question was booked, was not final and rather it was tentative. In order to substantiate their plea, the opposite parties have relied upon clause 6.1 of the brochure which reads as under:-

"6.1 Tentative area and approximate costs of different types of dwelling units are indicated in Table-1 below"

The opposite parties have also relied upon note 3 of clause 6 of the brochure (C-1), which reads as under :-

"3.The cost given in the table above are purely tentative based on current prices and may increase depending on escalation in labour and material cost, as well as alterations in design and specifications or any other unforeseen reasons. Actual cost would be payable by Allottees. In addition Equilisation Charges have to be paid as per Annexure-III. Equilisation charges are to bring you at par with those joined the scheme earlier."

Reliance has also been placed upon clause 9.5 of the brochure, which reads as under:-

"9.5 The Project accounts may not be closed at the time of occupation of houses, by the allottees. The last instalment payment shall, therefore, be considered tentative. As and when the accounts are closed, the allottees will be advised of the final actual cost and the difference between the final actual cost and the cost recovered will be payable by the allottees concerned."

Even the letter dated 7.3.2011 (C-2) mentions "The tentative cost of the Z-III type unit is Rs.26,18000 + service tax @ 2.575% + EC.....".



10. Hence, it is proved beyond any shadow of doubt that the price of the dwelling unit was tentative. Once the price was tentative, the opposite parties were well within their right to increase the same. In fact, the opposite parties vide their letter dated 8/11.1.2013 (C-6) have also explained the circumstances warranting increase in the price of the flats. It is not even the case of the complainant that the opposite parties were entitled to enhance the price of the flats upto a certain level/percentage only.....”

It is also coming out from the record that appeal bearing no.527 of 2013 filed against the said order dated 30.10.2013, before this Commission, was also dismissed vide order dated 11.12.2013. Since, it has been stated before us by Counsel for the complainant that no further revision or appeal was filed against the order dated 11.12.2013, as such, the order dated 30.10.2013 has attained finality.

14. In the present case, the letter dated 11.01.2013 which has been challenged by the complainant, was also directly in question before the District Commission-II, in CC No.184 of 2013 and also before this Commission in the appeal referred to above, which stood dismissed, meaning thereby, that the matter in controversy was identical in the earlier litigations, which has already been set at rest, as the same has attained finality, in the manner, referred to above. Thus, when whatever observation made by the District Commission-II, U.T., Chandigarh in CC No.184 of 2013 i.e. in the previous litigation has attained finality, as such, the present case on the same issue has attracted the principles of resjudicata. The Hon'ble National Commission in Reliance Industries Ltd. And Anr. vs Neera Maheshwari, 3 (2006) CPJ 67 NC, has held that if the reliefs sought by the complainant are identical to the reliefs claimed in earlier complaint, the principle of constructive resjudicata will attract. Relevant part of the said order is reproduced hereunder:-

“.....The complainant had filed a complaint No. 324/02 before the District Forum, Kasturba Gandhi Marg, New Delhi. It is relevant to mention that the learned District Forum was pleased to record that the shares certificates and the debentures have been handed over to the complainant which were accepted by the complainant and the complaint was disposed of as being satisfied. Thereafter, the complainant filed an identical complaint bearing No. OC/ 235/2003 on the same facts as in OC/324/2002 and inter alia prayed that the petitioner be directed to pay to the complainant penalty @ Rs. 500 per day for delay in handing over the certificates as well as damages. It is relevant to mention that reliefs sought by the complainant were identical to the reliefs claimed by her in her earlier complaint. The learned District Forum by its order dated 28.3.2003, dismissed the complaint as not being maintainable. Therefore, the principle of constructive res judicata applies in this case.....”

15. As stated above, the demand raised vide letter dated 11.01.2013, Annexure C-3 is also the root of the matter/dispute which was raised before

the District Commission-II, in CC No.184 of 2013, which has attained finality, as such, to our mind, the principle of as resjudicata has attracted to the present case.

16. Much reliance's has been placed by Counsel for the complainant on letter dated 01.07.2016, Annexure C-4, placed on paper book of the District Commission, which has been issued by some Managing Director of IRWO which reads as under:-

*"...Shri Ashwani Kumar  
594 E. Type II.  
RCF Complex  
Kapurthala (PB).*

*With reference to the telephonic talks with you on date, it is to advise you that the possession letters to the allottees are issued only on the basis of clearance of all dues and the same was issued to you also on the same principle, in which it is clearly written that the allottee has paid all the dues. As regards demands being sent from IRWO time and again, it would be seen that no undue demand letter be sent to you from today onward..."*

It seems that Ashwani Kumar has telephonically discussed some matter with regard to demand of revised cost of dwelling unit, as a result whereof, the aforesaid information was supplied to him to the effect that no undue demand letter will be sent to him. Thus, in the face of condition no.9.5 referred to above, no help can be drawn by the respondent, from the letter Annexure C-4.

17. Keeping in view the above discussion, we are of the considered view that this appeal has merits and deserves acceptance. Accordingly, we allow this appeal and the impugned order stands set aside. Consequently, the consumer complaint filed by the complainant stands dismissed with no order as to cost.

18. Certified copies of this order be sent to the parties, free of charge.

19. The concerned file be consigned to Record Room, after completion.

Pronounced  
16.03.2022

Date of receipt of application	---
Date of receipt of application	---
Date of receipt of application	---
Date of receipt of application	16-03-22
Date of disposal of copy	21-03-22
Date of Preparation of copy	---
Date of dispatch of free certified copy	---
Date of dispatch of free certified copy	22-03-22

Sd/-  
**[JUSTICE RAJ SHEKHAR ATTRI]**  
PRESIDENT

Sd/-  
**(PADMA PANDEY)**  
MEMBER

Sd/-  
**(RAJESH K. ARYA)**  
MEMBER

Rg

Certified to be true copy  
Member  
21/03/22  
State  
Commission