

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 331/2012

Revision Petition Under Section 116 of
Delhi Cooperative Societies Act, 2003.

In the matter of :-

1. Guru Coop. G/H Society Ltd.
Guru Apartments, Plot NO. 9,
Sector-14, Rohini,
Delhi-110085.Petitioner

Versus

1. Smt. Savita Beniwal
Flat No. 612

2. Shri Sanjay Rawal
Flat No. 632

3. Sh. Neeraj Jain
Flat No. 763

All at :-

Guru Apartment, Plot No. 9,
Sector-14, Rohini,
Delhi-110085.

4. Registrar Cooperative Societies,
Parliament Street,
New DelhiRespondents

DHARAM PAL, FINANCIAL COMMISSIONER

ORDER dated: 13th January, 2015

1. This order shall dispose of the revision petition filed by the Petitioner against the impugned order dated 27/07/2012 of Assistant Registrar (NW-I) u/s 116 of the Delhi Cooperative Societies Act, 2003. Vide this Order society was directed to grant membership to Smt. Savita Beniwal, Sh. Sanjay Rawal and Sh. Neeraj Jain. Assistant Registrar (NW-I) rejected the decision of the society to charge share money of Rs. 6,000/- on the basis of Annual General Body Meeting (herein after called AGBM) held on 04/05/1986. As per the bye-laws of the society the share money is only Rs. 100/- and no amendment

in the bye-laws for increase the share money as Rs. 6,000/-, was approved by the RCS Office.

2. The society filed the present revision petition against the aforesaid order primarily on the following grounds :

- i) That there was nothing in the bye laws that prevents society from charging share money more than what is prescribed in the bye laws.
- ii) That impugned order is not a speaking order.
- iii) That the society has increased the share money from Rs. 1,000/- to Rs. 6,000/- as per resolution passed by the AGBM held on 04/05/1986 and the Assistant Registrar has no power to reject the resolution dated 04/05/1986.

3. RCS in his reply has denied most of the averments made by the society and further submitted :

- i) that there was no provision under the Act that requires the purchaser to pay share money at such a higher rate.
- ii) that after the amendment in the DCS Act and Rules, the society has to get its bye laws amended which was not done by the society.

4. Respondents 1 to 3 in their reply has stated that the revision petition is not maintainable and further submitted :-

- i) that the society cannot arbitrarily deny membership to any member or person assuming rights from erstwhile member. This action is contrary to Section 91 of the Act.
- ii) that no sustainable reason has been given in the petition to deny respondents their membership and as per Section 91 of the Act and bye laws of the society, respondents have to purchase at least one share. Further, contrary to the claim made by Society, bye-laws have not been amended by following Section 11(b) of the DCS Act, 1972.

5. After hearing all the concerned parties at length and by going through the relevant provisions of the laws and available documents on the file, I am of the opinion that only issue that needs to be determined is whether it was correct on the part of Assistant Registrar to reject the decision of the society to deny membership of the respondents herein on the ground that society was seeking to charge more share money than what was prescribed in the bye laws on the basis of resolution passed by the AGBM.

6. As per section 91 of the DCS Act, 2003 purchaser may apply for membership by paying

- i) transfer fee of Rs. 500/-,
- ii) share money and admission fee as per provisions of the bye laws of the society. Further society is required to decide such membership application within a period of 30 days.

7. As per section 10(a) of the bye laws, which is reproduced below, value of the share has been prescribed as Rs. 100/- and no admission fee has been prescribed : -

“10. The capital shall composed of :-

a) an undetermined number of shares of the value of Rs. 100.”

8. It is the contention of the society that the share money of Rs. 6,000/- is being charged as per the decision of AGBM resolution dated. 04/05/1986, vide which share money was increased from Rs. 1,000/- to Rs. 6,000/-.

9. In support of its submissions, petitioner society has cited two judgements :

i) “In the case ‘Manav CGHS Ltd. Vs. P.O. Delhi Cooperative Tribunal (CW No. 3131/2001), Hon’ble High Court of Delhi vide order dated 04/09/2002 held that “unless and until there is a law or rule or bye law prohibiting a person or authority from doing a particular act, that person or authority, if vested with the final authority to take any decision for managing its affairs, the said authority or person is competent to take any decision, revise, review or revoke any earlier decision taken by it.”

In the instant case, AGBM had increased share money from Rs. 1,000/- to Rs. 6,000/- but society failed to amend the bye laws by following the procedure prescribed under section 11 of DCS Act, 1972. Section 10(1) of the Bye laws prescribe share money to be only Rs. 100/-. Therefore, Assistant Registrar was correct in holding that decision of AGBM of charging more share money than prescribed in bye laws, was not consistent with the provisions of bye laws.

ii) In the second case, cited by the petitioner society, titled as Veena Kumari Tandon Vs. Neelam Bhalla & Ors., civil appeal No. 5130/2007, Hon’ble Supreme Court of India held that “statutory provision would prevail over the bye laws”. This decision only strengthens the facts contrary to the contention of the society. Section 91 states that :

“Special provision for regularization of occupancy right of persons who have acquired such a right through the instrument of Power of Attorney or Agreement for Sale—

A member of a Housing Society who have sold his plot or flat on the Power of Attorney or Agreement for Sale or by Sale Deed, shall cease to be a member of that society from the date of sale of plot or flat :

Provided that the purchaser having registered Power of Attorney or registered agreement for sale or registered sale deed, as the case may be, in respect of such plot or flat, may apply for membership by paying transfer fee of five hundred rupees and share money and admission fee as per the provisions of the bye-laws of the society and the commitment shall grant membership to the applicant within thirty days after the submission of his application. In case of refusal by the committee, the applicant may appeal to the Registrar within thirty days and the decision of the Registrar shall be final :

Provided further that no purchaser shall be entitled for more than one membership in a housing society.”

10. Above section clearly states that purchaser may apply for membership by paying transfer fee of five hundred rupees, share money and admission fee as per provision of the bye-laws of the society. Society in its petition Para-D has stated that “there was no amount towards share money was prescribed in the bye-laws of the society”. On the other hand as per society’s bye-laws section 10(a) mentions value of one share to be Rs. 100/-. Further section 11(b) states that every member shall purchase at least one share. Since the society cannot do any act which is beyond the law, rule or bye-laws, therefore members can’t be compelled to pay more than what is prescribed in the bye laws.

11. Considering all the facts and circumstances, I do not find any merit in the contentions of the petitioner. Petition is accordingly dismissed.

12. Announced in the open Court.

-SD-

(DHARAM PAL)
Financial Commissioner,
Delhi.
13th January, 2015