

(2014) 11 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 23475 of 2013

Alka Narwal

APPELLANT

Vs

Haryana Urban Development Authority and Others

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Consumer Protection Act, 1986 — Section 12, 27

Citation : AIR 2015 PH 25 : (2015) 1 RCR(Civil) 974

Hon'ble Judges : Hemant Gupta, J; Hari Pal Verma, J

Bench : Division Bench

Advocate : R.S. Badhran, Advocates for the Appellant; Arvind Seth, Advocates for the Respondent

Judgement

Hemant Gupta, J.—The petitioner has claimed a writ in the nature of mandamus directing the respondents to handover the possession of Plot No. 146, Sector 15, Urban Estate, Jagadhri. The case has a chequered history. The petitioner was allotted the aforesaid plot on 23.8.1991, but the possession was not delivered allegedly on the ground that development works in the area were not completed. The petitioner filed a complaint under Section 12 of the Consumer Protection Act, 1986 before the District Consumer Disputes Redressal Forum (for short "the Forum") on 26.7.2000. Such complaint was decided on 23.11.2000. It was found that since the development works of the Sector were not completed and possession was not delivered, it was unjust and unfair with the respondents to withhold the amount of complainant. Thus, a direction was issued to refund the amount along with the interest thereon. The relevant extract from the order reads as under:--

"3. Arguments heard with the help of the learned counsel for the parties and have gone carefully through the material placed on the file. We all are of the firm view that when the plots were in litigation and the development of the sector was not completed and the possession is not delivered to the allottees, it was unjustify and unfair of the respondents to withheld the amount of the

complainant merely to earn interest thereon. The said act of the respondents is unfair mala fide and deficient. We have also gone through the case law R.K. Goel v. HUDA mentioned in supra that no deduction can be made by the respondents, rather the respondents are liable to pay interest along with refund of entire amount deposited by the complainant.

4. In our opinion, this case of the complainant is on strong footings and is well proved from the facts on the file. It is clear that the respondent has acted negligently qua the complainant. The complainant is therefore, allowed for the following relief:--

1) The complainant is entitled for the refund of his entire amount paid by him upto date.

2) The complainant would also be entitled to the interest @ 10% per annum from the date of each deposit of his instalments till the date of payment. The respondents are directed to comply with this order within clear 30 days from the date of this order, otherwise penal action under Section 27 of the Act shall be initiated against the respondents. File be consigned to the record room."

2. The appeal against the said order preferred by the respondents herein, was dismissed on 22.3.2007 inter alia on the ground that sufficient cause is not made out for condoning the delay in filing the appeal.

3. In the meantime, the petitioner is said to have been received certain communications demanding extension fee and non-construction charges, which the petitioner claims to have deposited. After the dismissal of appeal, the petitioner filed another complaint on 8.8.2007 before the Forum. Such petition was allowed with direction to the respondents to handover physical possession of the plot to the petitioner. The relevant extract from the order reads as under:--

"6. Resultantly, we allow the complaint of complainant and direct the respondents to handover the actual possession of the plot No. 146 in Sector 15, HUDA to the complainant and till the actual physical possession is delivered not to demand any extension fees from the complainant and pay Rs. 50,000/- as cost of escalation charges on account of mental agony, harassment and unfair trade practice and pay Rs. 5500/- as litigation expenses. Order be complied within one month. File be consigned to the record room."

4. An appeal was preferred against such order before the Haryana State Consumer Disputes Redressal Commission. The appeal was allowed on 7.8.2012 when the following finding was recorded:--

"It is not disputed that the complainant in her earlier complaint bearing No. 343/2000 had sought refund of the deposited amount with respect to the plot No. 146, Sector 15, HUDA, Jagadhri which was accepted by the District Forum vide order dated 23.11.2000. It is also not disputed that the appeal filed by HUDA against the order dated 23.11.2000 was dismissed vide order dated 22.3.2007 and thus the order dated 23.11.2000 has attained finality. It has also

come on the record that the opposite parties in order to comply with the order dated 23.11.2000 and 22.3.2007 sent a cheque bearing No. 541011 dated 6.4.2000 for an amount of Rs. 8,53,491/- through registered post on 26.4.2007 and thereafter through a chowkidar by hand, but the same was refused by the complainant. The act and conduct of the complainant shows that she wants to get the plot in these days when the prices of urban property of HUDA have increased manifold. This clever device of the complainant cannot be allowed to sustain. District Consumer Forum has committed great error in allowing the complaint against the facts and circumstances of the case, hence, the impugned order cannot be allowed to sustain.

For the reasons recorded above, this appeal is accepted, impugned order is set aside and the complaint is dismissed."

5. The subsequent challenge before the National Consumer Disputes Redressal Commission by way of revision remained unsuccessful vide order dated 16.7.2013. It is, thereafter, the petitioner has filed the present writ petition.

6. Learned counsel for the petitioner has vehemently argued that the respondents have dealt with the petitioner in discriminatory manner in as much as in respect of some other allottees, the possession has since been handed over, whereas in respect of the petitioner, the possession has not been handed over to her. It is also contended that the prayer in the second complaint was different than what was in the earlier complaint; therefore, the claim of the petitioner for possession cannot be declined in view of the orders passed earlier.

7. We have heard learned counsel for the parties and find no merit in the present writ petition. The order passed by the Forum on 23.11.2000 is that the petitioner should be refunded the amount deposited along with interest. Such order has attained finality. The petitioner has not challenged the said order in any manner in the appeal or revision. Once the order of refund of the amount deposited along with interest has become final, the same could not be ignored in a subsequent complaint filed by the petitioner to claim possession. The order passed by the statutory authority could not have been unilaterally ignored by the respondents, even if the demand of extension fee or the non-construction charges are claimed from the petitioner. Still further, the second complaint has been dismissed for the reason that in earlier complaint the petitioner sought refund of deposited amount. Once the petitioner has chosen a particular course of action to seek refund of the amount deposited, the petitioner cannot approbate and reprobate to claim possession at a subsequent stage.

8. The plea of discrimination was not raised before the National Commission or before the State Commission. Once a quasi judicial authority has taken a decision on a complaint earlier filed by the petitioner, the petitioner cannot be permitted to change her stand at subsequent stage. Consequently, we do not find any merit in the present writ petition; therefore, the same is dismissed.