(1998) 12 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

ASHUTOSH AHLUWALIA APPELLANT

Vs

HARYANA URBAN DEVELOPMENT AUTHORITY RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Citation : 1999 1 CPJ 34

Hon'ble Judges : U.P.Singh , R.K.Anand J.

Final Decision : Enquiry disposed of

Judgement

1. SHRI Ashutosh Ahluwalia has made a composite application under Section 36A and Section 12B of the Monopolies & Restrictive Trade Practices Act, 1969 (the Act for brief) against the respondents, Haryana Urban Development Authority (HUDA) and Industrial Assistance Group (IAG) through its Chief Coordinator. It has been alleged in the complaint that the respondent No. 1 issued an advertisement in the leading newspapers inviting applications upto 5.10.1994 from prospective entrepreneurs for allotment of industrial plots of 1, and acre @ Rs. 750/- per sq. meter in Electronic Hardware Technology Park (EHTP), Sector 34, Gurgaon. The applicant/complainant who is a non-resident Indian, obtained an application form and brochure for Rs. 100/- from the Industrial Assistance Group (IAG) and applied for allotment of acre of plot in the name of Best Power Systems and gave a demand draft of Rs. 1,57,500/- being 10% of the cost of the land to the Estate Officer, HUDA, Gurgaon. It has been further stated that in response to his application he was called for personal discussion and evaluation of his project on 21.11.1994. In his meeting with the Plot Allotment Committee he furnished details of his proposed project and also justification for allotment of acre of plot to him. Subsequently, he was asked by the IAG to submit the project report and other supporting documents. He was, later on, informed by the Senior Manager (Electronics) IAG vide his letter dated 29.6.1995 that it has been decided to offer him an industrial plot measuring 500 sq. metres at Udyog Vihar, Phase-VI, Gurgaon or 1/8 acre of industrial plot at the Industrial Estate, Bahadurgarh and that he should give his acceptance of the offer of either of the two plots.

2. IT has been further stated by the applicant/ complainant that he conveyed his acceptance of the plot measuring 500 sq. metres at Udyog Vihar, Phase-VI, Gurgaon vide his letter dated 10.7.1995. At the same time, he also requested that he should be given the minimum notified size of plot of acre keeping in view his requirements for land and the nature of the project. He was, however, informed that plot No. 74 measuring 500 sq. mts. at Udyog Vihar, Phase-VI had been allotted to him. Later on during his visit to HUDA he was informed that his consent to transfer his application and earnest money of Rs. 1,57,500/- to IAG was needed and accordingly he gave his written consent on 19.2.1996 for transfer of his earnest money from HUDA to IAG. It has been further added that he followed up his case and he was informed that as per the new industrial policy the plots in Gurgaon were to be auctioned since these were located in the High Potential Zone and that a plot allotted to him earlier could not be offered to him and the earnest money of Rs. 1,57,085/- was refunded to him after deducting the Bank charges of Rs. 415/-. The grievance of the applicant/ complainant is that although according to the advertisement he should have been allotted an industrial plot of minimum size of of an acre in EHTP, Gurgaon on the basis of his application and the earnest money deposited by him, possession of a smaller size plot of 500 sq. meters was not handed over to him in spite of its formal allotment and his acceptance of the allotment. Even if the policy with regard to allotment of plots was changed subsequently, he could not have been deprived of the plot as the allotment was made to him much before the new policy was introduced. He has further complained that the prices of the land in that area have since gone up from Rs. 750/- per sq. meter to about Rs. 10,000/- per sq. meter and it is an unfair trade practice on the part of the Government of Haryana and the respondents to take advantage of the situation, when according to the industrial policy the respondents are expected to sell the plots on ''no profit no loss'' basis. It has also been stated that the applicant-complainant''s earnest amount of Rs. 1,57,500/- has been kept by the respondent and no interest has accrued on it and thus he has been deprived of utilizing this amount in other productive investments.

In the reply filed on behalf of respondent No. 1 it has been stated that there was no reservation of plots in respect of EHTP for non- resident Indians. It has also been mentioned that IAG, respondent No. 2 is independent of HUDA, respondent No. 1 and has been created to evaluate the project reports submitted by prospective entrepreneurs like the applicant and also consider viability and other technical aspects of the project and it was on the basis of such evaluation that IAG decided to offer an industrial plot measuring 500 sq. mts. at Udyog Vihar, Phase-VI, Gurgaon or I/8th of an acre industrial plot at Industrial Estate, Bahadurgarh and accordingly the earnest money deposited by the complainant was transferred to IAG on 6th June, 1996 and, thereafter, respondent No. 1 was not dealing with the application of the complainant and therefore complainant''s claim made under Section 12B of the Act qua the respondent No. 1 is not tenable. It has been further clarified that although the complainant''s application was received by respondent No. 1, it was referred to IAG as IAG alone was competent to consider the applications of NRIs.

3. IN the reply filed by Mr. S.P.S. Chauhan, Coordinator IAG on behalf of respondent No. 2 it has been mentioned that the complainant''s request was considered by the Technical Committee on 16th June, 1995 and keeping in view the nature of the project and the project report it was decided to offer him a plot of 500 sq. mts. which was considered sufficient for his proposed project. It has also been clarified that the complainant''s request for bigger size plot was considered and was rejected keeping in view the requirement of land for the proposed project. It has also been highlighted that the complainant accepted the offer of 500 sq. mts. plot and also gave his consent to HUDA for transfer of the earnest money to the IAG and while the process of the issuing letter of intent to him was under way, the Government of Haryana framed a new industrial infrastructure development policy for allotment of industrial plots. According to this policy which was introduced on 15.7.1996 the industrial estates were divided into two categories of high potential zone and low potential zone and all the plots in the developed industrial estates in the high potential zone were to be put to auction and industrial estates in the Gurgaon were included in the higher potential zone. On completion of pleadings, the following issues were framed: 1. Whether the respondents are indulging in unfair trade practices as alleged in the NOE ? 2. Whether the alleged unfair trade practices are prejudicial to the interest of the applicant/complainant or consumers in general ? 3. Relief, if any ?

4. BOTH the applicant/complainant as well as the respondents have furnished their respective affidavits of evidence with supporting documents. They have been heard at length and the relevant record has been perused. It is pertinent to mention here that on 30.1.1997 when the complainant''s interim relief application under Section 12A of the Act was considered, a direction was given by the Commission to the respondents to reserve acre plot in Sector 34, Gurgaon for him, although it was made clear in the order that this direction was without prejudice to the final outcome of the enquiry. It is also worthy of note that on 6.7.1997 when the case was taken up it was stated by the learned Advocate appearing on behalf of respondent No. 2 that it had been decided by the MD of Haryana Industrial Development Corporation (HIDC) and Chief Administrator of respondent No. 1 after discussion with the complainant that recommendation for issuing a letter of intent to him for a plot measuring 500 sq. mts. in Udyog Vihar, Phase-VI would be made. From the written statement filed on 22.9.1997 on behalf of respondent No. 2 by Shri S.P.S. Chauhan it appears that vide letter dated 25.7.1997 a plot No. 74 measuring 500 sq. mts. in Udyog Vihar Phase VI, Gurgaon, was actually offered to the applicant/complainant. It, however, transpired that the actual size of the above plot was 456 sq. mts. and not 500 sq. mts. In the written statement of Shri Chauhan it has been clarified that the plot in question was in the 500 sq. mts. category of plots and the complainant had also been informed that he would be required to pay its cost @ Rs. 805/- per sq. mt. which was the prevalent rate of HIDC at that time. After hearing the

complainant as well as the Advocates for respondent Nos. 1 and 2 it transpires that it is not in dispute that the complainant applied for a plot of acre in response to the advertisement and accordingly deposited the earnest money of Rs. 1,57,500/- which works out to 10% of the cost of acre @ Rs. 750/- per sq. mt. It is also manifestly clear from the record that IAG is responsible for processing the applications of NRIs and the complainant claims to be one. It also transpires that IAG duly processed the application and after considering the project report, decided to offer 500 sq. mts. plot to him. While the respondent No. 2 appears to have restricted the plot''s size to 500 sq. mts. depending upon the nature of the project and the requirement of land for setting up of that project, there does not appear any basis for further reduction in the size of the plot to 456 sq. mts. It is also not disputed that when the complainant applied for a plot of land in 1994, the prevailing rate at that time was Rs. 750/- per sq. mt. and on that basis he deposited the earnest money. His earnest money of Rs. 1,57,500/- has all along remained with the respondents. It is also admitted by the respondent No. 2 that the complainant has been treated as an NRI and his case has been processed on that basis. The Commission while considering the complainant''s application for interim relief on 30.1.1997 observed that prima facie it was a fit case to be enquired into and directed the respondent to reserve acre plot for him as he had applied for this size of plot and deposited earnest money accordingly. However, as discussed above, the requirement of land needed by the complainant was assessed to be 500 sq. mts. only by respondent No. 2. It is, therefore, only fair and just that a plot of 500 sq, mts. should be handed over to him and that too at the rate of Rs. 750/- per sq. mt. which was indicated earlier. By denying a plot of 500 sq. mts. and offering him a plot of only 456 sq. mts., the respondents are undoubtedly indulging in unfair trade practices and our findings on the issue is that both the respondents 1 and 2 are guilty of unfair trade practices and these unfair trade practices are prejudicial to the interest of the complainant as well as to the consumers in general. Another instance of unfair trade practices on the part of the respondent No. 2 is to seek to apply the new Infrastructure Development Policy for allotment of industrial plots which came into force with effect from 15.7.1996. It is worthy of note and it bears repetition that the complainant applied in October, 1994 and his application was duly considered and offer of allotment of plot was also made to him and he conveyed his acceptance of the offer on 10.7.1996 that is prior to the introduction of the new Infrastructure Development Policy. It is also apparent from the record that but for the order dated the 30.1.1997 of the Commission directing the respondent to reserve acre plot for him.

5. IT is also pertinent to mention here that both the respondents have kept the earnest money deposited by the complainant and have not offered to pay any interest on the deposit. While it is true that there has been generally escalation in the cost of land due to various factors, the respondent cannot pass on this increase in cost to the complainant especially when his application is in response to the 1994 advertisement and at that time the cost of land indicated to him was

Rs. 750/- per sq. mt. IT is a case of restrictive trade practice on the part of respondent No. 2 to impose unjustified cost on him by asking him to pay Rs. 805/-per sq. mt. IT has also been noted that it is for no fault of the complainant that the processing of his case, has been delayed inordinately. We accordingly direct the respondents to cease the unfair trade practices being indulged in and also give an undertaking not to repeat the same or similar unfair trade practices in future. We also direct that the complainant should be given possession of a plot of 500 sq. mts. in Udyog Vihar, Phase-VI as was offered to him and not a plot of 456 sq. mts. at the rate of Rs. 750/- per sq. mt. The compliance of this order be made within 6 weeks of its pronouncement.

6. AS regards the compensation of Rs. 35,17,957/- claimed by the applicant/ complainant there is no rationale or basis for it. First of all as pointed out above the application for acre plot made by the applicant/ complainant was considered by the respondent and after evaluation of the project and assessing requirement of land for setting it up, a plot of 500 sq. mts. was offered to him. What is worthy of note is that the offer was accepted by him and a plot of that size was allotted to him also. It is, however, true that there has been a delay in actually giving possession of the same to him but we have already given a direction above to the respondent No. 2 that a plot of 500 sq. mts. and not 456 sq. mts. should be handed over to him and price @ Rs. 750/- per sq. mt. should be charged as that was the rate indicated to him and on that basis earnest money was deposited by him. The only other compensation we can award with justification is interest @ 10% on the amount of earnest money in excess of 10% of the cost of 500 sq. mts. plot. The interest is to be calculated from the date of acceptance of allotment offer by the applicant/complainant. While it is true that the entire amount after deducting Bank charges in the form of a Bank Draft/ cheque was refunded to him/it was not encashed by him. The claim of compensation for loss of salary and air fare to and fro Canada cannot be considered as it was for the complainant to follow up his application and meet the Plot Allotment Committee or the IAG and to satisfy them that he was a bona fide entrepreneur and his need for land was genuine. If for any reason, the processing of the case took inordinately long time, he cannot burden the respondent with a heavy amount by way of compensation. The respondents have been set up by the State Government of Haryana in order to provide necessary facilities to the prospective entrepreneurs in the interest of industrial development of the State and are expected to make available these facilities at "no profit no loss basis". In view of the above we do not think any further compensation other than what has been awarded by us is called for or is justified. In view of the above discussion, we hold that a case of unfair trade practice by and on behalf of respondents has been fully established and we direct that the respondents cease the unfair trade practices being indulged in by them and also give an undertaking within six weeks that they shall not repeat the same or similar objectionable trade practices in future. It is also directed that the applicant/complainant be given a plot measuring not less than 500 sq. mts. in

Udyog Vihar, Phase-VI for his project @ Rs. 750/- per sq. mt. We also direct that the respondents compensate the complainant by paying interest @ 18% per annum on the amount of earnest money in excess of 10% of the value of the plot of 500 sq. mts. The value of the plot shall be calculated @ Rs. 750/- per sq. mt. which was the prevailing rate at the relevant time. The interest amount will be calculated accordingly for the period the excess amount remained with the respondents. We further direct that the compliance of the order be made within six weeks from today. Enquiry disposed of.