
(2009) 03 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

CHANDIGARH HOUSING BOARD

APPELLANT

Vs

Krishan Kumar Goel And Ors.

RESPONDENT

Date of Decision : 13-03-2009

Acts Referred:

Citation : 2009 2 CPJ 174

Hon'ble Judges : R.C.JAIN , ANUPAM DASGUPTA J.

Advocate : RACHNA JOSHI ISSAR , SURINDER GANDHI , J.K.BHATIA , K.P.DUBEY

Judgement

1. CHANDIGARH Housing Board (in short, "Housing Board") has filed these appeals against the common order dated 20.12.2002 passed by the Consumer Disputes Redressal Commission, Union Territory, Chandigarh (in short "the State Commission") in Complaint Case No. 11 of 2002 and Complaint Case No. 33 of 2002. The complaint No. 11/02 was filed by 35 complainants while Complaint No. 33/02 was filed by 30 persons who were members of the Punjab & Haryana High Court Advocates Cooperative House Building Society Limited (in short, the Society), having a membership of 241. The complaints were filed alleging deficiency in service on the part of the Housing Board on several counts and seeking different reliefs. One of the allegations of deficiency made by the complainants is that though the Society had deposited the necessary amount for allotment of land with the Housing Board in the year 1992 -93, the Housing Board finalized the zoning plan only in October 1996 and only thereafter the possession of the allotted land could be taken. The complaint was resisted by the Housing Board as well as the Estate Office, U.T., Chandigarh denying any deficiency on their part and inter alia pleading that the complaint was filed by concealing material facts in regard to taking over of the possession by the then President of the Society on 28.12.1994 and thereafter it was owing to the dispute in regard to the name and numbers of the members of the Society which was subject matter a civil writ petition before the Punjab & Haryana High Court and soon after the decision of the said writ petition, action was taken to allot additional land as also to finalize the zoning plan within a reasonable period without any delay. It was sought to be explained that the delay, if any, had been

occasioned by the inaction on the part of the complainants. The State Commission, going by the respective pleas, evidence and material placed on record, however, partly allowed the complaint with the direction to the Housing Board to pay interest @ 9% p.a. on the amounts deposited by the respective complainants in both the complaint cases from the date of respective deposits till the date of sanction of zoning plan, i.e., October 1996 by holding that there was delay in the sanction of the zoning plan due to which the complainants were prevented from submitting their site plans for construction of the flats. Aggrieved by the said finding and order, the Housing Board seeks to challenge the said order and finding of the State Commission.

2. WE have heard Ms.Rachna Joshi Issar, learned Counsel for the Housing Board - appellant, Mr. Surinder Gandhi, learned Counsel representing the respondent and Mr. J.K. Bhatia and Mr. K.P. Dubey, learned Counsel representing the Estate Officer and have given our thoughtful consideration to their respective submissions.

3. BEFORE we proceed to consider the submissions put forth on behalf of the parties, we may notice that on 18.1.2006, this Commission after hearing the appeals at some length directed the appellant -Housing Board to place on record the dates when six additional members were included in the list, on affidavit, and also directed the responsible officer from the Architect Department of Chandigarh Administration to remain present. Pursuant to the said direction, affidavit of Mr. S.K. Setia. Secretary of the appellant -Housing Board has been filed. Reply to the said affidavit has also been filed. We have carefully perused the detailed affidavit of Mr. S.K. Setia. The affidavit satisfactorily explains the reasons why the sanctioning of zonal plan was delayed after allotment of land measuring 44334.49 sq. yds . to the complainant's Society vide allotment letter No. 25651 dated 7.12.1994, possession of which was handed over to the Society on 20.12.1994. It further states that after the Society was handed over possession of the land in 1994, it wanted six additional members to be included in the list of members, in lieu of outgoing members, which aspect later on became the subject matter of litigation in the High Court of Punjab and Haryana. The relevant writ petition was disposed of by the High Court on 28.2.1994. Afterwards, steps were taken to allot additional land of 1161.60 sq.yds. as per the revised lay out plan of Sector 49 -A. It is further stated that once the question of demarcation of the additional land was completed, the Chief Architect issued a communication dated 25.5.1995 and pursuant to the same, the Finance Secretary U.T., Chandigarh was requested by the appellant -Board, vide its letter of the even date to accord sanction of allotment of additional land and give necessary direction to the Estate Officer, U.T., Chandigarh to issue allotment letter in favour of appellant -Board. The Finance Secretary, Chandigarh Administration acted promptly on the said request and vide his letter dated 26.5.1995 addressed to the Estate Officer U.T., Chandigarh intimated to adjust the area measuring 1161.60 sq. yds. out of the land measuring 106.443 acres for allotment of plots/flats to additional eligible members of the complainant's Society. Soon

thereafter, the appellant -Board issued a letter dated 12.7.1995 to the Society in continuation of the earlier allotment letter allotting additional land measuring 1161.60 sq. yds. in respect of six additional members of Society vide memo dated 14.8.1995, the Society was also advised to obtain possession of the additional land within a week's time. However, there was no response from the Society and it was only on 14.11.1995 that the land was demarcated and possession of additional land was taken. The affidavit is supported by relevant communications. In regard to the sanction of zonal plan, it has been explained in the reply/written statement filed on behalf of Estate Officer, U.T. Chandigarh, which read as under: "The President of the Society applied for copy of zoning plan of the site on 10.11.1995 to the office of the respondent herein which supplied him a copy thereof which had already been approved and signed by the Chief Administrator, U.T., Chandigarh. Subsequently, the President of the Society sent a conceptual design plan of the society on 6.9.1996 which was approved by the Architectural Deptt. on 18.10.1996. Subsequently, the conceptual plan and the Community Centre was approved by the Architectural Deptt. on 9.1.1997. The revised plan/design for construction of the dwelling units was submitted on 10.10.1997 and the approval of the revised conceptual designs/plans was accorded by the Architectural Deptt. on 11.11.1997. The delay in the approval of the zoning plan by the Society in March 1995 was due to the fact that certain new names had been added under Court orders and zoning plan of the site needed to be revised. The revised zoning plan was accordingly approved on 10.11.1995 by the Chief Administrator and on the same day the President of the Society applied for copies of the zoning plan which were supplied on 15.11.1995. Thus, it would be clear that zoning plan was delayed due to the reasons that members were continued to increase which necessitated revision of the zoning plan."

4. AS against the above affidavit and reply, affidavit of D.D. Bansal, Advocate has been filed. On going through the same, we find that there is no denial of the factual position that the question in regard to the number of members and identity of members arose which was the subject matter of a writ petition before the High Court of Punjab and Haryana and ultimately the Society was permitted to replace six existing members by six new members. Since six new members were introduced in the Society, raising the membership to 241, there was requirement of additional land which was ultimately fulfilled by the Housing Board as well as U.T. Chandigarh. There is also no denial of the position that prompt action was taken by the authorities of the appellant -Board as well as that of the U.T. Administration to allot and demarcate the additional land. It is also not disputed that complainant's Society obtained the possession of the additional land only on 14.11.1995 and thereafter the President of the Society applied for copy of zoning plan on 10.11.1995 and thereafter, sent conceptual design plan for the Society only on 6.9.1996 which was approved by the Architectural Department of U.T. Administration on 18.10.1996. Subsequently, conceptual plan of the community centre was approved by the said Department

on 9.1.1997.

5. ON the basis of the above factual position, learned Counsel for the appellant - Board has vehemently argued that the State Commission was not justified in recording a finding of delay in sanctioning the zonal plan. There appears to be considerable force in this argument because, from the material available on record, it would appear to us that the allotment of land was made to the Society of the complainant in December 1994 for construction of houses for 235 members. However, subsequently it appears that the Society introduced six new members and, therefore a dispute arose which could be settled by the High Court of Punjab and Haryana with a direction to the appellant and U.T. Chandigarh Administration to allot additional land for six members. The process of allotment of additional land, its demarcation, etc., was bound to take some time because it required consideration not only of the appellant -Board but also of the land owning authority i.e. Administration of U.T. Chandigarh. Even then it appears that appellant -Board and U.T. Chandigarh Administration have acted with due dispatch so as to ensure that the proposal was realized on the ground without any delay. So far as sanctioning of zonal plan is concerned, it is established on record that the complainants' Society applied for the same in the month of September 1996 and approval was granted in October 1997, i.e., within a period of one month or so. This appears to be a reasonable time for the authorities to consider and accord necessary sanction. Therefore, it is not possible to hold that there was any delay, what to talk of any undue delay on behalf of the appellant - Board or the Estate Officer, U.T. Chandigarh Administration in according sanction to the zonal plan. They cannot be faulted for any delay which has taken place, firstly, due to the pendency of the writ petition in the High Court and, thereafter, the whole process of allotment of additional land required a number of formalities. We have also noticed that for some delay, the Society itself is responsible, firstly, in not taking the possession of the additional land promptly and secondly, by not submitting conceptual plan for the approval of the Estate Officer's Architect. Therefore, the finding of the State Commission in that behalf cannot be sustained. Even if, for the sake of argument, it is assumed that there was some so -called delay in sanctioning the zonal plan, there was no case made out for grant of any interest to the complainants. We say so because Clause 8 of Chandigarh Allotment of Land to Co -operative House Building Societies Scheme, 1991 clearly states that no interest shall, however, be payable on any amount which remained deposited with the Estate Officer under this Scheme.

6. YET another ground taken up by the appellant -Housing Board is that the complaint filed by the respondent was barred by limitation, viz., having been filed much after the period of 2 years as prescribed under Section 24A of the Consumer Protection Act, 1986. We see force in this submission also because going by the averments and allegations made in the complaint, the cause of action for filing the complaint had arisen sometime in the year 1995 -1996 when according to the complainants there was delay on the part of the appellant - Board and the Chandigarh Administration in sanctioning the zoning plan or latest

by the year 1998 when possession of the additional land was taken. Therefore, the complaints could have been filed upto the year 1999 or 2000. The complaints in this case were filed in the year 2002, without explaining any circumstance why the complaint could not be filed within the prescribed period of limitation. In the case of Kerala Agro Machinery Corporation Ltd. v. Bijoy Kumar Roy and Ors., II (2002) SLT 267=(2002) 3 SCC 165, the Hon"ble Supreme Court has held that the question of limitation should be considered seriously at the stage of complaint. In the case in hand, though the objection of limitation was taken by the appellant in their written version, the State Commission has not adverted to the same. In our view, the complaints filed by the respondents are also liable to be dismissed on the ground of limitation alone

7. FOR the foregoing reasons, we are of the opinion that present appeals deserve to be allowed, the order passed by the State Commission cannot be legally sustained. In the result, the appeals are allowed and impugned order is hereby set aside. However, in the facts and circumstances of the case, we leave the parties to bear their own costs throughout. Appeals allowed.