
(2014) 03 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

HARYANA URBAN DEVELOPMENT AUTHORITY

APPELLANT

Vs

Adhunik Educational Cultural And Welfare Society

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Citation : 2014 0 NCDRC 158

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 04.05.2005, passed by the Haryana State Consumer Disputes Redressal Commission (for short "the State Commission ") in Appeal No. 2819/2004, ""Haryana Urban Development Authority (hereinafter referred to as HUDA) versus Adhunik Educational Cultural & Welfare Society """, vide which while partly allowing the appeal, the order dated 20.07.2004, passed by the District Consumer Disputes Redressal Forum, Faridabad, allowing the consumer complaint no. 810 dated 17.10.2003, filed by the present respondent, was modified.

2. BRIEF facts of the case are that the complainant filed consumer complaint no. 810 on 17.10.2003 on the ground that they purchased a Nursery School site No. 3 at Sector 21 D, Faridabad through open auction on 15.10.98 at a cost of Rs.17,32,500/- and the allotment letters dated 26.07.98 and 30.07.99 were issued to them. 10% of the cost of the site was deposited at the time of auction and 15% was deposited within 30 days from the date of allotment. The balance payment was also made as per schedule in instalments, but the petitioner/OP failed to discharge its responsibility to hand over physical un-encumbered possession of the site immediately after deposit of 25% of the total cost. After writing many letters to the OP for possession, the formal possession was offered vide letter dated 30.07.99 and handed over vide letter dated 09.08.99. The building plan of the site was sanctioned on 24.05.2000, but when the complainant was about to start the construction work, they found high tension electricity line passing through their plot. It has been alleged that it was the duty

of the OP to remove the high tension wire and other encroachments, before handing over the possession of the plot. The OP had, therefore, indulged in deficiency in service. The District Forum after taking into account the evidence of the parties, allowed the complaint and ordered to remove the high tension wire forthwith. The District Forum also stated that if it was not possible to shift the said wire from that place, an alternative site of the same size and similar price should be given to the complainant. In addition, an amount of Rs.4,75,345/- received from the complainant in the shape of interest on instalments was ordered to be refunded. It was also directed that interest @10% p.a. should be paid on the deposited amount. The District Forum also ordered to pay a sum of Rs.2 lakh as compensation for mental harassment and Rs.2,000/- as cost of litigation. An appeal was filed against this order before the State Commission and vide impugned order dated 04.05.2005 of the said Commission, it was stated that HUDA had made a revised zoning plan for the area and in view of that, the directions issued by the District Forum had become infructuous. However, the complainant was entitled to get interest @10% p.a. on the deposited amount after 2 years from the date of allotment till the date of revision of Zoning Plan, i.e., 04.08.2003. The compensation of Rs.2 lakh awarded to the complainant was also reduced to Rs.50,000/-. It is against this order that the present revision petition has been filed by the OP, HUDA. This revision petition was filed in this Commission on 23.05.2006 with a delay of 79 days. An application for condonation of delay was also filed alongwith the revision petition. A notice was issued to the respondent / complainant vide order dated 07.06.2006 and the operation of the impugned order was stayed. Thereafter, the case remained pending in this Commission for admission hearing for long time and it was ordered to be admitted on 02.12.2011. It was also ordered that the case be listed for final hearing in due course. Later on, when the case was taken -up for hearing, notices were sent to the parties for appearance on 02.01.2014. However, the petitioner did not appear despite the delivery of notice upon the petitioner as well as their counsel. The respondent also did not appear despite the delivery of notice to counsel for respondent. When the matter was taken -up for consideration on 2.01.2014, it was decided that one more intimation should be given to the parties in the interest of justice and the case was fixed for hearing on 20.02.2014. On 20.02.2014, as per the office report, the notice has been delivered to the petitioner as well as to their counsel but despite that, none appeared on behalf of the petitioner. The respondent also did not appear.

3. LOOKING at the material on record, it is observed that the petition was filed with a delay of 79 days. In the application for condonation of delay, it has been mentioned that the copy of the impugned order dated 04.05.2005 was delivered/despached by the registry of the State Commission on 05.012.2005. However, after receiving the same, the matter was required to be dealt with in various branches of the OP involving lengthy, lethargic and cumbersome procedure, as per the version of the petitioner itself, which resulted in delay although the same was not intentional.

4. WE do not find any justification for the condonation of delay as the petitioner have themselves admitted about lengthy, lethargic and cumbersome procedure prevalent in their office. The Hon "ble Apex Court in a catena of judgements delivered recently have settled the law very clearly that unless cogent and convincing explanation is furnished by a party for condonation of delay, the same should not be condoned. We, therefore, do not find any justification for the condonation of delay in the present case and the revision petition deserves to be dismissed on this ground alone. Even on merits, it is made out from record that there was high tension wire passing over or near the plot in question. The petitioners then themselves changed the zoning plan. The State Commission have rightly observed in their order that because of the change in the zoning plan, the first direction contained in the order of the District Forum to remove the high tension wire over the plot had become infructuous. The date of the revision of the zoning plan has been stated to be 04.08.2003. The State Commission has also observed that the complainant had already been compensated by awarding interest @10% p.a. on the amount deposited. In their wisdom, they directed that compensation on account of mental harassment should be reduced from Rs.2 lakh to Rs.50,000/ -.

5. IT is clear from the above position that there is no merit in the revision petition, which require interference in the order passed by the State Commission. The petitioners themselves changed the zoning plan in order to take care of the problem caused by high tension wire over the plot. It is held, therefore, that the order of the State Commission does not suffer from any illegality, irregularity or jurisdictional error as well. Moreover, the petitioner has not come forward to plead their case despite affecting service of notice twice upon them. In the light of this situation, this revision petition is ordered to be dismissed and the order passed by the State Commission upheld with no order as to costs.