

(2006) 10 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

HARYANA URBAN DEVELOPMENT AUTHORITY

APPELLANT

Vs

VANDANA GOEL

RESPONDENT

Date of Decision : 25-10-2006

Acts Referred:

Citation : 2006 4 CPJ 258 : 2007 1 CLT 141

Hon'ble Judges : R.C.Kathuria , Banarsi Das , Shakuntla Yadav J.

Final Decision : Appeal dismissed

Judgement

1. CHALLENGE in this appeal is to the order dated 31.1.2006 passed by the District Consumer Disputes Redressal Forum, Karnal whereby while accepting the complaint of the respondent-complainant against the appellant-opposite parties it has been concluded as under: "We hold that OPs have wrongly refused to grant necessary permission to the complainant to transfer the plot in question particularly when the complainant is ready to execute indemnity bond to the satisfaction of OPs to pay any outstanding amount that may be found payable by her by the Hon'ble State Commission or any other competent Court of Law. Accordingly, this complaint is disposed of with the direction that OPs shall grant necessary permission to the complainant to transfer/sell the plot in question to the prospective purchaser within a period of 30 days of the receipt of copy of this order without imposing any restriction upon the complainant. However, before granting necessary permission to the complainant to transfer the plot in question, OPs may obtain indemnity bond from her, if so desired. There shall be no order as to costs."

2. IN order to focus the controversy involved in the present appeal essential facts as spelled out from the record need to be noticed briefly. The complainant was allotted a plot No. 295 located in Urban Estate, Sector-7, Karnal as per letter No. 3507 dated 24.1.1986 by the opposite parties. Because of certain demands received from the opposite parties, the complainant filed a Complaint No. 216 of 2003 on 10.3.2003 before the District Forum, Karnal which was decided on 14.3.2005 whereby direction was given to the opposite parties to overhaul the

account of the complainant. Execution No. 42 of 2005 filed on 30.3.2005 was also decided on 27.9.2005. Thereafter, the complainant deposited the necessary stamp papers for the execution of the conveyance-deed vide Memo No. 15133 dated 8.11.2005. The physical possession of the allotted plot was given to the complainant on 10.11.2005. IN the first week of December, 2005 the complainant submitted an application to the opposite parties seeking permission to sell the plot in question but the permission was denied to her on the ground that the appeal against the order dated 14.3.2005 passed in complaint by the District Forum had been filed which was pending. Aggrieved by the action of the opposite parties the complainant invoked the jurisdiction of the District Forum alleging that there is no condition in the agreement that after the execution of conveyance-deed, the complainant shall have no right to sell the plot in question. It was further averred by the complainant that she had entered into an agreement to sell the plot in question and till the permission was granted, she would be required to pay double the amount of the earnest money of Rs. 2,50,000. The complainant also stated that she was ready to give indemnity bond and affidavit undertaking to refund any amount due to the opposite parties. Accordingly, it was prayed that direction be given to the opposite parties to grant permission to sell the plot in question without demanding any extension fee and interest and in terms to return the amount of extension fee already charged from her; to pay interest on the deposited amount from the date of deposit till the offer of possession on 13.9.2005 and to pay the balance amount due to her. IN addition Rs. 20,000 was claimed as compensation on account of mental agony and harassment caused to her. The complaint was contested by the opposite parties. IN the written statement filed it was pleaded that a sum of Rs. 19,455 and Rs. 66,790 were payable by the complainant as over due of extension fee till 31.1.2006 respectively and till the said payment the permission to transfer the plot could not be granted to her. At the same time they did not dispute that the application for transfer of the plot had been received in their office on 12.12.2005 but no decision had been taken on the said application due to non-cooperation of the complainant. The plea of res judicata was also raised because against the order dated 14.3.2005 passed in Complaint Case No. 216 of 2003 the appeal filed by the opposite parties before the State Commission is still pending and for that reason relief claimed in the present complaint was covered under the previous complaint. Accordingly, it was prayed that the complaint merited dismissal. On appraisal of the pleadings of the parties and evidence adduced on record, the District Forum accepted the complaint as noticed above as per order dated 31.1.2006. It is against this order, the present appeal has been filed. Learned Counsel representing the parties have been heard at length.

Learned Counsel representing the appellants while assailing the order dated 31.1.2006 of the District Forum has made four fold submissions. Firstly, that the order dated 31.1.2006 of the District Forum is a nullity as it is against the mandatory/statutory provisions of Rule 4(9) of the Haryana Consumer Protection Rules, 2004 (hereinafter referred to as the Rules, 2004). In support of the stand

reference was made to the case Housing Board, Haryana, v. Housing Board Colony Welfare Association and Others, I (1996) CLT 108 (SC)=III (1995) CPJ 28 (SC)=AIR 1996 Supreme Court 92 and The Oriental Insurance Co. Ltd. v. Dharmendra Kumar Lall, First Appeal No. 73 of 1998 decided on 28.7.1999 reported as III (1999) CPJ 20 (NC)=(1996-2005) Consumer Law Cases 547 S.C. & National Commission. Secondly, that the complainant had moved an application for transfer of the plot in the first week of December, 2005 upon which no decision had been taken by the opposite parties and for that reason the complaint filed by the complainant on 21.12.2005 was premature. To support this stand reliance was placed upon Chiranjilal and Others v. Financial Commissioner, Haryana, Chandigarh and Others, AIR 1978 Punjab and Haryana 326. Thirdly, that the complainant has not approached the District Forum with clean hands and the complaint was liable to be thrown out as has been laid in case Shri Sushil Kumar of Hissar v. The Senior Divisional Manager, Oriental Insurance Company, 1992 C.P.C. 185. Fourthly, that the order of the District Forum dated 29.12.2005 being the administrative decision of the Administrator, HUDA could not be subject matter of judicial purview. Opposing the submission made learned Counsel representing the respondent-complainant has justified the order of the District Forum for the reasons stated therein. Additionally, it was also stated that after the complainant had deposited Rs. 31,904 as per demand made by the opposite parties vide Memo No. 12706 dated 13.9.2005, the conveyance-deed was executed in favour of the complainant and possession of the plot had also been given to her on 10.11.2005. It was further submitted that the further demand of Rs. 75,600 made by the opposite parties on 23.6.2000 during the pendency of the appeal had been deposited by the complainant. In addition affidavit and indemnity bond have also been submitted to the opposite parties in terms of the directions vide Memo No. 17995 dated 29.12.2005. Thus according to him there was no justification for the opposite parties to withhold the permission to sell the plot in question. Reliance was also placed on the case, Haryana Urban Development Authority v. Nirmal Mittal, V (2004) SLT 301=III (2004) CPJ 36 (SC)=2004 (2) C.P.C. 354, wherein it has been laid down that the opposite parties cannot refuse permission to sell the plot on the ground that the appeal was pending in the Court.

3. DEALING with the submission made it is manifest from the order dated 31.1.2006 that the same has been signed by the President as well as Member of the District Forum, Karnal. The date of pronouncement of the order has been mentioned on the left side of the order below the word "Announced". It is not understandable as to how the date of pronouncement so recorded in the order cannot be construed as compliance of Rule 4(9) Rules, 2004. Under the circumstances of the case the authoritative pronouncements cited from the side of the appellants render no assistance at all. Definite assertion has been made from the side of the complainant that in the first week of December, 2005 the complainant had submitted an application to the opposite parties seeking permission to sell the plot in question and the opposite parties had refused to

grant permission on the ground that the appeal against the order dated 14.3.2005 passed in complaint case No. 216 of 2003 was pending before the State Commission. In answer to this part of the averments made, the opposite parties had taken a specific stand that a sum of Rs. 19,455 and Rs. 66,790 were required to be paid by the complainant as a part of over due payment and extension fee upto 31.1.2006 and without the payment of the said amount, permission to transfer the said plot cannot be granted. It was also further stated that the application for permission to transfer the plot was received on 12.12.2005 but no decision in this regard had been taken on account of non-cooperation of the complainant. Dealing with the objection raised as noticed that the Counsel for the complainant had made statement on 16.1.2006 whereby he had given up the prayer made in Clauses 2 and 3 of the complaint and thus concluded that the complaint is not barred by the principle of *res judicata*. As regard the pendency of the appeal it took notice of the fact that it has no bearing with regard to the permission sought by the complainant to transfer the plot in favour of the prospective purchaser. It was further noticed by the District Forum that all the outstanding amount relating to plot as per order dated 14.3.2005 has been paid with regard to the demand of Rs. 19,455 and Rs. 66,790 . The District Forum rejected the stand of the opposite parties on the ground that till the order dated 14.3.2005 was set aside, the aforesaid amount could not be claimed. Moreover, during the course of arguments it has also been pointed out by the learned Counsel for the appellant-opposite parties that the complainant had deposited Rs. 75,600 on 23.6.2000 during the pendency of the appeal as per Memo No. 17995 dated 29.12.2005 issued by the opposite parties. Even otherwise the District Forum while rejecting the stand of the opposite parties had directed the complainant to furnish the indemnity bond by granting necessary permission to the complainant for transfer of the plot in question. The position of law has been well settled by the Hon''ble Supreme Court in case *Haryana Urban Development Authority v. Nirmal Mittal* (supra), wherein notice was taken of the fact that the complainant wanted to sell the plot but the permission of the same was not granted on the ground that the appeal was pending before the Hon''ble Supreme Court. While rejecting this submission it was observed, "we fail to understand what pendency of this Appeal has got to do with permission to sell. The respondent being the owner of the plot is entitled to sell. The appellants cannot unreasonably refused permission to sell. This appeal is restricted to the question of rate of interest payable by the appellant to the respondent. Thus, pendency of this appeal would not prevent appellants from giving permission to sell. We direct that permission to sell be given to the respondent forthwith". The above stated observations will fully apply to the facts of the present case as in this case. During the pendency of the appeal, the amount demanded by the opposite parties had been deposited by the complainant on 23.6.2000 with the opposite parties. Under the circumstances of the case the stand of the opposite parties that the complaint was pre-mature and that the complainant has not come to the Court with clean hands, as such, cannot be accepted. Even, the other objection taken that the order of the Administrator, HUDA being

administrative order cannot be the subject matter of judicial purview, as such, cannot be given any weight because in the letter dated 9.12.2005 the complainant had been asked to obtain indemnity bond from the proposed transferee to be submitted that the litigation regarding the plot was within their knowledge and after the plot was transferred in their name, they will move the State Commission and implead themselves as respondents/appellants in the cross pending appeal. Under the garb of this order, the opposite parties want to stall the permission to the proposed transferee and as such cannot come in the way of avoiding the transfer of the plot. Therefore, the stand taken from the side of the appellants is without any merit. Under the circumstances of the case, the District Forum was fully justified in accepting the complaint and issuing directions noticed above.

4. FOR the aforesaid reasons, there is no merit in the appeal and the same is consequently dismissed. Appeal dismissed.