
(2013) 05 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

HARYANA URBAN DEVELOPMENT , Estate Officer, Haryana
Urban Development

APPELLANT

Vs

Anil Diwan

RESPONDENT

Date of Decision : 23-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 441 : 2013 3 CPJ 349

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

Advocate : SANJAY KUMAR , J.S.CHHABRA

Judgement

1. THESE two revision petitions as described in the headnote have been filed under section 21(b) of the Consumer Protection Act, 1986 and are being disposed of through this single order and a copy of the same may be placed on each file.

2. THE State Consumer Disputes Redressal Commission, Union Territory Chandigarh (hereinafter referred to as "State Commission ") has passed two orders dated 20.10.2006 and 25.04.2007 in the instant case. The order dated 20.10.2006 has been passed in three Appeal cases, i.e., Appeal Case No. 834 of 2000 (Haryana)/RBT No. 367/2006 "Arun Goel versus Haryana Urban Development Authority (HUDA) and Anr. ", Appeal Case No. 833 of 2000 (Haryana)/RBT No. 368/2006 "Anil Dewan versus Haryana Urban Development Authority (HUDA) and Anr. " and Appeal Case No. 997 of 2000 (Haryana)/RBT No. 369/2006 "Haryana Urban Development Authority (HUDA) and Anr. versus Arun Goel ". The order dated 25.04.2007 has been passed by the State Commission in Appeal Case No. 996 of 2000 (Haryana)/RBT No. 173/2007 "Haryana Urban Development Authority and Anr. versus Anil Dewan. " Both these orders of the State Commission have been passed against single order dated 08.05.2000 passed by the District Forum, Panchkula vide which complaints filed by the complainants Anil Dewan and Arun Goel were allowed. Revision Petition No. 1738/2007, "HUDA and Anr. versus Anil Dewan " has been filed against both the orders dated 20.10.2006 and 25.04.2007 of the State Commission whereas

Revision Petition No. 1739/2007, "HUDA and Anr. versus Arun Goel " has been filed against the order dated 20.10.2006 of the State Commission.

3. THE brief facts of the case are that both the complainants, Anil Dewan and Arun Goel were allotted plots by HUDA in Urban Estate Sector 23, Sonapat plot no. 2316 and 1593 on 13.08.1991 and 07.08.1991 respectively. The complainants deposited 10% of the value of the plot along with the application and another 15% of the value on allotment, making a total of 25% as tentative cost of the plots, in question. This was strictly in accordance with the scheme formulated by HUDA for allotment of these plots. As per the Scheme, the balance 75% of the value of the plots was to be paid either in lump-sum without interest within 60 days from the date of issue of allotment letter or in six half-yearly annual instalments. The first instalment was to fall due after the expiry of one year from the date of issue of the allotment letter. Each instalment was recoverable together with interest on the balance price at the rate of 10% of the remaining amount. However, the interest was to accrue from the date of offer of possession of plots. It is also stipulated that interest @18% will be charged on the delayed payment. The possession was to be offered on completion of development works in the area. It is the case of the HUDA that the complainants did not deposit even a single instalment after the initial deposit of 25% and hence notices were sent to them under section 17 of the HUDA Act many times, but the respondents neither deposited instalments, nor appeared in person despite service of notices. Consequently, the allotted plots were resumed by Estate Officer, Sonapat, HUDA by his order dated 16.08.95 in the case of Anil Dewan and order dated 07.08.95 in the case of Arun Goel. According to HUDA, the complainants did not file any appeal against the said orders of resumption before the competent appellate authority of the HUDA. According to HUDA, the complainants lost the status of "consumer " by not filing the appeal before the higher authorities. However, the complainants on the other hand, have taken the plea that they waited for a long period, hoping to get the possession of the allotted plots and visited the office of OP many times, but they were told that the development work in the area would take long time and possession could not be offered in near future. The complainants wrote letters also to the office of HUDA regarding the delivery of possession but without any result. The area had not been developed on the date of making complaint dated 15.12.98, although more than seven years had passed from the date of the allotment of the plots. HUDA had, therefore, indulged in unfair trade practice, vis-a-vis the complainants. The complainants filed consumer complaints before the District Forum and the said forum vide order dated 8.5.2000 in both the cases ordered that the physical possession of the plots, in question, should be handed over to the complainants immediately and they should be further paid a sum of Rs.5,000/- as compensation for mental agony and harassment and Rs.1,000/- should be paid in each case for cost of litigation. Against this order, appeals were filed before the State Commission and as stated above, the State Commission vide order dated 25.04.2007 in the case of "Anil Dewan " dismissed the appeal of HUDA. Vide

order dated 20.10.2006 appeal filed by HUDA against "Arun Goel " and two appeals filed by the complainants against HUDA were decided. As per this order, the award of compensation of Rs.5,000/- by the District Forum to the complainants for mental agony / harassment was increased to Rs.40,000/-. The appeal filed by HUDA was ordered to be dismissed.

4. HEARD the learned counsel for the parties and examined the records. In both these cases, written arguments have also been filed on behalf of the HUDA and they are placed on file. It was argued by the learned counsel for the petitioner that the Estate Officer, HUDA vide his order dated 16.08.1995 in Anil Dewan case and order dated 07.08.2005 in Arun Goel case, has made it very clear that show-cause notices were sent to these two complainants under section 17(1), 17(2), 17 (3) and 17(4) at different intervals through registered letters, but they neither deposited the amount, in question, nor appeared before the Estate Officer to explain the reasons for not depositing the amount. The Estate Officer, therefore, held that there was a breach of terms and conditions of the allotment and there was a wilful default for non-payment of the requisite amount. The Estate Officer, exercising power under section 17(4) of the HUDA Act, 1977 ordered the resumption of the aforesaid plots and also forfeiture of the amount of Rs.57,525/- in both the cases. In case, the complainants were aggrieved against this order, it was open for them to challenge the same before the appellate authority, but they had not done so, meaning thereby that they had accepted this order as final, and also lost the status of "consumer " after the said cancellation. The complaint, in question, was filed on 15.12.98 and hence it was a time-barred complaint as per section 24(A) of the Consumer Protection Act, 1986.

5. THE learned counsel, however, admitted that this plea had not been taken by the petitioners in the grounds of revision petition or in the written arguments filed in the cases. In the memo of appeal filed before the State Commission also, this point had not been touched upon.

6. ON the other hand, learned counsel for the respondents vehemently argued that HUDA had given them non-existence plots and they had not developed the said sites, even after a long lapse of time. Because of their failure to meet the commitment of development of the site, they had no right to resume the plots in question. Learned counsel stated that before passing the resumption order in question, neither notice had been issued, nor the order of the Estate Officer was communicated to him. Regarding the complaint being time-barred, learned counsel argued that since the possession had not been offered/delivered, there was a continuing cause of action available to the complainants and hence the complaints were not time barred. Learned counsel reiterated that since the development had not taken place on the site, HUDA had no right to resume these plots. A careful examination of the record of the case available on file and the oral arguments before us reveals that the complainant demanded in his complaint dated 15.12.98 that the deposited amount of Rs.57,525/- with HUDA

should be refunded along with interest @18% p.a. from the date of deposit till realisation, OR in the alternative, HUDA should be directed to deliver physical possession of developed plot immediately and a compensation of Rs.25,000/- should be given by HUDA for unfair trade practice and Rs.3 lakh would be given as escalation commission.

7. THE orders for resumption of plots were passed by the Estate Officer, HUDA, Sonapat on 16.08.95 and 07.08.95. The primary issue involved in these cases revolves around the fact, whether the resumption order is legally correct or not. It has been claimed by HUDA that notices were sent under section 17(1), 17(2), 17 (3) and 17(4) of the HUDA Act through registered post to the complainant, before passing the resumption order. On this issue learned State Commission has observed as follows:- "The case of Haryana Urban Development Authority is that plots were resumed vide order dated 07.08.95 as the complainants did not pay balance amount of 75% from 7.5.93 to 7.8.95. It was further stated that notices were served upon them under the HUDA Act on 7.5.93, 3.7.93, 27.8.93, 27.4.94, 10.1.95, 22.5.95 and 7.8.95. None of the notices mentioned in the written reply had been placed on the file of District Consumer Forum. However, during arguments photocopies of some of notices had been placed on file. One does not know whether the notices were sent under registered cover or otherwise because the postal receipts have not been placed on file. Photocopies of the despatch register as well as of the parcel branch had been placed on file to show that the said notices were sent but it is not known whether the same had been received by the complainants or not. "

8. IT is clear from a plain reading of the above observation of the State Commission that the issue of sending of proper notices and their service upon the complainants has not been gone into in depth by the State Commission or the District Forum. It was their duty to call for the record of the case and ascertain whether proper procedure was adopted before passing the order of resumption. In accordance with the terms and conditions of allotment letter, the allottee is supposed to make payment to the OP as per the schedule laid down wherein it has been clearly stated that interest will not be charged till the possession is offered to the allottee. In so far as delay in developing the site and late delivery of possession is concerned, an allottee has every right to agitate upon this issue and demand adequate compensation from the developer and that can be decided by the competent authority based on the facts and circumstances of the case. It is, however, not open for the allottee to withhold, on its own, the payment of instalments, which was supposed to be paid without interest to the developer.

9. IT may be mentioned here that the Hon "ble Apex Court in their judgement in "Municipal Corporation of Chandigarh versus Shantikunj Investment (P) Ltd. " [2006 (iv) SCC 109], stated that providing of amenities by a developer cannot be made a condition precedent for payment of premium, ground rent etc. The omission on the part of the administration to provide the statutory amenities

would not enable the allottees to get rid of their obligation to pay the instalments. In the present case, therefore, even if HUDA has not been able to develop the land in question within a reasonable time, the allottees cannot refuse to make payment of the instalments as per the payment schedule, more so, when the said instalments do not carry any interest portion as it has been made clear that liability to pay interest shall start from the date of offer of possession only. This, however, does not mean that the developer is at liberty to take abnormally long time in developing the area in question. It is open to the allottees to seek redressal of their grievance by asking for payment of interest etc. on the deposited amount by the HUDA and the appropriate authority can take decision to that effect, looking at the facts and circumstances of the case.

10. IN the light of above discussion, we are inclined to accept these revision petitions and direct the State Commission to call for the record of the case and evidence on the subject to find out whether proper procedure was followed by HUDA before passing the order of resumption. It is also clear that the allottees did not file any appeal before the statutory authorities against the said order of resumption which they should have done. The State Commission after examining the legal aspects of the resumption order may then go on to the question of late development of the area and determine whether the allottees are entitled for any relief on that account or not. With the above observations, these petitions are accepted, the orders passed by the State Commission are set aside and cases are remanded back to the State Commission for giving an opportunity to the parties to lead their evidence afresh and then take decision as per law. No order is being passed as to costs.