
(1994) 06 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

H.U.D.A.

APPELLANT

Vs

LT. COL. YOGESH

RESPONDENT

Date of Decision : 01-06-1994

Acts Referred:

Citation : 1994 3 CPJ 513

Hon'ble Judges : A.Venkatarami Reddy , J.Ananda Lakshmi , C.V.Subba Reddy J.

Final Decision : Appeal allowed

Judgement

1. THESE two appeals arise out of a common order passed in C.D. No. 623 of 1990 dated 30.4.93 by the District Forum, Hyderabad. C.D.A. No. 300/93 was preferred by the Hyderabad Urban Development Authority, Hyderabad i.e. the opposite party and the other appeal, C.D.A. No. 314/94 was preferred by the complainant i.e. Lt. Col. Yogesh for enhancement of compensation awarded by the District Forum.

2. THE case of the complainant is that the opposite party, herein after called HUDA for the sake of convenience, issued a prospectus Ex. A.1 wherein they offered allotment of residential plots at various places including Mushk Mahal residential complex wherein they offered 320 plots under various categories for allotment. THE complainant deposited earnest money deposit of Rs. 2000/- on 3.1.1990 and applied for allotment of HIG plot in Mushk Mahal residential complex in accordance with the prescribed procedure. THE lots were drawn on 25.2.90 and the complainant was allotted plot No. 18 measuring 325 Sq. Mts. at Rs. 235/- per Square Metre. On 5.3.90 the HUDA intimated the complainant about the allotment of plot No. 18 to him. THE complainant paid 25% of the notified cost (including E.M.D.) on 19.3.90 Rs. 17,093.75Ps. and the balance of the amount of Rs. 67,281.75Ps. on 16.4.90. On 19.5.90 the complainant wrote to HUDA that the plot allotted to him was full of rocks and boulders and asked the opposite party, HUDA, to remove them or to give another plot. On 26.6.90, HUDA sent a reply stating that according to the general condition No. 15 the allotment is "as is where is" basis, and the request for alternative plot cannot be

considered and asked the complainant to take possession of the plot. Again on 20.7.90 the complainant addressed a letter to be Vice Chairman requesting for removal of boulders and a reply was sent on 27.8.90 stating that nothing could be done in view of condition No. 15. THE complainant issued a lawyer's notice on 20.10.90 and filed a complaint praying for a direction to HUDA to remove rocks in the said plot so as to make it fully developed and fit for construction or in the alternative allot another fully developed plot or to pay a sum of Rs. 85,000/- as compensation for removing the rocks. He also claimed Rs. 10,000/- as damages and Rs. 1,500/- towards costs. Huda opposed the complaint on the grounds that the parties are governed by the terms of the contract and that, therefore, the District Forum has no jurisdiction to entertain the complaint and under condition No. 15 of the General Conditions of allotment, the plot was sold "as is where is basis" and the applicant after intimation of the allotment that he was allotted plot No. 18 and before paying 25% of the notified price including E.M.D. the complainant should have inspected the plot and seen its physical conditions and then only made the first instalment payment. It is the case of Huda that they have developed the scheme providing for demarcation of the plots with necessary roads and other infrastructure facilities like water, drainage and electricity and that therefore, they have sold the developed plots. It was also stated that if there are rocks it is advantageous to the complainant who can cut them into proper sizes and use them for construction of the house.

On the basis of the aforesaid pleadings, the District Forum formulated four points for consideration. (1) Whether this Forum has territorial jurisdiction to entertain the complaint? (2) Whether, in view of the fact that the conditions of allotment stipulate reciprocal obligations, a complaint cannot be brought under the Consumer Protection Act for a breach of any such obligation? (3) Whether in its prospectus, the opposite party had offered to allot developed plots and the subject plot has rocks and is undeveloped? (4) Whether in view of a stipulation in clause 15 of the general conditions that the allotment of plot was on "as is where is basis" the complainant cannot complain that the subject plot is undeveloped? (5) To what relief if any to which the complainant is entitled to?

3. ON behalf of the complainant, Lt. Col. Yogesh, the complainant himself, filed his affidavit, and marked Exs. A.1 to A.12 on his side. No documents were filed on behalf of the opposite party. The District Forum after considering the material and arguments held that it has jurisdiction as part of the cause of action arose within its territorial limits as the opposite party carries on business within its local limits. ON point No. 2 it held that since it relates to housing activity of the opposite party, although there is a contract entered into between the parties still with regard to deficiencies in rendering service, the complaint is maintainable as the complainant paid consideration. ON point Nos. 3 and 4 it held that on the harmonious interpretation of the word developed plots with the general condition No. 15 that the plot was sold on "as is where is" basis subject to the plot being developed. Since according to the District Forum if the plot is not properly developed that can only mean not properly levelled by removing the boulders

there is deficiency in service and that therefore, the opposite party is liable to make level of the plot or to remove the boulders or pay a sum of Rs. 60,000/- by way of compensation and also directed payment of Rs. 10,000/- for mental agony and anguish and Rs. 500/- towards costs. It is convenient to dispose of the appeal, C.D.A No. 300/93, preferred by the HUDA first. The facts are not in dispute. But the only controversy is as to the interpretation to be placed on the words developed plots and on condition No. 15 of the General Conditions, i.e. "allotment of plot is as is where is basis". The District Forum took the view that the words "as is where is basis" can harmoniously be considered by interpreting that as is where is condition relates to location of situation of the plot and the expression as is where is basis has to be read subject to plot being developed. According to the District Forum as there are boulders in the plot, it cannot be said to be a developed plot and that therefore, the HUDA must bear the cost for removing the boulders by way of compensation.

4. IT is submitted by the learned Counsel for HUDA the appellant, that the interpretation placed by the District Forum is wrong. According to the learned Counsel the developed plot means a plot for which there was lay out and developed by infrastructure facilities such as road, electricity, water and drainage. IT does not mean that the opposite parity should level each plot at its expense by removing the boulders and if it is in low level by levelling it. So far as the plot is concerned, the complainant has accepted the plot as is where is basis as laid down in General Condition No. 15. We see sufficient force in the aforesaid contention. In the prospectus issued by the opposite party apart from containing the form of application, declaration, certificate of residence, age certificate, income certificate and caste certificate, physically handicapped certificate, freedom fighter certificate and receipts for payment of instalments, it was also stated at page No. 1 that "The Hyderabad Urban Development Authority (HUDA) has developed a number of residential layouts around the city of Hyderabad and provided basic amenities like roads, drainage, water supply and street lighting etc. Provision is also made for neighbourhood shopping centres and other community facilities. Eventually, these layouts have been developed into self-contained mini-townships which will have all advantages of the modern city life." Thus, according to the HUDA, they have developed number of residential layouts provided basic amenities like roads etc. into self contained mini townships. With regard to Mushk Mahal residential complex, it was mentioned as follows:- "HUDA has developed Mushk Mahal residential complex very close to Attapur-Rajendranagar and connected to the Inner Ring Road. IT is only 4 K.Ms, away from the High Court and 8 K.Ms, from Mehdiapatnam Centre. HUDA has constructed houses and developed 654 plots of various categories and already allotted 124 houses and 236 developed plots with all the necessary infrastructure facilities. Serene atmosphere is the special character of this complex. HUDA now offers about 320 plots under various categories for allotment." Thus, it is clear that by developed plots, what all the HUDA means is that they have provided all infrastructure facilities. IT was nowhere stated that the plots are levelled.

Developed plot was not defined either in the so called regulations of Hyderabad Urban Development Authority, Zoning Regulations 1981. In the so called regulations, which came into force from 3.9.1981, under regulation 2.12 the word development is defined. "2.12. Development" with grammatical variations means the carrying out of building, engineering, mining or other operations in, or over, or under land or water, or the making of any material change, in any building or land, or in the use of any building or land, and includes re-development and layout and sub-division of any land and "to develop" shall be construed accordingly."

Relying on the aforesaid regulation it is submitted by the Counsel for the appellant that development includes re-development and lay out and sub-division of any land also and in this context the developed plot must be understood as a plot for which there was approved lay out with infrastructure facilities. So far as the condition of the plot is concerned, the general condition 15 stipulates that "the allotment of plot is on "as is where is basis" and no representations will be entertained for exchange of plots or for extension of time for payment". The complainant also sent a declaration alongwith the application stating that he read the conditions of allotment and he would abide by them and also the regulations of the authority. IT is, therefore, submitted by the learned Counsel for the appellant that since the complainant agreed to condition No. 15 and he has accepted the plot on "as is where is basis". So he cannot contend now that the plot must be developed by HUDA by removing the boulders and levelling it up. We are of the view that the complainant has accepted the plot on as is where is basis. The complainant has an adequate and reasonable opportunity to see the plot before paying 25% of the notified price. In the instant case, the complainant was informed that plot No. 18 was allotted to him by a letter dated 5.3.90. It was only on 19.3.90 the complainant paid 1/4th of the amount. Since he knew by that time the plot allotted, he should have inspected the plot and if he if found that it is full of boulders and rocks and is not fit for residential purpose, he should not have paid 25% of the notified amount as instalment. The very circumstance that the complainant paid 25% of the price and also balance of consideration on 16.4.90 shows that he has been prepared to accept the plot No. 18. It was only a month thereafter, i.e. on 19.5.90 he wrote a letter to HUDA calling upon them that the plot allotted is full of boulders and rocks and requested to allot another plot. From the record it is clear that the complainant was allotted another plot bearing No. 36 and subsequently also he did not accept the same. We are therefore of the view that the complainant accepted the plot on as is where is basis and that there is no deficiency on the part of the opposite party, HUDA. Hence the appeal has to be allowed by setting aside the order of the District Forum. In the appeal preferred by the complainant, C.D.A. No. 314/94, he sought for enhancement of compensation from HUDA from Rs. 60,000/- to Rs. 1,50,000/-.

5. IT is firstly submitted that in the original complaint, he sought direction to the opposite party to remove rocks and boulders so as to make it fully developed and

useful for construction or pay a sum of Rs. 50,000/- as compensation for removing the boulders and rocks, Rs. 1,500/- towards costs and Rs. 10,000/- towards mental agony. On a direction of the District Forum, the complainant got the technical estimate made for removing boulders and rocks in the allotted plot No. 18 by M/s. K.B.V. Associates which came to Rs. 1,65,000/-. Since this amount is beyond the pecuniary jurisdiction of the District Forum, the complainant filed a petition to amend the complaint by reducing the claim to Rs. 1,00,000/- with liberty to claim balance of Rs. 65,000/-. When the said petition came for consideration, the District Forum observed that adding Rs. 10,000/- and Rs. 1,500/- in addition to the cost of removal of the boulders the value exceeds Rs. 1,50,000/- and it therefore exceeds Rs. 1,00,000/- ousting the jurisdiction of the District Forum. Thereupon, the complainant filed another petition to restrict the claim for removal of rocks by Rs. 85,000/- without prejudice to his right to claim the remaining amount of Rs. 75,000/- for removal of rock. Ultimately, the District Forum allowed Rs. 60,000/- being the cost for removal of rocks after taking into consideration that the rocks blasted can be used after cutting them into proper sizes for construction. The appellant, therefore, submits firstly, the District Forum ought not to have reduced the claim from Rs. 85,000/- to Rs. 60,000/- as it is within its knowledge to deal with all the aspects. We are not inclined to agree with this contention. Because the District Forum took into consideration rightly the stones that can be cut from the boulders and rocks can be used for construction by cutting into proper sizes. Therefore, we are satisfied that it is quite reasonable and it rightly reduced the sum of Rs. 25,000/- towards the value of stones that the complainant would get from the boulders and rocks. Secondly, it is submitted that the cost of construction has escalated by leaps and bounds. The District Forum should have taken into consideration that aspect, and also should have estimated the rate of inflation and should have awarded Rs. 1,50,000/-. But the District Forum cannot award more than Rs. 1,00,000/- and it is therefore, futile to contend that the District Forum should have awarded Rs. 1,50,000/-. IT is next submitted that the State Commission has jurisdiction to award more than Rs. 1 lakh and a sum of Rs. 1,50,000/- maybe awarded as compensation. We are not inclined to agree with this contention. In the District Forum, the complainant Confined his relief with regard to boulders to Rs. 85,000/-. Now sitting in the appeal we cannot accept the increase in value which will take away the jurisdiction of the District Forum. For all the aforesaid reasons, we are satisfied that the cross-appeal is devoid of merits and is liable to be dismissed. In the result, the appeal CDA 300/93 preferred by the HUDA is allowed setting aside the order of the District Forum passed in CD No. 623/90. The appeal CDA No. 314/94 preferred by the complainant in CD No. 623/90 for enhancement of compensation is dismissed. In the circumstances of the case each party is directed to bear their own costs. Appeal of HUDA allowed.