

(2007) 02 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

JIWAN PARKASH KAPOOR

APPELLANT

Vs

HARYANA URBAN DEVELOPMENT AUTHORITY

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Citation : 2007 4 CPJ 104

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

Advocate : J.P.Kapoor , Raman Gour , Sandeep Kapur

Judgement

1. CHALLENGE in this appeal is to the order dated 6. 8. 2003 passed by the District Consumer Disputes Redressal Forum, Panchkula whereby the complaint filed by the appellant-complainant against the respondent-opposite parties had been dismissed as time-barred. At the same time direction has been given to the respondent-opposite parties to refund the amount charged in respect of the excess area as per rules to the complainant.

2. IN order to focus the controversy involved in the present appeal essential facts have to be noticed briefly. A residential plot No. 1750 measuring 420 sq. mtrs. located in Sector-4, Panchkula was allotted to Shri Sudarshan Kumar Chaudhary as per letter bearing Memo No. 28. 9. 1974. Thereafter, the said plot was re-allotted to the complainant Jiwan Parkash Kapoor and his wife Smt. Shimla Devi as per Memo dated 24. 8. 1995 on the terms and conditions issued in the allotment letter. The complainant, thereafter, paid the extension fee of the said plot up to 31. 12. 1995. It was followed by another extension fee of Rs. 16,800 on 20. 8. 1997. On 23. 10. 1997 the complainant submitted an application to the opposite party No. 2 for delivery of possession of the plot to him so as to enable him to carry out the construction over the said plot. The possession certificate No. 6480 dated 24. 10. 1997 was issued to the complainant by Shri Ram Kumar, J. E. on behalf of the opposite party No. 2 wherein possession of 405 sq. mtrs. in respect of 420 sq. mtrs. was delivered to him. The complainant made a complaint to the opposite party No. 2 on 4. 11. 1997 regarding delivery of possession of less area than the allotted area as per allotment letter issued to

him. The complainant also submitted a construction plan of building to the opposite parties. The opposite party No. 2 approved the building plan of the complainant vide letter dated 25. 11. 1997. The complainant also deposited Rs. 1,033 on account of Road Cut Fee vide receipt dated 26. 11. 1997. The complainant thereafter approached the opposite parties for demarcation of the plot in order to start the construction over it. The complainant made a representation dated 8. 12. 1997 to the opposite party No. 2 for removal of the encroachment of the portion of the plot made by the owner of the adjoining plot No. 1751 Sector 4, Panchkula. Taking into account the representation of the complainant the opposite party No. 2 issued notice to the owner of the plot No. 1751 Sector-4, Panchkula vide Memo dated 10. 12. 1997 directing him to remove the encroachment from the said plot but without any result. The complainant again sent a reminder to the opposite party No. 2 vide letter dated 16. 12. 1997 to demarcate the area of the plot and to remove the encroachment from the said plot. He also requested the opposite party No. 2 not to charge any extension fee but no action was taken by the opposite parties. In the meanwhile on the complaint of owner of plot No. 1751, Sector-4, Panchkula, the complainant was called by the S. H. O. Sector-2, Panchkula and had to face harassment on this account. The complainant approached the opposite party No. 2 to get the encroached area demolished and not to charge extension fee from him as per representation dated 29. 12. 1997 followed by other reminders dated 14. 1. 1998, 26. 3. 1998, September 1999, January 2000, May 2000, December 2000 and March 2001 but the opposite parties failed to demarcate the area and deliver the actual possession of the plot after removing the encroachment. According to the complainant, the encroachment is not only above the surface but it is beneath the land also and foundation of plot Nos. 1751 and 1753 has been laid in the encroached manner to provide passage between two houses. The owner of plot No. 1751 also encroached 9" area at the first floor of the house of the back side in the shape of the balcony in such a manner that the complainant cannot construct and erect the left side of the common wall of the plot for the purpose of construction. It was further alleged that as the encroachment was in the shape of passage, the complainant who had to build his personal room as shown in the site plan sanctioned by the opposite parties, would not be able to do so till the encroachment was removed. But the opposite parties failed to get the encroachment removed. Forced by these circumstances, the complainant invoked the jurisdiction of the District Forum by filing the present complaint seeking following directions against the opposite parties: "it is, therefore, most respectfully prayed- (i) That the O. Ps. may kindly be directed to remove the encroachment over and under the surface on plot No. 1750, Sector-4, Panchkula and to deliver the actual physical possession for the construction to the complainant. Or in the alternative, allot the another plot of 420 sq. m. in the same sector (ii) That the O. Ps. be restrained from charging extension fees from the year 1999 to till the date of delivering actual physical possession after removing the encroachment. (iii) That the O. Ps. may kindly be directed to refund the price of 15 sq. m. at the market value price to the complainant with

the extension fees already deposited limited to 15 sq. m. only along with 18% interest. (iv) That an amount of Rs. 2,00,000 may kindly be granted as compensation in favour of the complainant and against the O. Ps. for mental agony, harassment, loss of investment and reputation and mental and physical pain suffered by the complainant for the deficiency in services by the O. Ps. (v) Any other relief which this Hon"ble Court deem fit may also be granted in favour of the complainant and against the O. Ps. "

The complaint was contested by the opposite parties. In the written statement filed preliminary objections with regard to the locus standi, want of cause of action and non-maintainability of the complaint in the present form were taken. On merits, it was pleaded that after the plot was allotted to the complainant, he was served with a notice vide Memo No. 5032 dated 22. 8. 2000 to deposit the extension fee up to 31. 12. 2000 which he did not deposit and for that reason the extension fee was payable by him. At the same time it was admitted that the complainant had submitted an application dated 23. 10. 1997 for delivery of possession and the paper possession was given to him on 24. 10. 1997 as per official record. It was also stated that the area of the plot allotted to the complainant was tentative and the encroachment made by the allottee of the plot No. 1751 on the plot in question was removed by the Naib Tehsildar on 23. 12. 1997. According to them the demarcation of the plot was given to the complainant on 2. 12. 1997 when physical possession of the plot was delivered to him. Accordingly, it was prayed that the complaint merited dismissal.

On scrutiny of the pleadings of the parties and evidence adduced on record, the District Forum came to the conclusion that the demarcation had already been given to the complainant on 2. 12. 1997, the day on which the physical possession was given. The complainant did not approach the District Forum within two years from 2. 12. 1997 and as the present complaint has been instituted on 21. 5. 2001 and no application for condonation of delay has been filed, therefore, the complaint was barred by limitation. Consequently, the complaint was dismissed. Aggrieved by the said order the appellant-complainant has filed the present appeal.

3. SHRI Sandeep Kapoor son of the appellant-complainant Shri J. P Kapoor as representative, as well as Mr. Raman Gaur, Advocate representing the respondents-opposite parties have been heard at length. The representative of the complainant while assailing the order dated 6. 8. 2003 of the District Forum mainly contended that the District Forum has not only misconstrued the pleadings of the parties and evidence on record but has totally ignored the factual position brought on record in evidence led by the parties. Learned Counsel representing the respondent-opposite parties has justified the order of the District Forum for the reasons stated therein. The complaint has been dismissed on the ground of limitation, which question was inter-linked with the question of cause of action. Therefore, the main question which requires determination is as to when cause of action had arisen for the complainant to file

the present complaint. In this case the allotment of the plot as per letter bearing Memo dated 24. 8. 1995 made to the complainant and his wife has not been disputed by the opposite parties in the written statement filed. The area of the plot No. 1750, Sector-4, Panchkula as per allotment letter is 420 sq. mts. which factual position is also not disputed on record. The possession certificate bearing Memo No. 6480 dated 24. 10. 1997 mentions the area of the plot as 405 sq. mts. for which possession was given to Shri Jiwan Parkash Kapoor. This possession certificate has been construed to be a paper possession because in Para No. 5 of the written statement, the opposite parties have also stated that paper possession had been given to the complainant on that day. Therefore, the stand of the complainant is fully supported by the opposite parties. Needless to say that it was the duty of the opposite parties to have delivered the possession of the total area of the plot measuring 420 sq. mts. The stand of the complainant is that he had approached the opposite parties about the possession of the less area of the plot had been given to him and he had lodged a complaint dated 4. 11. 1997 with the opposite parties in this regard. The opposite parties did not dispute this version of the complainant and rather stated that the encroachment made by the allottee of the plot No. 1751 on the plot in question had already been removed by the Naib Tehsildar on 23. 12. 1997. The complainant had submitted representation dated 29. 12. 1997 followed by other reminders dated 14. 1. 1998, 26. 3. 1998, September 1999, January 2000, May 2000, December 2000 and March 2001 for demarcation of the area of the plot in question but no action had been taken by the opposite parties. The complainant has fully supported his version in his own affidavit coupled with the documents Ex. C1 to C10. Even from the documents filed by the opposite party No. 1 Ex. R1 to R6 fully support the version of the complainant. Ex. R7 is the Note of the Office File by the opposite parties which clearly records that on 16. 12. 1997 owner of the plot No. 1751 had not removed encroachment and Naib Tehsildar had been asked to remove the same on file of plot No. 1751. The report dated 24. 12. 1997 records that unauthorized construction had been removed but not a single document has been produced from the side of the opposite parties whereby it could be established that any intimation was given to the complainant that the encroachment in question had been removed from the plot allotted to him. During the course of trial of the complaint, the District Forum had appointed Shri Sukhdev Saini, Advocate, as Local Commissioner who submitted his report dated 8. 1. 2003 which reads as under: "report of Local Commissioner-As per the orders of this Hon"ble Forum, I was appointed as Local Commissioner with the direction to inspect the site of plot No. 1750, Sector-4, Panchkula after issuing notice to both the parties. Accordingly, I issued notice to Counsel for both the parties about my visit. The copy of the notice signed by Counsel for both parties is attached as Annexure-A. I visited the spot on 5. 12. 2002 at 3. 00 p. m. The complainant Shri Jeewan Parkash Kapoor along with his Counsel Shri Deepak Kapoor were present at the spot who signed the memo of presence, which is Annexure-B. I prepared the rough site plan of the plot No. 1750 and other adjoining plots which is Annexure-C. As far as the development and the basic

amenities are concerned, there is no deficiency in the area in this regard. However, there is encroachment measuring about 4" x 4" on the plot No. 1750. In one corner of plot No. 1750 a rasta has been curved out which connects the H. No. 1751 and H. No. 1750 from back side as has been shown in colour red in the site plan Annexure-C. This rasta has been made pucca by putting cement and chips and is up to foundation level. A chhajja has been constructed over the common wall between the H. No. 1751 and plot No. 1750 by the owner of H. No. 1751, due to which it is not possible to raise construction on this common wall while raising construction on plot No. 1750. Thus the area is developed and basic amenities are there but there is encroachment as mentioned above in plot No. 1750, Sector-4, Panchkula. "

4. THE above report clearly nullifies the stand of the opposite parties that they had removed the encroachment from the allotted plot of the complainant. In fact up to the date of report of the Local Commissioner, the encroachment so made still existed at the spot. The District Forum surprisingly has totally overlooked the above stated evidence. In fact, the District Forum has given conflicting findings because on one hand it has been held that the complaint of the complainant is barred by time but at the same time direction has been given to the opposite parties to refund the amount charged in excess for offering the possession of less area. This approach of the District Forum to say the least tantamount to deny the rightful claim of the complainant. From the evidence adduced on record it is prominently brought out that the opposite parties failed to perform their duties because having made the allotment of the residential plot to the complainant on payment of the entire sale price, they deliberately delivered the possession of 405 sq. mts. to the complainant as per possession certificate dated 24. 10. 1997 which was termed by them as paper possession while it was the duty of the opposite parties to have insured to remove the encroachment from the said plot before making the delivery of the possession of the plot to the complainant. In fact, by their own acts and omission they have allowed the adjoining owner of the plot No. 1751 to encroach upon 15 sq. metres area belonging to the complainant knowing fully well that law does not require any consideration to be shown to the person who unauthorizedly occupy the property of the other person and raise unauthorized construction over it. In fact, the opposite parties by their own act and omission had encouraged the illegality being committed by the owner of plot No. 1751. This conclusion has to be drawn because they have gone to the extent of obtaining a report of the Naib Tehsildar having removed the encroachment on 24. 12. 1997 which stands factually disproved on record as per the report of the Local Commissioner noticed above. Under the circumstances of the case, it has to be held that the complainant has a continuing cause of action up to the date of filing his complaint and his stand was fully redeemed as per report of the Local Commissioner. Therefore, the finding of the District Forum with regard to the complaint being barred by limitation is patently illegal and has to be set aside. The opposite parties had not only denied the possession of the complete area of the allotted plot to the complainant and further failed to

demarcate the area of the plot as per sanctioned plan. They cannot be permitted to charge extension fee from the complainant. Whatever delay in raising construction over the plot occurred, it is directly attributable to the action of the opposite parties, rather, the complainant had repeatedly requested the opposite parties to come to his rescue so that he may be able to carry out the construction over the plot. The harassment and mental agony caused to him on this account is unquestionable under the facts and circumstances of the case. Therefore, the opposite parties have rendered deficient services to the complainant for which they cannot escape liability.

5. FOR the aforesaid reasons, while accepting the appeal the impugned order is set aside and following directions are given to the opposite parties: (i) The opposite parties shall get the encroachment noticed by the Local Commissioner as detailed in the report coupled with the site plan prepared, removed within three months of the date of the receipt of the copy of the order and thereafter shall provide the demarcation of the plot measuring 420 sq. mts. to the complainant so as to enable him to raise construction as per sanctioned plan; (ii) The opposite parties shall not charge any extension fee from the date of the submission of the plan till the demarcation of the allotted plot and shall refund the extension fee deposited by the complainant; (iii) The opposite parties shall pay Rs. 20,000 to the complainant on account of mental agony and harassment caused to the complainant and in addition Rs. 5,000 shall be paid as litigation expenses.

Appeal allowed.