**(1999) 01 NCDRC CK 0018**

**In the National Consumer Disputes Redressal Commission**

KANWAR RANI SOHINDER NABHA — APPELLANT

Vs

Haryana State Industrial Development Corporation — RESPONDENT

**Date of Decision :** 20-01-1999

**Acts Referred:**

**Citation :** 1999 2 CPJ 14

**Hon'ble Judges :** U.P.Singh , S.K.Parthasarathy J.

**Final Decision :** Enquiry discharged

## Judgement

1. A Notice of Enquiry (NOE) was issued on 4.11.1997 in terms of Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969 (for brief the Act) to the Haryana State Industrial Development Corporation, Chandigarh, respondent in this case on the basis of a complaint filed by Smt. Kanwar Rani and Sohinder Nabha of 10-A Kasturba Gandhi Marg, New Delhi. The complainant alleged that the respondent had indulged in restrictive trade practices falling under the definition of 2(o)(ii) of the Act.

2. THE facts of the case as contained in the complaint summarised as below : In August, 1992 the respondent had invited applications for allotment of industrial plots in Phase VI of the Udyog Vihar, Gurgaon. The complainant applied on 13.8.1992 for allotment of a plot measuring 2,000 sq. metres and deposited a sum of Rs. 1,40,000/- being 10 per cent of the cost. The respondent issued a letter of intent offering allotment of plots Nos. 58 and 59 through its letter dated 17.6.1993 and the complainant deposited a further amount of Rs. 2,10,000/- on 17.6.1993 as per requirement.

The complainant applied on 4.11.1993 for the change of the plots bearing Nos. 58 and 59 to plots 52 and 53 as the plots offered were not suitable to him. At the instance of the respondent the complainants also agreed on 18.12.1993 to accepting allotment of plot Nos. 54 and 55. The respondent on 2.2.1994, however, expressed its inability for change in the plots and requested the complainants to complete the formalities in respect of plot numbers 58 and 59 on or before 16.3.1994. Subsequently, the respondent on 8.3.1994 agreed to allot plot Nos. 56 and 57 subject to the condition that the terms and conditions contained in the letter of intent dated 17.6.1993 remained unchanged. The respondent also extended the time for completion of formalities upto 16.6.1994. By a letter dated 18.8.1994 the respondent informed the complainants that the offer of the plot Nos. 56 and 57 to the complainants was subject to her furnishing an unconditional consent for the revised rate of Rs. 805/- sq. metre instead of Rs. 700/- per sq. metre as mentioned in the letter of intent dated 17.7.1993 which and the consequent incurred amount was paid by the complainant. The complainant also remitted Rs. 6 Lakhs on 2.1.1995 towards the cost of land. The balance of Rs. 6,27,500/- was to be made after the loan was anctioned by the Haryana Financial Corporation. While the complainant was waiting for the loan to be sanctioned by the Haryana Financial Corporation the respondent in its letter dated 16.5.1995 informed the complainants about the withdrawal of the offer of allotment of plot Nos. 56 and 57 as they fell in the unacquired portion of the land and agreed to offer plot Nos. 58 and 59. In response to suggestions of the complainants for allotment of other alternative plots the respondent informed the complainants on 11.10.1995 that no other plot excepting Nos. 58 and 59 were available.

3. THE respondents on 27.12.1995 while granting a no objection certificate to the complainants to mortgage the plot Nos. 58 and 59 in favour of Haryana Financial Corporation demanded a sum of Rs. 8,98,665/- from the complainants including Rs. 2,20,000/- towards interest. THE complainants pointed out to the respondent that the demand for the interest was unjust as she was helpless since the Haryana Financial Corporation was not willing to release the loan amount till the respondent executed the Conveyance Deed in favour of the complainant. THE respondent informed the complainant on 5.2.1996 that the up-to-date amount due from the complainants was Rs. 7,98,665/-and if the amount was not remitted the letter of intent would be cancelled. Since the loan was being delayed the complainants deposited a sum of Rs. 60,000/- with the respondent on 18.3.1996. THE respondent by their letter dated 4.7.1996 informed the complainants that the offer in respect of plot Nos. 58 and 59 has been withdrawn since the complainants had failed to remit the amount within the stipulated period. THE complainant represented to the respondent on 12.7.1996 to reconsider the case and recall the letter, of withdrawal of offer. THE complainants also remitted Rs. 6 Lakhs towards the balance of the allotment price for plots 58 and 59 on 7.8.1996. The respondent issued a letter on 19.9.1997 informing the complainants that the State Government under the new Infrastructure Development Policy has decided to condone the delay on the part of the complainants in completing the formalities in respect of the letter of intent issued. The complainant was further informed that the respondent had decided to issue regular letter of allotment in respect of plots at the revised rate of Rs. 2,000/- per sq. metre and directed the complainants to deposit an amount of Rs. 21,87,500/- in addition the amount already paid by the complainant. The complainant was also directed to remit the amount on or before 31.10.1997.

 

4. THE Commission in its order dated 24th October, 1997 by way of an ad interim order directed the respondent not to cancel the allotment of plot Nos. 58 and 59 in favour of the complainants and to maintain status quo with respect to the said plots till further orders. On the respondent pointing out in the hearing held on 10th February, 1998 that the allotment of plots in question has not came into effect and the plots in question have not been allotted to anyone else the direction of the Commission to the respondent to maintain status quo in respect of the plots in question was confirmed. THE respondent in its reply to the NOE has made the following main points : (1) THE respondent issued a letter of intent on 17.6.1993 to the complainant offering plot Nos. 58 and 59 and according to the terms and conditions 75 per cent of the cost of the plot was to be remitted within a period of nine months from the letter of intent that is one or before ________ and extension of only three months could be obtained on the payment of three months charges. (2) While requests were made by the complainant for the change of plots, the respondent through its letter dated 16.5.1995 informed the complainants that possession of any other plot could not be handed over to her and she was requested to complete the formalities relating to plot Nos. 58 and 59 within the period stipulated calculated from 16.5.1995. THE nine months permissible period was to expire on 15th February, 1996. (3) Since the complainants failed to pay the balance 75 per cent of the cost of the plots, the respondent through its letter dated 4.7.1996 withdrew the letter of intent by exercising its powers. (4) THE complainants made a representation on 6/7 August, 1996 alongwith a demand draft of Rs. 6 Lakhs as part payment Of 75 per cent balance cost of the plot which was beyond the time stipulated in the letter of intent. (5) THE Haryana Government had issued instructions on 15.7.1996, after the date of withdrawal of letter of intent, announcing a new allotment policy for industrial plots. By this policy of the allotment of plots in Udyog Vihar, Gurgaon, could only be made by auction after 15.7.1996. (6) A decision was taken by the respondent that the reserved price of plot in Phase-VI Udyog Vihar would be at Rs. 2,000/- per sq. metres which has subsequently been increased to Rs. 3,000/- per sq. meter. While no auction has taken place in Phase-VI, in Phases I to V where the reserved price was fixed at Rs. 3,500/- per sq. metre plots have been sold by auction by Rs. 18,000/- per sq. metre in auction held in August, 1996. (7) THE representation of the complainant was placed before the Board of Directors of the respondent and action was taken in accordance with the Industrial Infrastructure Development Policy framed by the Government dated 8th April, 1997. According to this policy the Allotment Committee constituted under the policy would be competent to decide all cases of letters of intent/plots/ transfer /extensions under the previous policies. This Committee decided that the delay on the part of the complainant in completion formalities of the letter of intent in respect of plot Nos. 58 and 59 could be condoned and letter of allotment could be issued to the complainants at the last refixed rate which was Rs. 2,000/- per sq. metre. (8) THE offer of the plots at Rs. 2,000/-per sq. metre at the latest revised reserved price of the plots was based on a sympathetic attitude taken by the Committee. After the pleadings

 

were completed, the following issues were framed : (1) Whether the respondent has been or is indulging in the Restrictive Trade Practices as alleged in the complaint ? (2) If so, whether such restrictive trade practices are prejudicial to public interest ? (3) Relief.

Both the parties agreed that the case could be decided on the basis of documentary evidence and evidence of oral witnesses are not necessary. We gave a hearing to Mr. Inderbir Singh, Advocate for the complainant and Mr. Ravinder Bana, Advocate for the respondent. We have very carefully gone through the material placed on record by both the parties, evaluated the evidences adduced and given due consideration to the arguments submitted by them. Our findings on the two issues referred to above are as given below ad seriatim : (1) In the negative (2) and (3) Do not arise

5. THERE are no disputes relating to facts in this case. It is admitted by the complainant that according to the letter of intent dated 17.6.1993 the complainant was required to deposit the balance 75 per cent cost of the plot within a period of nine months (extendable by three months) from the date of letter of intent. The letter of intent stipulates that in the event of the non-completion of the formalities within this specified period the letter of intent shall stand withdrawn and the amount deposited will be refunded after deducting 10 per cent. The facts of the case reveal that the complainant could not get the loan from the Haryana Financial Corporation within the time limit. THERE was delay on the part of the respondent in completing the Conveyance Deed relating to the plots of land as there were numerous changes relating to the exact plot to be allotted to the complainant. It is also established that while the respondent has offered plot Nos. 58 and 59 it was the complainant who had been requesting for change of plots repeatedly by suggesting different plots as the originally allotted plots were not suitable to him. THERE is no suggestion at all that the complainant was not willing to allot the originally offered plots 58 and 59. It is also seen from the records that the respondent finally informed the complainant vide its letter dated 16.5.1995 that the possession of no other plot could be handed over to the complainant and the Corporation had decided to offer plots 58 and 59 which was originally allotted to her and she was requested to complete all the formalities which was required in the letter of intent. Even calculating from this date the complainant should have deposited 75 per cent of the balance cost of the plot by 15th February, 1996 and if permissible extension of three months was availed of the payment should have been made by 15.5.1996. It is seen that the respondent withdrew the offer of plot Nos. 58 and 59 only by letter dated 4.7.1996. We also note that the respondent in its letter dated 21.12.1995 asked the complainant to pay the amount by 21.12.1995. On 5.2.1996 the respondent gave a notice to the complainant that if the balance amount was not paid, the case for cancellation of the letter of intent would be processed. Thus we note that the respondent has not withdrawn the letter of intent unilaterally or arbitrarily. The Advocate for the complainant endeavored to show that the balance amount could not be paid because Haryana Financial

 

Corporation did not disburse the amount earlier. We see that there is no commitment on the part of the respondent that the balance amount can be paid by die complainant only when the financial institution disbursed the loan without any limit of time. In case it was not possible for the complainants to complete the formalities within the prescribed period for obtaining the loan it was for her to make alternative arrangements in order to protect her interest.

6. THE charges of restrictive trade practices levelled against the respondent are to be examined in the light of the above finding of ours. It is the case of the complainant that the action of the respondent in not handing over the possession of the plots after receiving the full payment and its demand for an additional amount of Rs. 21,97,500/- is a restrictive trade practice falling within the meaning of Section 2(o)(ii) of the Act as it amounts to manipulating the conditions of delivery resulting in imposition of unjustified cost. THE respondent has admitted that it wrote a letter to the complainant on 19.9.1997 stating that it had been decided to condone the delay on the part of the complainant in completing the formalities laid down in the letter of intent and a regular letter of allotment would be issued to the complainant at the last revised rates which was Rs. 2,000/- per sq. metre. We have already come to the finding that the action of the respondent in issuing the letter dated 4.7.1996 withdrawing the original letter of intent issued on 17.6.1993 is in accordance with the agreement and is neither illegal nor arbitrary. THE Advocate for the respondent argued that a request was made by the complainant to the respondent to condone the delay in making the payment of the balance cost in respect of the plots in question due to circumstances beyond its control and once the respondent condoned the delay the original terms and conditions of the letter of intent should apply. This would mean according to the Advocate for the complainant that the respondent was not justified in increasing the price of the plots in question. THE Advocate for the respondent also pointed out that even according the new Industrial Infrastructure Development Policy the commitment, LOIs/allotment issued/made prior to the present policy will continue to be governed as per the terms and conditions contained in such LOIs/allotment in the executive instructions issued by the Government as applicable to that period". The Advocate for the respondent brought to our notice the judgment of the Hon''ble High Court of Punjab and Haryana at Chandigarh in C.W.P. 15801 in 1997, Ms. Santosh Rani v. HSIDC Limited, pronounced on 19.3.1998 in a case where the allottee failed to stick to time limit for payment of the cost of land mentioned in the LOI and the respondent decided to condone the delay and revised the price to the rate prevalent at the time of final letter of allotment. The Hon''ble High Court observed "the Corporation may have been within its right to treat the letter of intent as cancelled/withdrawn automatically in terms of para 8 thereof. However, the respondents adopted an extremely compassionate approach and instead of treating the LOI as cancelled, they merely asked the petitioners to pay additional price in terms of para 11 of the LOI. This action of the Corporation can not be termed as arbitrary or unjustified". It is true that in the case referred to in the

 

judgment of the High Court the letter of intent itself included a clause stating that if the formalities are not completed within the stipulated/extended period the respondent can condone the delay and charge the prevalent rate. The important point is that where payment has not been made within the stipulated period, the action of respondent in charging the prevalent rate after condoning the delay on the part of the allottee has been held to be correct. We have already come to the finding that there was no agreement between the complainant and the respondent that the payment of the balance cost of the plots was conditional upon disbursement of the loan by Haryana Financial Corporation. Since the complainant did not stick to the time limit set out in the letter of intent, even after making due allowances for the delay involved in communicating the decision by the respondent in respect of the request of the complainant for change of plots, the action of the respondent in withdrawing the letter of intent was justified. We note that the respondent has decided to condone the delay on the part of the complainant and was willing to offer the same plots at the prevalent rates. It has already been stated by the respondent that as per the present policy of the respondent the plots in question are to be sold by auction. We note that the respondent has fairly asked for only the reserve price fixed for auction to be payable by the complainant. It is obvious that if the respondent had not decided to condone the delay on the part of the complainant and the complainant wanted the plots in question for participating in the auction she might have had to pay much higher amount than what has been demanded by the respondent as plots in other Sectors have been sold at Rs. 18,000/- per sq. metre when the reserve price was Rs. 3,500/-.

As regards the argument of the respondent that even as per the new Industrial Infrastructure Policy of the respondent the old letters of intent are to be governed by the terms and conditions contained in the original LOIs we find that the new Industrial Infrastructure Development Policy only lays down that in respect of treatment of cases previous LOIs and issues relating to transfer, extensions, resumption, restoration etc. under the previous policy the Allotment Committee constituted under the new policy would be competent to decide all such cases after going into the merits of each case. We find in this case that this Allotment Committee had decided to condone the delay on the part of the complainant and had made an offer that regular allotment letter could be issued provided the complainant paid the prevalent rate. It is also relevant to note that the original letter of intent dated 17.6.1993 very clearly stated that the "letter of intent shall not give any legal right for allotment unless the regular letter of allotment is issued". Admittedly, the whole issue in this case is for the release of the regular allotment letter which admittedly had not been issued by the respondent. Under the circumstances, the action of the respondent in offering to the complainant to issue a regular allotment letter at the prevalent rate keeping in view that a letter of intent had been issued to the complainant earlier is neither arbitrary nor unreasonable and cannot be construed as manipulation of conditions of delivery on the part of the respondent to impose unjustified cost on the complainants. Further, since we have already held that the action of the respondent in withdrawing the letter of intent was justified and its action in asking the complainant to pay for the plots of land in question the reserve price fixed for auction is fair, we do not hold the respondent guilty of indulgence of restrictive trade practices. We, therefore, direct that the NOE against it may be discharged. There is no order as to costs. The above order received the concurrence of Mr. U.P. Singh, Member, before he demitted office. Enquiry discharged.