
(2006) 08 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

MANOHAR LAL SHARMA

APPELLANT

Vs

Urban Improvement Company P Ltd

RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Citation : 2006 4 CPJ 289

Hon'ble Judges : J.D.KAPOOR , RUMNITA MITTAL , Manohar Lal Sharma J.

Judgement

1. COMPLAINANT was 50 years old when he booked two plots, one in his name and another in his wife's name with the opposite party Urban Improvement Co. (P) Ltd. in Greenfield Society. Having waited for 45 years and having paid the entire consideration amount, he could not get the possession as the plots were cancelled in the year 2002 allegedly on non-payment of the amounts demanded from time to time on account of additional development charges. He is now 95 years old and has on account of wrongful cancellation of the plots, through this complaint, sought following reliefs: A. Direct the respondent to immediately handover the peaceful possession to the complainant of the said plot No. N -94, measuring 223 sq. yds. booked in the name of the complainant and that of the said Plot No. N -135 measuring 267 sq. yds. booked in the name of late Smt. Mohan Devi Sharma the wife of the complainant or in the alternative direct inter alia to the respondent to pay a sum of Rs. 10,000 per sq. yards i.e. Rs. 22,30,000 for the said plot No. N -94 and Rs. 26,70,000 on the said plot No. N -135, to the complainant for non-delivery of the possession of the said plot and/or plots as the present market value of the said plot/plots with interest @ 24% from the date of filing the present petition till realisation of the said amount. B. Direct the respondent to pay a suitable rather exemplary damages to the complainant for the respondent's failure to hand over the timely possession of the said plot/plots to the complainant, as may be deemed fit and proper in the circumstances of the case.

2. FACTS as disclosed by the complainant in short are that the complainant had booked two plots of land in the Greenfield Society with the OP in the year 1961

viz. one plot in his name and the second in the name of his wife late Smt. Mohan Devi Sharma, who expired on 7.3.1990 and consequently the name of complainant was substituted in her place. The payments towards cost of the said plots were made in stipulated instalments to the OP. The details of payments made by the complainant in respect of Plot No. N -94,(measuring 222 sq. yds) in his name are as under: (a) Total cost of the plot as per offer documents, including the cost of entire development work. Rs. 3,145.50 (b) 15% paid on 18.2.1961 Rs. 472.00 (c) 20% paid on 11.9.1962 Rs. 629.00 (d) 20% paid on 15.10.1962 Rs. 629.00 (e) 20% paid on 23.10.1962 Rs. 629.00 (f) 20% paid on 16.3.1964 Rs. 629.00

The balance amount of the cost of plot was to be paid at the time of completion of the arrangement of lighting etc. But the project was delayed by the OP company. On 22.2.1967 the company demanded Additional Development Charges (ADC) from the plot holders @ Rs. 6 per sq. yd. even though at the time of booking of plots there was no mention of such charges to be recovered from the plot holders. Every cost of development was included in the cost of the plot. The plot holders objected to the same and did not pay ADCs at that time.

3. ON 2.9.1969 the OP advised that plot area had been increased by 50 sq. yds from 233 yds. but later on in May, 1982 it was actually decreased to 222 sq. yds. and the plot No. was also changed. In May 1982 i.e. after 15 years the OP company demanded Additional Development Charges (ADCs) @ Rs. 65 per sq. yd. and the same were paid through following instalments: (g) 1st instalment of Rs.4,014.00 was paid on 10.8.1983 . (h) 2nd instalment of Rs.3,300.00 was paid on 10.8.1984. (i) 3rd instalment of Rs. 3,3300.00 was paid on 12.10.1985. (j) 4th instalment of Rs. 4,400.00 was paid on 20.3.1987. (k) On 20.3.1987 complainant paid Rs. 370.00 against interest on account of delay in deposit of ADCs.

4. IN April, 1988 the OP Company asked the plot holders to deposit the cost of stamp papers and registration fee, but it took no steps for registration of the plots in the name of plot holders. Additional amount of Rs. 6,000 was deposited on A/c of change in area of plot on 16.12.1993. On 16.3.1994, the OP again illegally demanded External Development Charges (EDCs), the amount of which was quite substantial and was out of the reach of the complainant as by then he had retired as Govt. servant and was getting a meagre pension, which was hardly sufficient for living expenses of the family of complainant. The OP Company demanded exorbitant EDCs from Rs. 29,817 on 16.3.1994 to Rs. 50,821 on 24.1.1996 which means they were charging very high interest on the said EDCs too. Inspite of this on 21.1.1997 instalment towards EDCs for Rs. 12,732.00 was deposited.

5. ON 9.7.2002, the OP Company cancelled the plot without giving any prior notice to that effect and refunded a sum of Rs. 35,677 vide its cheque No. 513945 dated 6.7.2002, after deducting a sum of Rs. 1,057 out of the total amount deposited by the complainant. However, the said cheque was not

encashed by the complainant and a protest was lodged with the OP Company through the Association of plot holders.

6. AGAINST the total original sale consideration of Rs. 3145, the complainant was forced to deposit a total sum of Rs. 37,104 by the OP Company and still the possession of plots was not handed over to the complainant. After cancellation of so many plots by the OP Company, the same were re-sold by it for exorbitant sale consideration ranging between Rs. 35 to 80 lacs and thereby OP has illegally earned profits at the cost of poor plot holders who paid their hard-earned money to the OP Company right from 1961 onwards. Further the OP Company was not entitled to cancel the plot on account of non-deposit of full EDCs because the amount of Additional Development Charges (ADCs) and External Development Charges (EDCs) were not part of the offer for sale of plots made by the OP. The cost of entire development work was included in the cost of the plots and same is very clear from the offer document made by the OP company in the year 1961.

7. ACCORDING to the complainant EDCs are recovered by the Government from plot holders for providing them certain external facilities and in case the same are not paid, only the Govt. has the right to recover it from the plot holders and the OP Company in no way can cancel the plots, on account of delay in payment of the EDCs. It is simply a trick played by OP Company on the poor plot holders, to achieve its ulterior motive of earning high profits, by re-selling the cancelled plots at exorbitant prices.

8. BESIDES raising preliminary objections that the complaint was barred by limitation as it was filed in the year 2005 whereas the allotment of plots was cancelled on 9.7.2003 i.e. beyond the prescribed period of two years and that the complaint was bad for misjoinder of cause of action and misjoinder of necessary parties and lack of territorial jurisdiction as well as pecuniary jurisdiction of this Commission, the OP has denied the allegations of complainant and justified the cancellation of plots. Version of OP in brief is that OP demanded vide its letter dated 13.5.1982 New Additional Development Charges @ Rs. 65 per sq. yd (in instalments) were demanded as it was necessitated for the development of the colony in terms of Exemption granted by the Govt. of Haryana vide its Memo dated 5.4.1982. The OP had also required the complainant to pay the first instalment thereof by 31.5.1982. The persons, who had booked the plots in the year 1962 and had also paid the cost thereof at that time, could not expect the OP to develop the colony in the year 1982 at the cost prevailing in the year 1962. Further that the Greenfield Plot Holders Association had also consented to such demand of the OP towards New Additional Development Charges. As against target date of payment by 31.5.1982, as per own showing of the complainant he made the payment of the first instalment @ Rs. 15.00 per sq. yard highly belated on 10.8.1983 despite repeated reminders and consequently allotment was cancelled.

9. AFTER hearing the Counsel for the parties at considerable length, perusing the records and giving our careful consideration to the respective version of parties,

find from the original terms of agreement between the parties that 95% development charges were paid upto 1964 and it was only in 1969, the OP levied additional development charges which were also paid by the complainant along with interest upto March, 1987. It was thereafter that the OP issued letter to the complainant that plots would be allotted to him if he shall deposit amount of some dues as well as registration charges. However, in spite of making payment, the OP started adopting delaying tactics and lingered on the matter till 16.3.1994 and raised further illegal demand of external development charges part of which was also paid by the complainant in January, 1997.

10. IT is not understandable as to why did the OP cancel the allotment without serving the notice upon the complainant as to the balance amount. It only published notice in the newspapers stating that the allotments of the complainant along with some others have been cancelled due to non -payment of external development charges. Counsel for the complainant contended that assurance was given by the OP to restore the allotment and the complainant also took up the matter with the Association. However, the Counsel for the OP states that it is not possible to restore the plots. The aforesaid facts clearly make out a case of not only unfair trade practice but also deficiency on the part of the OP.

11. THE OP did not honour the terms and conditions of agreement and continued raising demand after demand by delaying the possession for more than 20 years. It was unscrupulous on the part of the OP to have suddenly cancelled the allotment after 33 years inspite of having accepted various payments towards illegal demands of external development charges. Sole intention was to create circumstances for large number of plot holders not to fulfil their demands which at every given point of time were against the terms of the original agreement. OPs are guilty of unfair trade practice in making false representations as to the actual charges and consideration of the plots and committed an offence of deficiency in service in wrongfully cancelling the allotment which means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

12. THE complainant has been waiting for the possession of piece of land for the last more than four decades though he had paid the actual consideration besides several other demands and even after payment of demand, fresh demands were being made in order to deprive large number of plot holders with the ill motives and dubious design to earn illegal profits by selling these plots at exorbitant rates as the prices have skyrocketed. We have given choice to the OP to apprise us whether any plot is still lying vacant that can be allotted to the complainant who is in the fag end of his life. The Counsel for the complainant has informed that Plot No. 94/875 which has been assigned a new number 85/875 is still lying vacant. Counsel for the OP states that there is no other plot lying vacant except the aforesaid plot. In view of the given facts and circumstances of the case mere

interest on the deposit would not be adequate compensation as the complainant has been deprived of a property booked by him in 1961 because of prices having gone up unexpectedly. The complaint is allowed in the following terms: "That OP shall either allot Plot No. N -94 (New Number B -875) in the name of the complainant and another plot in the name of his wife immediately on payment of the balance amount towards external development charges demanded for the first time without any further charges or interest. If it is not possible for the OP to allot the said plots, the OP shall pay Rs. 25 lacs for each plot i.e. Rs. 50 lacs to the complainant as to the actual loss or injury suffered by him due to deficiency in service and wrongful cancellation of the plots."

13. A copy of this order as per the statutory requirements be forwarded to the parties, free of charge and thereafter the file be consigned to the Record Room. Complaint allowed.