

(2014) 04 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

MEERUT DEVELOPMENT AUTHORITY

APPELLANT

Vs

OM PRAKASH GUPTA

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Citation : 2014 0 NCDRC 484 : 2014 2 CPJ 652

Hon'ble Judges : J.M.MALIK J.

Final Decision : Disposed off

Judgement

1. SH . Om Prakash Gupta and his son, Sh. Sunil Gupta, the complainants, had applied for allotment of plot admeasuring 600 sq. mts., under the Industrial Estate Scheme and deposited a sum of Rs. 5,000, on 31.8.1987, with the Vice - Chairman, Meerut Development Authority, OP. Thereafter, on inquiry, the complainants were assured that the plot would be allotted in their favour. However, the complainants did not hear from the OP, till 24.11.2005. The complainants sent a notice on 24.11.2005 to the OP and enquired about the said plot. The OP sent a response vide its letter dated 20.12.2005, wherein it was replied that the said plot was not allotted in favour of any person. The said Scheme was abandoned and the complainants were asked to surrender the original receipt in the sum of Rs. 5,000, deposited by them in the Office of the OP, so that the amount could be refunded to them, as per rules. The complainants filed a complaint with the District Forum. The District Forum partly allowed the complaint. It was ordered, as under: Complaint of the complainants is allowed against the opposite party. Opposite party is ordered that if OP has allotted plot of land to any of the applicants, in any of the Scheme, then they allot plot in favour of complainants also at previous rates. Opposite Party to pay interest also at the rate of 12 percent on the amount deposited by complainant since the date of deposit till the date of allotment, Rs. 5,000 as compensation and Rs. 3,000 against cost of complaint to complainant, within the period of one month from the date of order. Opposite party to ensure compliance of this order within the prescribed period, otherwise, complainants would be free to initiate proceedings under Section 25/27 of C.P. Act, 1986, against opposite party.

It is interesting to note that the complainants did not file any Appeal against the said order. It, therefore, clearly means that the complainants had accepted the order passed by the District Forum. It had attained finality, qua the complainants. However, First Appeal was filed by the OP, before the State Commission. The State Commission passed another order in favour of the complainants, when no appeal was filed by them. The Bench presided over by Sh. Sayyed Ali Azhar Rizvi, passed the following order:

Appeal is allowed partially. While amending the judgment and order dated 13.1.2011 passed by the District Forum, Meerut, in Complaint Case No. 28/2006, Meerut Development Authority is ordered that they are supposed to allot a plot in lieu of applied industrial plot (vacant) available in above said Ganganagar, Pallavpuram and Shatabadi Nagar Schemes, within the period of two months at the then prevailing old rates, inter alia, adjusting the amount deposited by complainants earlier.

2. THE State Commission was not armed with such power, which the State Commission, went out of way and passed more favourable order in favour of the complainants when the complainants had not even preferred any appeal. We have heard the Counsel for the parties. The first submission made by the Counsel for the petitioner/opposite party was that the complaint filed by the complainants, is barred by limitation. In its written statement, the petitioner/OP explained that the plot of the land could not be allotted to the applicants under the said Scheme for which public notice had been issued in newspapers and having read the same, other registered applicants have accepted the refund of the amount deposited with them, as per rules. He contended that the complainants never established contacts with the petitioner, after registration, but the petitioner had published public notice in newspapers, about not allotting industrial plot to them, and therefore, the same is clearly barred by time. He has cited the authority reported in *State Bank of India v. B.S. Agriculture Industries*, : II (2009) CPJ 29 (SC) : II (2009) SLT 793 : (2009) 5 SCC 121.

3. ALL these arguments are bereft of merit. The Counsel for the petitioner vehemently argued that there were some reasons which were not specified in the written statement. He further submitted that there could be several reasons for abandonment of the scheme. He, however, could not point out the reasons for abandonment of this Scheme. He contended that public notice was published in the newspapers. The said newspaper did not see the light of the day. There is not even an iota of evidence that the said notice was sent to the complainants, in this respect.

4. THE facts of the above said authority (*State Bank of India*) are different. This is a continuous cause of action. In case, *Raghava Estates Ltd. v. Vishnupuram Colony Welfare Association & Anr.*, in : IV (2012) CPJ 36 (NC) : RP No. 3097 of 2012, decided by this Bench, on 4.9.2012, passed the following order: 9. The learned State Commission brushed aside the argument regarding delay in filing the complaint by placing reliance on the judgment in *B. Venu Madhav v. National*

Consumer Disputes Redressal Commission, Represented by its Registrar, New Delhi & Ors., in W.P. No. 30394 of 2011, dated 18.1.2012, reported in CDJ 2012 APHC 421, wherein it was held that when there is immovable property and the amenities promised by the opposite party were not provided, the National Commission held that it can be construed as continuing cause of action and it cannot be said to be barred by time.

10. This discussion tips the scale in favour of the complainant and, as such, the revision petition filed by the OP, is dismissed.

Slp was filed against the said order before the Hon'ble Apex Court. The Apex Court in Civil Appeal No. 35805 of 2012, dismissed the same, vide its order dated 7.12.2012.

5. THE present case, stands on a better footing. Here, no effort was made to return the money. The OP was withholding the money with ulterior motive. When others had taken the money back, it was the bounden duty of the OP to refund the money back to the complainants or send them a notice to get the refund of the above said money. The action on the part of the OP, clearly goes to show that it acted in an arbitrary manner. Consequently, we find that the complaint was filed within time.

6. ON the other hand, the Counsel for the respondents/complainants contended that it is a settled law that if the OP has got any vacant plot, it should be handed over to the complainants, immediately. He has cited an authority reported in HUDA v. Vijay Aggarwal, : III (2004) CPJ 11 (SC) : IV (2004) SLT 874 : (2005) 9 SCC 446. This argument too, is devoid of merit. It must be borne in mind that the complainants have not yet been allotted the plot. In Manjul Srivastava v. Government of Uttar Pradesh & Ors., : VIII (2008) SLT 14 : III (2008) CPJ 84 (SC) : (2008) 8 SCC 652, the Hon'ble Apex Court was pleased to observe as under: 22. In our view, a reading of this letter dated 10.2.1989, and also the different clauses, as already indicated in the brochure, we have no hesitation in agreeing with the Commission that the appellant could not have acquired any legal right for allotment of a plot until and unless she could be found to be successful in the draw of lots. Therefore, in our view, it was an amount for reservation of Category D Plot, which, by no means, would lead to the" interference of registration by itself, guaranteeing the allotment of a specific plot to the appellant.

7. THE complainants are not entitled to the plot as such. The OP is hereby directed to refund the amount. The order of the District Forum is restored. The complainants have failed to show that the OP has allotted plot of land to any of the applicants under that Scheme. Consequently, the OP is entitled to refund the allotment of a new plot. They are directed to pay a sum of Rs. 5,000 as compensation and Rs. 3,000 as costs of the complaint, to the complainants, as directed by the District Forum, within a period of 90 days, otherwise, it will have to pay a penalty in the sum of Rs. 1,000 per day, till realization.

8. KEEPING in view of the facts and circumstances of the case, I am of the considered view that a considerable period of time has elapsed from 31.8.1987 to 11.4.2014, i.e., almost 27 years. The OP has kept the money with them, all this period. The prices of land have increased by leaps and bounds. It is difficult to fathom why did the OP pursue the matter in such a lackadaisical manner. The attitude of authorities adds a shocking dimension of the situation. The administration should sensitise its officers to serve the public, rather than justify their dictatorial acts. Consequently, I award a compensation in the sum of Rs. 1,00,000 to the complainants, in addition, for the harassment, anguish, anger, frustration and sadness, suffered by them, which be paid by the Opposite Party, within 90 days of receipt of this order, otherwise, it will carry interest @ 9% p.a. till realization.