
(2013) 09 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

M.L. Sharma

APPELLANT

Vs

H.U.D.A.

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : 2013 4 CPJ 171

Hon'ble Judges : VINAY KUMAR J.

Final Decision : Appeal dismissed

Judgement

1. THIS matter was originally listed as a revision petition but was subsequently converted into an Execution Appeal. As the impugned order was passed by the Haryana State Consumer Disputes Redressal Commission, in an Execution Proceeding, the matter is considered by this Commission as an appeal under Section 27A of the Consumer Protection Act. Excluding the permissible period of 30 days, delay of 60 days has occurred in filing this appeal. In explanation of the same, the appellant/Complainant has pointed out that this delay has occurred as he was under the impression that a revision petition would lie against the impugned order. We consider this explanation to be in line with the developments in the present proceedings, which started as revision petition and were converted into an execution appeal. The explanation is therefore, accepted and the delay of 60 days is, condoned. The matter is taken up for consideration on merit.

2. IN a brief but sharply focused order the State Commission has outlined the developments starting with consumer complaint No. 3/1991 being decided by Haryana State Consumer Disputes Redressal Commission in favour of the Complainant Shri M.L. Sharma on 8.7.1991. The operative portion of the order read as follows: In the wake of the above, we direct the opposite parties to allot an eight Maria residential plot to the complainant at Gurgaon either in Sector 23 or Sector 23A (Phase -II), or in an adjacent area, at the rates charged in 1986 by the H.U.D.A. from the applicants similarly placed, subject of course to the complainant's completing all the necessary formalities therefore.

The Execution Application filed by the applicant was allowed on 28.2.1997 by the

State Commission with the following direction to the O.P./H.U.D.A.: Consequently, the application is allowed and the possession of the plot, if not already delivered, shall now be delivered positively within two weeks from the payment of the additional amount demanded by H.U.D.A. - -by way of enhanced cost of the land minus amount of interest from 19th April, 1990 onwards, as stated in the affidavit filed by the Estate Officer, H.U.D.A. dated 26th March, 1996.

This was followed by another Civil Misc. Application (CMA/89/1997) made by the Complainant before the State Commission. It was prayed that the demand notices issued by the H.U.D.A. on 12.12.1994, 23.6.1997 and 11.8.1997 for additional costs of Rs. 30,310 should be quashed. The State Commission in its order of 26.10.1998 observed that:

In response to the notice issued, H.U.D.A. has sought to justify the demands by way of additional cost for plot No. 512, Sector 22, Pocket B, Gurgaon. In reply thereto the complainant has stated the amount of Rs. 30,000 had already been deposited by him by way of Bank Draft dated 21.3.1997 in compliance with the direction issued by this Commission on 28.2.1997. In view of this position, the impugned demand notices as mentioned by the complainant -applicant in his application, dated 17.11.1997 shall stand quashed being untenable. In the circumstances of the case there shall be no order as to costs.

3. THE impugned order passed by the State Commission on 19.8.2011 has been made in yet another Execution Application filed by the Complainant Shri M.L. Sharma, after a gap of several years, in 2009 (E.A./758/2009). The State Commission has rejected the application observing that this is an attempt to stretch the order of the Commission beyond additional costs for the plot and to cover even extension fee. Extension fee was not the question involved in the main complaint and therefore, the O.P./H.U.D.A. was justified in claiming the same.

4. THE present proceedings before this Commission have been initiated by the appellant/Complainant against the above order of the State Commission rejecting his Execution Application No. 758 of 2009. We have perused the records submitted by the two sides and heard Ms. Anubha Agrawal, Advocate on behalf of respondent/H.U.D.A.. The Complainant/Shri M.L. Sharma has argued the case in person. He has been heard at length and his written arguments, filed subsequently, perused.

5. IN para 8 of his petition (treated as Execution Appeal before this Commission), he refers to the decision in the impugned order holding that H.U.D.A. would be justified and within their right to demand extension fee and contends that: It was pertinent to mention here the question of extension fees may not be involved in the main complaint but it was very much involved in implementing the main order in the complaint. Then again respondent refused to give sanctioned plan for construction and petitioner could not construct plot then how Execution can

stand satisfied? Rather it defeated the execution.

Similarly, in the written argument files subsequent before this Commission, the appellant has argued that the State Commission was wrong in holding that execution stands satisfied. It is claimed that till respondent/H.U.D.A. hands over the approved plan together with water and sewerage connection, execution shall remain incomplete.

6. THE above contentions need to be seen in the context of the original order of 8.7.1991 passed by the State Commission. The State Commission had therein directed H.U.D.A. to allot the plot at the rates prevailing in 1986. Any execution proceedings flowing from it would have to be confined to the issue decided in the order of 8.7.1991. Clearly, neither the question of extension fee (as agitated before the State Commission) in E.A. No. 758 of 2009 nor the question of approval of construction plan (as raised in the present appeal) can be treated as matters arising from the decision of 8.7.1991. We therefore, hold that the State Commission was legally correct in dismissing E.A. No. 758 of 2009 filed by the present appellant. In the light of the details considered above, we have no hesitation in holding that the present appeal is entirely devoid of any merit. It is nothing but an attempt to misuse the process of law. We deprecate this attempt on the part of the appellant/complainant. In the result, the appeal is dismissed and the impugned order passed by the Haryana State Consumer Disputes Redressal Commission on 19.8.2011 in E.A. No. 758 of 2009 is confirmed. No order as to costs.