

(2012) 03 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

Mundi Co-Operative Housing Building Society Ltd	APPELLANT
Vs	
PUNJAB URBAN PLANNING AND DEVELOPMENT AUTHORITY	RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Citation : 2012 0 NCDRC 770 : 2012 2 CPJ 269

Hon'ble Judges : R.C.JAIN , S.K.NAIK J.

Final Decision : Appeal accordingly dismissed

Judgement

1. ALLEGING deficiency in service and adoption of unfair trade practice by practising discrimination, the complainant, a cooperative Housing Society has filed the present complaint seeking interest @ 18% per annum from 24.11.1995 to 17.5.1998 i.e. for the period of two years four months and 23 days on the deposited amount of Rs. 54,66,358 along with the compensation.

2. IN nutshell, the case of the complainant Society is that pursuant to an advertisement issued by the Opposite Party/Punjab Urban Planning and Development Authority (for short "PUDA "), the complainant Society applied for the allotment of a plot of land by submitting a registration fee of Rs. 10,000. PUDA gave a letter of intent in respect of a plot of land measuring 15618.68 square yards of land in Sector 70, SAS Nagar, Mohali to the complainant society for construction of multi-storeyed flats on free hold basis at a tentative price at Rs. 1,400 per square yard and the complainant was called upon to deposit a sum of Rs. 54,66,538 as 25% of the sale consideration. The demanded amount was paid by the complainant in November, 1995. However, it appears that there was some litigation effecting the land in question and therefore the process of allotment was finalized only in April, 1998 and the price was increased and the society was called upon to pay the additional amount of Rs. 11,22,354, which was paid by the society. Afterwards final allotment letter was issued subject to the condition that either the payment of balance consideration could be made in one go or in annual equitable instalments. It appeared that the complainant opted to pay according to later course and paid the balance consideration by the

year 2004. It is not in dispute that the possession of the allotted land was delivered to the complainant society some time in June, 1998. However, subsequently the complainant realized that it has been treated differently than the other purchasers of the land from the Opposite Party/PUDA, as they were given land at a different rate. The case of the complainant is that the PUDA has discriminated the complainant vis-a-vis private builders who were also allotted land in the above manner. It is alleged that although the complainant society was called upon to make the payment to the extent of 25% of the sale consideration as far back as in November, 1995, the other private housing builders were asked to pay the part payment of 25% after the allotment i.e. in May, 1998 and therefore, the complainant society has suffered monetarily on account of the loss towards the interest for the period between 24.11.1995 to 17.5.1998. Hence the complaint. It is pertinent to note here that before filing the present complaint, the complainant had filed a similar complaint before the Punjab State Consumer Disputes Redressal Commission, Chandigarh and the said complaint was made over/transferred to the State Commission of U.T. Chandigarh where it was registered as complaint No. 50 of 2000. However by an order dated 19.7.2001 Consumer Disputes Redressal Commission, U.T. Chandigarh returned the complaint to the complainant for presentation before the appropriate Forum having requisite jurisdiction to try the same as in the opinion of the State Commission, the complaint fell outside its pecuniary jurisdiction. The present complaint was however, presented in the Commission only on 30.4.2002.

3. PUDA has resisted the complaint by filing a reply thereby raising preliminary objections about the maintainability of the present complaint on the ground viz. the complaint was based on suggestio falsi, the complaint is frivolous as PUDA has not committed any deficiency in service or any discrimination in the allotment of the land to the complainant society and the present complaint being nothing but an attempt on the part of the complainant to over reach this Forum on the basis of vague, incorrect and unsubstantiated allegations. That apart, the complaint is stated to be barred by limitation as provided under Section 24-A of the Consumer Protection Act, 1986. On merits it is not denied that the complainant society applied for and was allotted a plot of land of the above description at the said rate and a sum of Rs. 54,66,538 was deposited by the complainant in the year 1995. It is also not disputed that the final allotment of the land was however made in May, 1998 and a demand for additional money as final price which was fully met by the complainant society and, thereafter, possession of the plot in question was handed over to the complainant society in June, 1998. It is sought to be explained that the cases of the private builder were treated as a class apart from that of the cooperative group housing building society. It is also explained that the PUDA had charged high price from the private builder who were allotted the land in the year 1995.

4. IN the rejoinder, the complainant has controverted the objections and pleas raised in the written version and has reiterated the averments and allegations made in the complaint. In the sub-rejoinder to the rejoinder of the complainant,

the opposite party made further explanation and justified their action in regard to the allotment of plot and the payment received by them on different stages and also filed a statement of account of the complainant society showing that after adjusting the entire amount received from the complainant society, certain amount was still due and payable by the complainant society. Parties have mostly relied upon the documents i.e. the terms and conditions of the allotment and certain correspondence exchanged between the parties as also their supporting affidavits. We have heard Mr. B.S. Sharma, learned Counsel for the complainant and Ms. Rachana Joshi, learned Counsel for the Opposite Party/PUDA and have considered their submissions.

5. BEFORE we advert to the merits of the complaint, we would like to deal with the objections of the opposite party in regard to the maintainability of the present complaint on the ground that the complaint is barred by the limitation. The basis of this objection is that Letter of Intent for the allotment of the above referred plot was issued to the complainant some time in 1995 subject to certain conditions and the complainant in compliance of the said conditions had deposited a sum of Rs. 54,66,538 towards 25% of the tentative cost of the plot in November, 1995. Afterwards the final allotment letter was issued in April, 1998 and the complainant deposited the additional amount as asked for without any reservation or protest. Not only this the possession of the plot in question was handed over to the complainant in June, 1998. It is contended that the cause of action for filing the present complaint even if it can be said to have arisen would have lastly arisen to the complainant in June, 1998 and computing the period of limitation from that date the complaint filed before the Punjab State Commission in August, 2000 was beyond the limitation period. That apart it is pointed and is manifest that the complainant took unduly long period in filing the present complaint before this Commission after the order of the State Commission of 2001. The complainant as a diligent person, ought to have filed this complaint within a reasonable period say about four weeks after the complaint was returned to it for presentation before the Fora having requisite pecuniary jurisdiction to entertain the complaint. For what reasons the complainant sat over the matter and did not file the complaint for a period of more than nine months is not explained nor any application was made seeking condonation of delay in filing the complaint before the State Commission or subsequent delay before filing the complaint in this Commission. Ideally, the legally permissible course was that the complaint which was filed before the State Commission ought to have been returned to the complainant so as to enable him to file the same without any delay. Whatever may be the position, we are of the view that complainant has not been prompt enough to pursue its remedy within the timeframe of two years from the date of the cause of action as prescribed in Section 24 of the Consumer Protection Act. Therefore, apparently the complaint is barred by limitation. However, since the complaint was entertained by this Commission and remained pending for almost a decade, we would not like to non-suit the complainant on this sole ground.

6. COMING to the merits of the case, one allegation made in the complaint which was pursued even at the time of hearing is that PUDA discriminated the complainant in the matter of allotment of land and fixing the price vis-a-vis other private builders who were likewise allotted land by PUDA in 1998 i.e. at the time of firm allotment of the land and not in the year 1995 when letter of intent was issued to the complainant. This plea appears to be misconceived because the complainant has not alleged any discrimination vis-a-vis any other group housing cooperative society or it has been treated differently than the other similarly situated society. Moreover, it has been satisfactorily explained that the price of the (and received from the private builders in the year 1998 was much higher than at which the land was allotted to the complainant society. We, therefore, reject this plea as misconceived and unsubstantiated. The precise claim of the complainant in the present complaint is for award of interest for the intervening period i.e. from 24th November, 1995 to 17th May, 1998 i.e. between the date of letter of Intent and the firm allotment of the plot as the amount of Rs. 54,66,538 deposited by the complainant remained lying with the opposite party. In this regard, Ms. Joshi invited our attention to the statement of calculations filed with the supplementary affidavit of Mr. Darshan Singh Sandhu, Estate Officer, PUDA filed on record, which shows that the O.P./PUDA has in fact paid a sum of Rs. 10,41,291 as interest for the intervening period. The said amount was however, credited only after the period of 181 days from the issue of the letter of intent of allotment till the date of firm allotment. This is stated to be in accordance with the policy of PUDA. The contention of the O.P. is that the deposit of Rs. 54,66,538 by the complainant society in the October, 1995 was duly taken into account while working out the final price of the allotted land at the time of final allotment in April, 1998. In our view, that being the position, the complainant cannot claim any further interest for the period from 24.11.1995 to 17.5.1998 much less interest @ 18% per annum for the above stated reasons and has not been able to establish any deficiency in service on the part of the opposite party/ PUDA entitling it to any compensation much less compensation claimed by it. In the result the complaint fails and accordingly dismissed leaving the parties to bear their own cost. Ordered accordingly.