

(2012) 02 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

PAWAN AHUJA SON OF LATE SH. OM PARKASH AHUJA	APPELLANT
Vs	
HARYANA URBAN DEVELOPMENT AUTHORITY	RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Citation : 2012 0 NCDRC 249 : 2012 2 CPJ 115 : 2012 2 CPR 210

Hon'ble Judges : V.B.GUPTA J.

Advocate : AKSHAT GOEL

Judgement

1. PRESENT revision petition has been filed against order dated 1.9.2011, passed by State Consumer Disputes Redressal Commission, Panchkula (for short as State Commission) vide which, appeal of the respondent was accepted.

2. BRIEF facts are that petitioner (complainant in the District Forum) was allottee of plot No. 325, in Sector 5, Urban Estate, Gurgaon. It is the case of petitioner that total cost of the plot was Rs 2,38,010/- out of which he paid 10%. However, respondents (opposite parties in the District Forum) did not issue regular allotment letter qua the said plot. When petitioner enquired about allotment, he came to know that the same has been cancelled and earnest money was forfeited without giving any show cause notice to him. It is alleged that no allotment letter was issued to him. The said plot is still available. Thus, there was deficiency in service on the part of the respondents.

3. RESPONDENTS in its written statement raised preliminary objection that complaint is time barred. The plot was cancelled on 3.7.1990, so the complaint filed after twelve years is not maintainable.

4. ON merits, it is denied that respondents did not send the letter of allotment to the petitioner. The allotment letter dated 26.2.1990, was sent to the petitioner and the same was not returned undelivered, rather it was received by the petitioner. Petitioner failed to deposit 15% amount within 30 days, according to the conditions of the allotment letter. Hence, allotment was cancelled, vide memo dated 3.7.1990 due to non payment of 15% amount. Thus, there is no deficiency

in service on the part of the respondents.

5. IT is contended by learned counsel for the petitioner that no allotment and cancellation letters were ever received by the petitioner. The onus is upon the respondents to show that relevant communications were sent by registered post to the petitioner. However, no such document was placed on record to show that allotment letter or letter demanding 15% of the amount was sent through registered post. Moreover, knowledge about the cancellation of allotment came to the petitioner only vide letter dated 27.6.2000. Thereafter, complaint was filed on 5.5.2002. Thus, the complaint has been filed well within time. Under these circumstances, impugned order is liable to be set aside.

6. STATE Commission in the impugned order has observed: " At the very outset the question for consideration before this Commission is as to whether the complaint filed by the complainant before the District Forum was within limitation for seeking relief under the Consumer Protection Act. It was submitted that the plot was cancelled on 3.7.1990 whereas the complaint was filed on 8.5.2002 i.e. after 12 years and thus the complaint was not maintainable as prescribed under section 24A of the Consumer Protection Act, 1986 according to which complaint was to be filed within two years from the date of cause of action. Reference may be made to case law cited as V.N. Shirkhande (Dr.) Versus Anita Sena Fernandes 2011 CTJ 1 (Supreme Court) wherein the Hon"ble Supreme Court has held that: - "Section 24A (1) contains a negative legislative mandate against admission of a complaint which has been filed after 2 years from the date of accrual of cause of action. In other words, the consumer forums to not have the jurisdiction to entertain a complaint if the same is not filed within 2 years from the date on which the cause of action has arisen. This power is required to be exercised after giving opportunity of hearing to the complainant, who can seek condonation of delay under section 24A (2) by showing that there was sufficient cause for not filing the complaint within the period prescribed under section 24 a (1). If the complaint is per se barred by time and the complainant does not seek condonation of delay under Section 24a (2), the consumer Forums will have no option but to dismiss the same" . Learned counsel for the appellants have placed on record judgment of Hon"ble National Commission titled HUDA Vs. Ushma Rani Dureja IV (2009) CPJ 304 (NC), wherein the Hon"ble National Commission has held that: - "Section 24A - - Limitation - -Time barred - -Plot Allotted -Earnest Money deposited" Payment of instalments defaulted - -Plot resumed by HUDA - - Allotment of other plot directed by Forum - -Order upheld in appeal - -Hence revision -Resumption of plot taken place in 2002 - -Respondent neither challenged resumption, nor approached public authority for redressal of grievance -complaint filed after inordinate delay in 2006 - -Order of lower fora set aside -No relief entitled." The present case is fully covered by V. N. Shrikhande (Dr.) Veruus Anita Sena fernandes and HUDA Vs. Ushma Rani Dureja(Supra) and as such the complaint filed by the complainant deserves to be dismissed. The District Forum passed the impugned order by ignoring all these aspects and as such the impugned order being an illegal one cannot be

sustained. For the reasons recorded above, this appeal is accepted, the impugned order is set aside and the complaint is dismissed " .

7. PARAS 2 to 6 of the complaint are relevant for deciding the controversy in this case and these paras read as under: " 2. That true facts of the case of the complainant are that the complainant was successful allottee in the draw of lots held for Sector -5, Urban Estate Gurgaon. In the draw of lots, complainant stood successful and a residential plot bearing no. 315, in sector -5 (Part 3 & 6), Urban Estate, Gurgaon measuring 10 marla fell to the lot of the complainant. It is pertinent to mention here that the total cost of above said plot was Rs. 2,38,010/- out of which 10% was paid by the complainant. 3. That subsequently OPs did not sent the letter of allotment to the complainant for the reasons best known to O.Ps. However, subsequently it was revealed that due to some litigations over the area, the regular letter of allotment was not issued to the complainant although he kept on corresponding with O.Ps. 4. That in April, 2000, complainant again visited the office of O.P. No.2 and there the dealing assistant one Sh. Lal Singh after putting his best efforts, could not trace out the concerned file of the plot of the complainant. However, in turn Sh. Lal Singh told the complainant to given another letter in the office to keep the matter alive as well as tracing of the file. The copy of the letter which was acknowledged in the office of O.P.No.2 on 2.6.2000 is attached herewith. It is pertinent to mention here that during the year 1992 -93, the complainant could not pay any attention qua the matter of his plot as his plot as his father and mother were seriously ill. 5. That on the other hand, it is come to the knowledge and notice of the complainant that the area where his plot is in existence has cleared from the litigation and lot of development has taken place in the vicinity concerned. 6. That now it has come to the notice and knowledge of the complainant that his plot file is lying in the office of O.P. No.1 and his allotment of Plot has been cancelled by O.Ps. for non payment of the remaining dues and the 10% amount already lying deposited stands forfeited" .

8. THUS, as per averments made in Para 2 of the complaint, petitioner was a successful allottee in the draw of lots. The cost of the plot was Rs. 2,38,010/-, out of which 10% was paid by him. This 10% of the cost of the plot, could not have been paid by the petitioner, unless he had received the allotment letter. Petitioner for reasons best known to him has not placed on record that initial letter of allotment, on the basis of which he was declared as a successful allottee.

9. FURTHER, in Para 6 of the complaint, petitioner has not deliberately mentioned as to on which date it came to his knowledge, that his plot's file was lying in the office of respondent no. 1 and his allotment of plot has been cancelled for non payment of the remaining dues.

10. SO, there are no reasons to disbelieve this defence of the respondents that allotment letter was sent to the petitioner, vide memo No. 334 dated 26.2.1990, which was not returned undelivered, rather it was received by the petitioner.

11. ALLOTMENT of the was cancelled on 3.7.1990, whereas complaint was filed on 08.5.2002, that is, after about 12 years. As such complaint is not maintainable in view of Section 24A of the Act, according to which complaint was to be filed within two years, from the date of allotment.

12. HON"ble Apex Court in case of Kandimalla Raghavaiah & Co. versus National Insurance Co. Ltd. and another, 2009 CTJ 951 (Supreme Court) (CP) took view of the observations made in case State Bank of India v. B.S. Agricultural Industries, 2009 CTJ 481 (SC) (CP) =JT 2009(4) SC 191, as under: - " 8. It would be seen from the aforesaid provision that it is peremptory in nature and requires consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, "shall not admit a complaint" occurring in Section 24A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within limitation period prescribed thereunder. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside. "

13. IT has been held by the Hon"ble Supreme Court" " The term "cause of action" is neITher defined in the Act nor in the Code of Civil Procedure, 1908 but is of wide import. It has different meanings in different contexts, that is when used in the context of terrITorial jurisdiction or limITation or the accrual of right to sue. Generally, IT is described "bundle of facts"., which if proved or admITted entITle the plaintiff to the relief prayed for. PITHily stated, "cause of action" means the cause of action for which the suIT is brought. "Cause of action" is cause of action which gives occasion for and forms the foundation of the suIT. In the context of limITation wITH reference to a fire insurance policy, undoubtedly, the date of accrual of cause of action has to be the date on which the fire breaks out. "

14. THE observations made out by Hon"ble Supreme Court in the authoritative pronouncement as above, are fully attracted to the facts and circumstances of the present case.

15. IT is not the case of the petitioner that he had filed any application for condonation of delay in filing of the complaint before the District Forum.

16. SINCE, the complaint of the petitioner before the District Forum was barred by limitation, the State Commission rightly dismissed the complaint. There is no

infirmity or illegality in the impugned order.

17. PRESENT revision petition having no merits and the same being without any legal basis, is hereby dismissed with costs of Rs.10,000/ - (Rupees Ten Thousand only).

18. PETITIONER is directed to deposit the costs of Rs.10,000/ - (Rupees Ten Thousand Only) by way of a cross cheque in the name of "Consumer Legal Aid Account" within four weeks from today.

19. IN case, costs are not deposited within the prescribed period, then petitioner shall be liable to pay interest @ 9% p.a., till realization. Pending application stands disposed of.