

(2012) 07 NCDRC CK 0130

In the National Consumer Disputes Redressal Commission

Praveen Kumar Arora S/O Of Nand Lal Arora

APPELLANT

Vs

Administrator Haryana Urban Development Authority , Estate
Officer Haryana Urban Development Authority , Chief
Administrator Haryana Urban Development Authority

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 348 : 2012 3 CPJ 456 : 2012 3 CPR 344

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Judgement

1. AGGRIEVED by order dated 11.1.2012, passed by State Consumer Disputes Redressal Commission, Panchkula (for short as "State Commission) petitioner has filed the present revision petition.

2. BRIEF facts are that petitioner/complainant was allotted plot no.2738 in Sector - 2, Faridabad, vide allotment letter dated 11.11.1998 at a tentative price of Rs.2,13,127/-. Petitioner deposited a sum of Rs.2,63,199/- with respondents/opposite parties. However, respondents failed to offer possession of the plot as the same was deleted from the plan. Respondents vide letters dated 31.10.2000 and 22.4.2002, demanded the enhanced price of the plot. Instead of depositing the enhanced price, petitioner moved an application to Estate Office, HUDA, Faridabad, on 25.2.2004 seeking refund of the deposited amount and preferred not to retain the plot. Application of the petitioner was under process but in the meantime, he filed a complaint under Section 12 of the Consumer Protection Act, 1986 (for short as "Act") before the District Consumer Disputes Redressal Forum, Faridabad (for short as "District Forum") on 18.3.2004. Later on, petitioner amended his complaint and made the following prayer ; "1. To pass an order to directing the respondent to deliver the physical possession of the allotted plot or directed to allot a new alternate plot in a developed sector. 2. To pass an order to directing the respondent to pay the interest @24% p.a. on the whole deposited amount from the date of its deposition till realization. 3. To pass an order to directing the respondent to not charged the interest on installments or delayed payment or enhancement. 4. To pass an order to directing the

respondent to award compensation of 50,000/- as increasing cost of building material/labour charges etc. and to reduce mental agony, pain, shock, etc. 5. To not charge the interest on installments and on enhanced price etc. 6. To pay Rs.5,000/- towards the cost of litigation. 7. Such other relief, which this Hon'ble forum may deem fit to be awarded."

3. RESPONDENTS in the written statement denied that they failed to deliver the possession of the plot in question to the petitioner. In fact, most of the development work had been completed but petitioner himself was not interested in the plot in question and he applied for refund of the deposited amount. On his request, as per policy of HUDA, entire deposited amount was refunded, vide cheque no.645475 dated 23.3.2004, which was duly encashed by the petitioner. Petitioner is no more a consumer. Thus, there was no deficiency in service on the part of the respondent at the time of surrendering the plot. Hence, the complaint is not maintainable.

4. DISTRICT Forum, vide its order dated 14.12.2005, allowed the complaint and passed the following directions ; "1. The respondents are ordered to re-allot plot no.2738, Sector-2, Faridabad, to the complainant on the similar price and in case if it is not found vacant and unallotted then allot another plot of the same size and on the similar price, in some developed pocket of the same sector. 2. The respondents are further ordered to pay interest @ 12% p.a. on the deposited amount of the complainant w.e.f. its deposit till its realization. If any amount has been deducted from the deposited amount of the complainant that be also paid to the complainant along with interest @ 12% p.a. w.e.f. its deposit till its realization. 3. The respondents are further ordered not to charge any kind of interest, penal interest, compound interest, penalty and extension fee from the complainant w.e.f. the allotment of the plot in question upto the period of delivery of the physical possession of the plot as ordered above. 4. The respondents are also ordered to pay Rs.20,000/- on account of mental agony and Rs.5,000/- as litigation expenses to the complainant. It is further ordered that the account of the complainant be overhauled and after overhauling the account of the complainant the amount whichever so be assessed as per the aforesaid spirit, the same be adjusted towards the price of the plot now to be allotted to the complainant as per aforesaid order. The respondents are also ordered to comply with the order of the Forum within 30 days after the receipt of the copy of the present order. Complaint has been disposed of, accordingly."

5. AGGRIEVED by the order of District Forum, respondents filed an appeal before the State Commission. State Commission, vide its impugned order accepted the appeal and set aside the order of District Forum. Consequently, complaint of the petitioner was dismissed.

6. PETITIONER himself has appeared in person and has argued his case.

7. IT is contended by the petitioner that respondents failed to develop the plot in question and that is the reason why they did not offer the physical possession of

the plot to him. The entire consideration amount of the plot had already been received by them long back and therefore, they ought to have been directed to allot an alternate plot in lieu of the original plot to him. Thus, there is clear cut deficiency on the part of the respondents.

8. STATE Commission in its impugned order has observed ; "Admittedly, in the instant case, the plot which was allotted to the complainant was not available as per layout plan and for that reason in view of condition No.(ii) of the letter mentioned above, the complainant was refunded the entire deposited amount of Rs.2,63,199/- without any deduction. It is well settled principle of law that the parties are governed by the terms and conditions of HUDA policy and therefore the complainant is not entitled for any compensation as claimed by him in the complaint. It is very strange that while disposing of the complaint, District Consumer Forum awarded relief to the complainant i.e., re-allotment of the plot, which was never the prayer of the complainant. It is also relevant to be mentioned here that after accepting the cheque dated 23.3.2004 worth Rs.2,63,199/-, the complainant has no further cause of action in his favour. Complainant ceased to be a "consumer" after surrender of the plot and taking the refund of the deposited amount as per HUDA policy. District Consumer Forum has erred by ordering for re-allotment of the plot, which was not the case of the complainant before the District Forum. Hence, the impugned order cannot be allowed to sustain."

9. AS per petitioner's own case, since respondents did not offer the possession of plot within the prescribed period, petitioner itself, sought refund of the amount deposited by him. In this regard, petitioner also gave an application dated 25.2.2004 in writing to the respondents. It is also an admitted case of the parties that, after filing of the application for refund of the amount, petitioner, later on, filed consumer complaint before the District Forum on 18.3.2004. Meanwhile, as the complaint of petitioner was pending, respondent refunded the entire deposited amount by the petitioner on 23.3.2004, which was duly accepted by the petitioner unconditionally and petitioner also got the cheque encashed.

10. ONCE, petitioner has received the entire deposited amount unconditionally and has also got the cheque encashed, under these circumstances petitioner ceased to be a "consumer" as per Consumer Protection Act, 1986. The privity of contract or relationship of consumer and service provider between the parties if any, came to an end the moment petitioner accepted the refund unconditionally and also got the cheque encashed. Under these circumstances, District Forum ought to have dismissed the consumer complaint of the petitioner.

11. PETITIONER having got the refund amount of Rs.2,63,199/- as far back as in the year 2004, is enjoying with that money and now he wants to have the plot in question for free. Petitioner cannot have the cake and eat it too. Hence, the present petition is most bogus and frivolous one as well as is meritless, which is required to be dismissed with punitive costs for wasting the time of this Commission.

12. THEREFORE, we dismiss the present petition with punitive costs of Rs.20,000/- (Twenty Thousand only). Petitioner is directed to deposit the costs by way of a demand draft in the name of "Consumer Legal Aid Account", within four weeks from today.

13. IN case, petitioner fails to deposit the said costs, within the prescribed period, he shall also be liable to pay interest @ 9% p.a., till realization.

14. PENDING application also stands disposed of.

15. LIST the matter for compliance on 24.8.2012.