

(2015) 11 P&H CK 0108
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17386 of 2014

Prem Narain Dikshit and Others

APPELLANT

Vs

Haryana Urban Development Authority and Others

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Consumer Protection Act, 1986 — Section 27

Citation : (2015) 11 P&H CK 0108

Hon'ble Judges : S.J. Vazifdar, Actg. C.J. and Tejinder Singh Dhindsa, J.

Bench : Division Bench

Advocate : Shyam Kumar Sharma, Advocate, for the Appellant; Rahul Dev Singh, Deputy Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—The petitioners seek a writ of mandamus to direct the Estate Officer, HUDA, Faridabad to issue the completion certificate as also execute the conveyance deed in respect of House No. 215, Sector 31, Faridabad.

2. It has been averred on behalf of the petitioners that initially, plot No. No. 275, Sector 31, Faridabad was allotted in their favour vide allotment letter dated 2.1.1999. The total price of the plot was duly deposited. Thereafter, an alternate plot bearing No. 215, Sector 31, Faridabad was allotted on 8.1.2008 and possession thereof was delivered on 28.1.2008. It has been contended that building plans were duly approved by the competent authority on 15.7.2008 and as such, construction of a residential house was carried out over plot No. 215, Sector 31, Faridabad as per sanctioned building plans. Case of the petitioners in a nut-shell is that without any justifiable basis, completion certificate in respect of House No. 215, Sector 31, Faridabad has not been issued till date and neither has the conveyance deed, presented on 27.10.2010, been executed.

3. Even though the claim of the petitioners appears to be well-founded at first blush, but a joint reply filed on behalf of the respondents reveals a different

picture. In the reply, it has been stated that a plot ad-measuring 350 sq.yards bearing No. 275, Sector 31, Faridabad was purchased by petitioner No. 1 through open auction conducted on 23.12.1998. Allotment letter was issued on 20.1.1999. Possession of the plot was offered to the allottee vide memo dated 5.5.2000, but the same was not accepted on the plea that a high tension electric line was passing over the plot. Such electric line is stated to have been shifted on 25.11.2001. Subsequently, the allottee i.e. petitioner No. 1 made a request for adding the name of his wife and, accordingly, the name of petitioner No. 2 was endorsed in the record. Subsequently, an application dated 5.3.2002 from the petitioners for surrender of the plot was received in the office of respondent No. 3 vide diary No. 4049 dated 14.3.2002 mentioning therein that they were unable to raise construction thereupon due to personal reasons and as such, sought refund of the amount that had been deposited. Such request of the petitioners was acceded to and as per terms and conditions of the allotment letter, 10% amount of the total sale-consideration was deducted and balance amount of Rs. 8,62,549/- was refunded vide cheque No. 435186 dated 21.3.2002. The cheque was duly encashed by the petitioners. In September 2005, a complaint was filed before the District Consumer Disputes Redressal Forum, Faridabad for allotment of an alternate plot. The complaint was accepted by the District Forum vide order dated 2.1.2006 and directions were issued to the HUDA authorities to allot plot No. 196 or plot No. 215, Sector 31, Faridabad towards alternate plot in lieu of originally allotted plot No. 275, Sector 31, Faridabad. HUDA authorities filed an appeal before the State Consumer Commission Haryana against the order dated 2.1.2006 passed by the District Consumer Redressal Forum. During pendency of the appeal, a conditional allotment of plot No. 215, Sector 31, Faridabad was made vide memo dated 8.1.2008 and in pursuance there to, possession was delivered. Appeal filed by HUDA was accepted by the State Consumer Commission vide order dated 2.7.2009 and the impugned order passed by the District Forum dated 2.1.2006 in terms of which, the alternate plot was allotted to the petitioners was set aside. As per learned counsel appearing for the respondent-Authorities, the order dated 2.7.2009 passed by the State Consumer Commission, Haryana having attained finality, there would be no subsisting right in favour of the petitioners as regards alternate plot bearing No. 215, Sector 31, Faridabad.

4. Having heard learned counsel for the parties at length, we are of the considered view that the instant petition merits dismissal. The reasons for holding such view are as under:

"i) Plot No. 215, Sector 31, Faridabad was allotted in favour of the petitioners in pursuance to the directions passed by the District Consumer Disputes Redressal Forum, Faridabad in its order dated 2.1.2006. In appeal, the Haryana State Consumer Commission vide order dated 2.7.2009 has set aside the order of the District Forum. Petitioners have chosen not to challenge the order passed by the State Consumer Commission dated 2.7.2009 and the same, as such, has attained finality. No legal right, as such, would vest in the petitioners qua plot

No. 215, Sector 31, Faridabad which had been allotted in pursuance to an order dated 2.1.2006 passed by the District Consumer Disputes Redressal Forum, Faridabad and which, in turn, has been declared to be bad in law by the Appellate Authority.

ii) The order dated 2.1.2006 passed by the District Consumer Forum, Faridabad was challenged by way of an appeal before the State Consumer Commission by the HUDA authorities. It has gone uncontroverted that during pendency of the appeal, the petitioners had filed an execution application under Section 27 of the Consumer Protection Act before the District Consumer Forum, Faridabad. Faced with such a situation, the respondent-authorities took a decision to allot plot No. 215, Sector 31, Faridabad conditionally and subject to the outcome of the appeal. The allotment letter dated 8.1.2008 pertaining to alternate plot No. 215, Sector 31, Faridabad in lieu of plot No. 275, Sector 31, Faridabad has been placed on record and appended as Annexure P2 along with the petition. The same would reveal that the allotment was being made in compliance with the order dated 2.1.2006 passed by the District Consumer Forum, Faridabad and was made expressly conditional and in the following terms:

"The allotment letter has been issued subject to the decision of appeal upto the Apex Court."

The petitioners, as such, had been put to notice at the very outset that such alternate plot had been allotted subject to the outcome of challenge that had been laid to the order dated 2.1.2006 passed by the District Consumer Forum, Faridabad. Admittedly, appeal against the order of District Consumer Forum has been accepted by the State Consumer Commission, Haryana vide decision dated 2.7.2009. The order of the State Consumer Commission, Haryana has since attained finality. So much so, while accepting the appeal, the State Consumer Commission, Haryana had even taken note of the fact that during the pendency of the appeal, possession of the alternate plot had already been delivered to the present petitioners. In spite thereof, the order passed by the District Forum was set aside by observing that the complainants (present petitioners) had secured possession of the alternate plot subject to the decision of appeal and possession thereof had been delivered by the HUDA authorities only to avoid coercive steps that had been prayed for in the execution proceedings. A conditional allotment of the plot in question in favour of the petitioners, as such, would have to face up to the consequences of the proceedings whereby the order in pursuance to which such conditional allotment had been made, had been put to test.

iii) From the sequence of facts and circumstances, we would have no hesitation in observing that the petitioners have been speculating all through. Plot No. 275, Sector 31, Faridabad that had, initially, been allotted, was surrendered by the petitioners in March 2002. Even the refund made over by the HUDA authorities upon surrender was accepted by the petitioners in the month of March 2002 itself. After a gap of 3-1/2 years of surrender, the petitioners executed a GPA in favour of Shri Ashok Dass son of Shri A.N. Dass in respect of plot No. 275, Sector

31, Faridabad. This is inspite of the fact that such plot already stood surrendered. After execution of the GPA, a complaint was filed before the District Consumer Forum, Faridabad on 12.9.2005 seeking alternate plot in lieu of the original plot. Suffice it to observe that after surrender of the initial plot allotted, the petitioners possibly could not have staked a claim for any alternate plot. Be that as it may, an order dated 2.1.2006 came to be passed by the District Consumer Forum for allotment of alternate plot. HUDA authorities challenged the same in appeal before the State Consumer Commission, Haryana. During the pendency of appeal, the petitioners pressed for implementation of the order of the District Consumer Forum and filed execution proceedings. To avoid any legal complications, HUDA authorities made a conditional allotment of plot No. 215, Sector 31, Faridabad to the petitioners. Inspite of having been put to express notice that such allotment was subject to the outcome of appeal upto to the Apex Court, the petitioners not only took possession, but proceeded further to get building plans sanctioned and thereafter even raised construction. Such steps have been taken by the petitioners/duly constituted GPA at their own risk and peril. The petitioners were clearly taking a chance. The order directing allotment of alternate plot having itself been set aside by the State Consumer Commission, Haryana, and such order having since attained finality, acceptance of the prayers made in the instant petition for issuance of completion certificate in respect of construction effected upon plot No. 215, Sector 31, Faridabad would amount to undoing the order of the Haryana State Consumer Commission. Acceptance of the prayers would also amount to putting premium on the conduct of the petitioners/GPA and which was all within the realm of speculation. We would certainly refrain from doing so.

iv) Another aspect that has weighed heavily with us while declining to interfere is that the petitioners have not approached this Court with clean hands. There is not even a whisper in the petition as regards the petitioners having submitted an application for surrender of the initial plot i.e. plot No. 275, Sector 31, Faridabad, such request having been accepted by the HUDA authorities, refund of the amount deposited after 10% deduction having been made over and such refund having been accepted. Such facts have come to light only in the reply furnished by the respondent-authorities. There has been no rebuttal forthcoming to such facts in the replication filed to the reply. These facts were material and relevant to the issue. After all, the claim in respect of the alternate plot i.e. plot No. 215, Sector 31, Faridabad was based in lieu of the original plot i.e. plot No. 275, Sector 31, Faridabad and which, as has now emerged, had already been surrendered by the petitioners. The petitioners are guilty of concealment of material facts from this Court. They have, as such, lost the right to claim any relief even on grounds of equity."

5. In view of the above, the prayers raised in the petition are declined.

6. Petition dismissed.