
(2002) 11 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

PROMODE BHARGAVA

APPELLANT

Vs

D.L.F.UNIVERSAL LTD.

RESPONDENT

Date of Decision : 18-11-2002

Acts Referred:

Citation : 2003 1 CPJ 113

Hon'ble Judges : C.M.Nayar , R.L.Sudhir J.

Final Decision : Complaint disposed of

Judgement

1. THE present complaint has been filed under Section 36B(a) of the Monopolies and Restrictive Trade Practices Act, 1969 against the respondents. THE complainants are stated to be apartment owners in multi-storeyed building known as Regency Part-II City, Ph. IV, Gurgaon, Haryana, 122 022. THE complainant No. 1 Mr. Promode Bhargava is stated to be authorised representative of rest of the complainants to sign the complaints, applications and file affidavits etc. along with relevant papers and documents which are considered necessary in the case. THE said representative is also to act on the advice and direction of Mr. L.N. Mehta, learned Counsel in the present case as referred to in paragraph 1 of the complaint.

2. RESPONDENT No. 1 is a promoter/coloniser and vendor in respect of sale of apartments and is licensee of respondent No. 3 with whom he has executed an agreement whereby apartments are sold in compliance of the provisions of The Haryana Apartment Ownership Act, 1983 (hereinafter referred to as "1983 Act"). The complainants have two-fold grievance. Firstly that respondent No. 2 is starting a School with tacit collusion of respondent No. 1 and with active connivance of respondent No. 3. The School never existed in the original plan/layout of the Complex. Apartment owners have undivided interest in common areas in specified percentage to be governed and administered by Governing Body of apartment owners as provided in Section 16 of the 1983 Act. Therefore, respondent No. 1 is guilty of unfair and restrictive trade practices. Secondly, it is alleged that respondent Nos. 1 and 3 are under obligation for developing group

housing society on allotted land strictly in accordance with terms and conditions of the licence as granted by respondent No. 3 and the responsibility of ownership of common area and facilities as well as their management and maintenance shall continue to vest with the coloniser till such time the responsibility is transferred to owners of dwelling units under the 1983 Act.

Learned Counsel for the complainants did not address us on the first question with regard to the School, which continues to function. The following interim order was passed on 31st July, 2001 which is self-explanatory : "This order will dispose of an application filed by the complainants under Section 12A of the Monopolies and Restrictive Trade Practices Act, 1969. The applicants have prima facie challenged certain actions of the respondents for operating the School known as M/s. Sri Ram School, Regency Park II DLF City, Ph. IV Gurgaon-122002, Haryana. The prayers which are made in the application are two-fold. Firstly, that respondent Nos. 1 and 2 be restrained from starting operation of School known as Sri Ram School. Secondly, respondent No. 1 be restrained from alienating in any manner, areas which are earmarked as common areas and facilities under Section 3 of Haryana Apartment Ownership Act, 1983, till administration of the same is passed on to the Governing Body of the Apartment Owners as per Bye-laws contained in Section 16 of the said Apartment Act. We have heard learned Counsels for the parties at length. The learned Counsel for the applicants does not press the prayer for staying the operation of the School which is already functioning. The second prayer with regard to alienation of common areas cannot be considered and granted at this preliminary stage particularly in view of the fact that in the reply of respondent No. 3 it is clearly stated that the detailed building plans of high school-cum-primary school and community centre were approved after obtaining an undertaking from the coloniser that no 3rd party rights will be created on these community sites. The building plans of the remaining facilities in the scheme shall also be approved as and when submitted by the coloniser after obtaining the said undertaking. The respondent No. 1 has also filed an additional affidavit wherein it is stated in paragraph 2 that the respondent has received the occupation certificate in respect of school buildings from the Director, Town and Country Planning on 30th July, 2001. A copy of the said occupation certificate dated 30th July, 2001 has been placed on record. It is further submitted with regard to parking by respondent No. 1 on cash as follows in paragraph 3 : "I say that the distance from Entrance A to the School parking is 100 mtrs.; the distance from the School to W-Block of Regency Park II is 310 mtrs.; the distance from the School to X-Block of Regency Park-II is 200 mtrs.; and the distance from the School to Y-Block to Regency Park-II is 150 mtrs. The width of the road is 28 ft. A copy of the map showing the Regency Park Blocks of 24,645 acres including the School and Blocks W, X and Y where the complainants are residing and the distance between the same, are annexed herewith and marked as Annexure-B." We are, therefore, of the opinion that the applicants are sufficiently protected at this interim stage and we need not pass any order of

restraint. The respondents shall abide by the undertakings already given by them till the final disposal of this case. The present application is accordingly disposed of."

3. AS it is contended by the learned Counsel for respondent No. 1 that the Occupation Certificate in respect of the building has already been issued by the Director, Town and Country Planning on 30th July, 2001, it will not be necessary for us to deal with the first contention and it is not pressed at the time of arguments by the learned Counsel for the complainants as the complainants are entitled in law to take up the matter with the Director, Town and Country Planning to assail the functioning of the School and will be at liberty to take appropriate proceedings in accordance with law such as taking steps to challenge the action of respondent Nos. 1 and 3 under Articles 226 and 227 of the Constitution of India. Respondent No. 1 has next filed a copy of the Declaration dated 10th July, 2002 regarding common areas issued under Section 2 read with Section 11 of the 1983 Act which is taken on record. This Declaration is stated to be approved by the Competent Authority as provided in the 1983 Act. Learned Counsel for the complainants has filed written submissions in this regard wherein it is primarily contended as follows : "That respondents have shown scant concern for Licence Agreement executed between Haryana Govt. (R-3) and (R-1) DLF Universal Ltd. as also for Provisions of Haryana Apartment Act, 1983, Rules 1987. Execution and registration of "Declaration" is not within the knowledge of apartment owners or their Registered Association. They have been by-passed and proxy Association respondent-1 comprising of their own representative with 7 persons have formed such proxy association and got it registered under Registration of Societies Act, ignoring regd. Association of petitioners/complainant. Respondent - 1 through clever move passed on administration of common areas and facilities to third party. Thus R-1 and new Association as formed are one and the same person. Complainants hereunder beg to quote clauses of licence agreement and Sections and Rules of Haryana Apartment Ownership Act, 1983 and Rules, 1987 : Licence Clause (n) That the owner (Coloniser) shall ensure that flats/dwelling units are sold/leased/transferred by him in keeping with the Provisions of Haryana Apartment Ownership Act, 1983. (p) The responsibility of ownership of the common areas and facilities as well as their management continue with the colonizer till such time the responsibility is transferred to the owners of dwelling units under the Haryana Apartment Act, 1983. That by illegally constituting association, violating the provisions of the Act and by passing on responsibility to himself through "declaration" executed by fake association is nothing but Unfair and Restrictive Trade Practice. Haryana Apartment Act (Rules) Bye-laws 4 and 5 explicitly enunciate detailed objects of Association and Members of Association. Relevant pages annexed herewith. That Exhibit A of Rules of Haryana Apartment Rules, requires that plans of sanction by Competent Authority shows as least following details : Lay-out plan of scheme showing various apartments, blocks and common buildings and services of roads, parking, public health... landscaping and recreational activities. Though R-1 has

complied with this on paper, but has withheld completion of boundary wall of community centre. Since commercial club is coming up adjacent to the wall of community centre, there is apprehension and very likelihood that wall has been kept open in order to malafidely use area, for the purpose of club. This has got to be curtailed forthwith. Unfair trade practice is evident on this account as well. Foul and arbitrary addition made in "declaration", which is not provided in law : That on page 5 declaration R-1 has arbitrarily added, that meaning of the association of apartment owners shall mean and include the association apartment owners in housing block and owners of buildings, school, community centre etc. in the entire scheme. This is clever move to disassociate apartment owners' association from that of common facilities for grabbing them. This is clearly Unfair Trade Practice. Thus respondent-1 has not only violated Provision of the Act vide which apartments were sold to the apartment owners, he has also further handed over, management malafide to himself through proxy. Respondent-1 has further taken advantage of mis-statement, concealment of material facts by continuing with third-party run school in order to make wrongful gains. Passing on of voting power to so-called owners of community centre, schools, dispensaries etc. (already part and parcel in common, to the sale price of apartment owners is abuse of process of law."

4. WE may now refer to the relevant provisions as contained in the 1983 Act. "2. Application of Act-This Act applies only to property, the sole owner or all the owners of which submit the same to the provisions of this Act by duly executing and registering declaration as hereinafter provided: Provided that no property shall be submitted to the provisions of this Act unless it is used or proposed to be used for residential purposes. 3. (b) "apartment owner" means the person or persons owning an apartment and undivided interest in the common areas and facilities in the percentage specified and established in the declaration; (c) "apartment number" means the number, letter combination thereof designing the apartment in the declaration;"

Sections 5 and 6 may also be reproduced as below : "5. Ownership of apartments-(1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment in accordance with the declaration. (2) Each apartment owner shall execute a deed of apartment in relation to his apartment in the manner prescribed. 6. Common areas and facilities-(1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the property; and such percentage shall reflect the limited common areas and facilities. (2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all the apartment owners and expressed in an amended declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it

appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument. (3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof unless the property has been removed from the provisions of this Act as provided in Sections 14 and 22. Any covenant to the contrary shall be null and void. (4) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners. (5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition of improvements thereto shall be carried out as provided herein and in the by-laws. (6) The association of apartment owners shall have the irrevocable right, to be exercised by the Manager or Board of Managers thereof, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments."

The necessary declaration as issued under Section 2 read with Sections 11 and 13 of 1983 Act reads as below : "11. Contents of declarations.-(1) The declaration shall contain the following particulars, namely : (a) description of land on which the building and improvements are to be located and whether the land is free-hold or lease-hold; (b) description of the building stating the number of storeys and basement, the number of apartments and the principal materials of which it is or is to be constructed; (c) the apartment number of each apartment and statement of its location, approximate area, number of rooms and immediate common area to which it has access and any other data necessary for its proper identification; (d) description of the limited common areas and facilities; (e) description of the limited common areas and facilities, if any, stating to which apartments their use is reserved; (f) value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting, and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever or not on the date of the declaration; (g) statement of the purposes for which the building and each of the apartments are intended and restricted as to use; (h) the name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such persons which shall be within the city, town or village in which the building is located; (i) provisions as to the percentages of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property; (j) any other details in connection with the property which the person executing the declaration may deem desirable to

set forth consistent with this Act; and (k) the method by which the declaration may be amended consistent with the provisions of this Act. (2) A true copy of each of the declaration and bye-laws and all amendments to the declaration or the bye-laws shall be filed in the office of the Competent Authority. 13. Declaration, deed of apartments and copies of floor plans to be registered-(1) The declaration and all amendments thereto and the deed of apartment in respect of each apartment and the floor plans of the buildings referred to in Sub-section (2) shall be registered under the Indian Registration Act, 1908. (2) Simultaneously with the registration of the declaration, there shall be filed along with it a set of the floor plans of the buildings showing the layout, location, apartments, stating the name of the building or that it has no name and bearing the verified statement of an architect certifying that it is an accurate copy of the portions of the plans of the building as filed with and approved by the local authority within whose jurisdiction the building is located. If such plans do not include a verified statement by such architect that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, there shall be recorded prior to the first conveyance of any apartment, an amendment to the declaration to which shall be attached a verified statement of an architect certifying that the plans therefore filed, or being filed simultaneously with such amendment, fully and accurately, depict the layout, location, apartment number and dimension of the apartment as built. (3) In all registration offices a book called "Register of declarations and deeds of apartments under the Haryana Apartment Ownership Act, 1983" and index relating thereto shall be kept. The book and the index shall be kept in such form and shall contain such particulars as may be prescribed. (4) It shall be the duty of every Manager or Board of Managers to send to Sub-Registrar of the Sub-District in which the property containing the apartment is situated or if there is no Sub-Registrar for the area, to the Registrar of the District in which such property is situated, a certified copy of the declaration and deed of apartment made in respect of every apartment contained in the building forming part of the property. (5) The Sub-Registrar or as the case may be, the Registrar shall register the declaration along with the floor plans of the building and the deed of apartment in the register and also enter particulars in the index kept under Sub-section (3). Any person acquiring an apartment of any apartment owner shall be deemed to have notice of the declaration and deed of apartment. (6) Except as provided in this section, the provisions of the Indian Registration Act, 1908 shall, mutatis mutandis, apply to the registration of such declarations and deeds of apartments and the words and expressions, used in this section but not defined in this Act shall have the meaning assigned to them in the Indian Registration Act, 1908."

Learned Counsel for respondent No. 1 has submitted that the above provisions of law have been duly complied with and the approval has been granted by the Director, Town and Country Planning Department, Haryana who is the Competent Authority in respect of the matters which arise for consideration in the present

proceedings such as the usage of common areas and facilities. The provisions of the Act also stipulate that they will be binding on apartment owners, tenants etc. Section 24 may be referred to as under : "24. Act to be binding on apartment owners, tenants etc.-(1) All apartment owners, tenants of such owners, employees of owners and tenants or any other person who may in any manner use property or any part thereof submitted to the provisions of this Act, shall be subject to this Act and to the declaration and the bye-laws of the association of apartment owners adopted pursuant to the provisions of this Act. (2) All agreements, decisions and determinations lawfully made by the association of apartment owners in accordance with the voting percentages established under this Act, declaration or bye-laws shall be deemed to be binding on all apartment owners."

5. THE complainants on the above basis are amply protected by the provisions of the 1983 Act and in case it is felt that these provisions have been violated they have recourse to a remedy in accordance with law in an appropriate Forum. THE lapse or violation of the provisions have not been clearly established yet. We may refer to the observations made in the judgment of Punjab and Haryana High Court in Civil Writ Petition No. 6704 of 1999 in the matter of DLF Universal Ltd. & Ors. v. THE Director, Town and Country Planning, Haryana & Ors., decided by the Division Bench on 31.5.2001 which has also been referred to by the learned Counsel for the complainants. THE following paragraphs which are of relevance read as follows : "We also agree with the learned Counsel for the plot holders that the power vested in the Director, Town and Country Planning, Haryana to grant licence includes the power to ensure the licensee abides by the conditions of licence and does not violate the same. In Khargram Panchayat Samiti & Anr. v. State of West Bengal & Ors., (1987) 3 SCC 82, their Lordships of the Supreme Court interpreted Section 117 of the West Bengal Panchayat Act, 1973 under which a licence could be granted by Panchayat Samiti for holding a hat of fair and held that the power of general administration necessarily carried with it the power to manage such hat or fair within its territorial jurisdiction which includes incidental and consequential order. THEir Lordships referred to "Judicial Review of Administrative Action by De Smith, 5th Edition".

"Administrative Law" by HWR Wade, 5th Edition; Attorney General v. Great Eastern Railways, LR (1880) 5 AC 473 and Baroness Wnlock v. River Dee Company, LR (1885) 10 AC 354, and held as under : "THE conferment of statutory powers on local authorities must be construed as impliedly authorising everything which could fairly and reasonably be regarded as incidental or consequential to the power itself. THE doctrine of ultra vires is not to be applied narrowly. It should be applied reasonably so that exercise of such incidental or consequential power may not be held to be ultra vires. By applying the above extracted principle to the cases in hand, we hold that the power vested in the Director, Town and Country Planning, Haryana to grant licence carries with it the power to issue ancillary directions to ensure the compliance of the provisions of the Act and the Rules and also to prevent the abuse of the licence by the

coloniser. THEREfore, the directions contained in the impugned memos cannot be declared ultra vires to the provisions of the Act and the Rules and the Director, Town and Country Planning, Haryana will be deemed to have acted within the domain of his authority when he directed the petitioners not to charge maintenance fee and extension fee from the plot and/or flat holders. THE issue which remains to be considered is whether the Director, Town and Country Planning, Haryana can impose restriction on the petitioners from granting permission for transfer of the plots/flats and apartments after taking full price from the buyers. Respondent Nos. 1 and 2 have relied on Section 17(b) of the Indian Registration Act and have averred that the impugned direction has been given in order to curb the violation of Section 17(b) of the said Act which results in heavy loss of stamp duty to the State Exchequer. THE argument of learned Counsel for the petitioners is that the Director, Town and Country Planning, Haryana does not have the jurisdiction to impose the impugned restriction because he does not have the power to do so under the Indian Registration Act. THE aforesaid argument of the learned Counsel sounds attractive but lacks merit and deserves to be rejected. THE licence granted to the petitioners implies that they would abide not only the provisions of the Act and the Rules, but all other statutes including the Indian Registration Act. By permitting the transfer of plots by way of nomination, the petitioners are clearly acting in violation of Section 17(b) of the Indian Registration Act which requires compulsory registration of all such transactions. THEREfore, it has to be held that by imposing the impugned restriction, the Director, Town and Country Planning, Haryana did not commit any illegality which may require interference by the Court."

6. THE facts of the present case will establish that the respondent No. 1 has filed a Legal Declaration under Section 2 read with Section 11 of the 1983 Act before the Competent Authority and have taken other steps for approval of relevant permission for establishing School in the vicinity. THE Occupation Certificate has been issued by the Director, Town and Country Planning on 30th July, 2001. In case the complainants feel aggrieved by the action of respondent Nos. 1 and 3 it will be open for them to take recourse to a remedy in an appropriate Forum by establishing that the respondent No. 1 has violated the provisions of 1983 Act and the permission granted by the Competent Authority is liable to be revoked. THE present proceedings will, therefore, not lie at this stage as the alleged violations by respondent No. 1 can only be investigated by the Competent Authority and in case the complainants continue to feel aggrieved they are provided with the specific remedy in an appropriate Forum as permissible in law. THE present proceedings stand disposed of though liberty is granted to the complainants to agitate the matter before an appropriate Forum in accordance with law. THERE is no order as to the costs. Complaint disposed of.