

(2012) 05 NCDRC CK 0107

In the National Consumer Disputes Redressal Commission

Rajinder Kumar Son of Om Prakash Purshottam Das APPELLANT

Vs

Haryana Urban Development Authority Through its Estate Officer Bhiwani, Haryana RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 134

Hon'ble Judges : Anupam Dasgupta J.

Advocate : Jitender Vashisht , R.S.Badhran , Yash Garg

Judgement

1. THIS revision petition challenges the order dated 29.09.2010 of the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, the State Commission). By this order, the State Commission allowed the appeal of the Haryana Urban Development Authority (HUDA) and set aside the order dated 15.10.2007 of the District Consumer Disputes Redressal Forum, Bhiwani (in short, the District Forum).

2. (I) The undisputed facts of the case are that the petitioner/complainant purchased a residential plot of land (no. 51) in Mandi Township, Bhiwani in 1989 in an open auction. He paid 25% of the approved bid price and opted for payment of the balance amount in six half-yearly instalments, as per clause 5 of the letter of allotment dated 17.10.1989. Clause 6 of the said letter stipulated as under: "6. The possession of the site will be offered to you on completion of the development works in the area. In the case of building or undeveloped land, the possession shall, however, be delivered within 90 days from the date of this letter . (II) Though by a letter dated 01.07.1994 HUDA offered possession of the plot, it was the contention of the petitioner that the development works in the area (required to be completed by HUDA before offering possession, as per clause 6 above) had actually not been completed by that time. Apparently, therefore, he did not pay the requisite half-yearly instalments. As a result, by his order dated 19.01.1998 the Estate Officer concerned resumed the land from the petitioner. (III) Aggrieved by this action, he filed an appeal before the

competent authority in HUDA that was dismissed by an order dated 16.06.2003 of the Administrator, HUDA. Thereafter, he filed a consumer complaint alleging deficiency in service on the part of HUDA, seeking various reliefs. (iv) HUDA contested the complaint mainly on the ground that the complainant having been purchased the plot in an open auction, he could not be termed a "consumer under the relevant provisions of the Consumer Protection Act, 1986 (hereafter, the Act)". In addition, HUDA contended that the development works in the area had already been completed before issuing the letter dated 01.07.1994 offering possession. (v) However, the petitioner contested the claim of completion of the development works in the area by pointing out that even as late in July 1997, the Chief Administrator, HUDA had written to the Superintending Engineer, HUDA, Hissar to complete the development works within three months.

On consideration of the pleadings and evidence of the parties, the District Forum allowed the complaint with the following directions: "order with regard to resumption of plot is hereby waived and respondents are directed to pay interest on the deposited amount of the complainant at the rate of 10% per annum from the date of deposit till the date of offer of possession and also we direct the respondents to offer the possession of the plot within two months from today. Opposite parties are also directed to pay Rs.2, 000/- as cost of litigation to the complainant. Other relief are hereby declined.

It is against this order of the District Forum that HUDA filed an appeal before the State Commission, with the result mentioned above.

3. I have heard the learned counsel for the parties and carefully considered the documents brought on record. The State Commission allowed the appeal of HUDA with the following observations: "Now the question for consideration before us is that whether the complainant falls under the definition of Consumer or not. The Hon'ble Supreme Court in *U. T. Chandigarh Administration and Anr. v Amarjeet Singh and Ors.* (2009) 4 SCC 660 has held that: Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site, if all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/ premium or the stipulated interest on the delayed payment or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided. With reference to a public auction of existing sites (as contrasted from sites to be formed), the purchaser/lessee is not a consumer, the owner is not a trader or service provider and the grievance does not relate to any matter in regard to which a complaint can be filed. Therefore, any grievance by the purchaser/lessee will not give rise to a complaint

or consumer dispute and the for a under the Act will not have jurisdiction to entertain or decide any complaint by the auction purchaser/lessee against the owner holding the auction of sites . Undisputedly, the complainant had purchased the plot in question in an open auction held by the opposite parties being the highest bidder on as and where basis and no assurance was given by the opposite party as service provider. Thus, the present case is covered by Amarjeet Singh s case (supra), wherein it has been made clear that any grievance of the purchaser/lessee who purchases the site in an open auction cannot be termed as a Consumer Dispute and the Consumer Fora have no jurisdiction to entertain and decide any complaint."

4. ON this issue, it would suffice to refer to the discussion in this Commission s order dated 18.08.2011 in the case of Haryana Urban Development Authority and Anr. v Suneja and Sons [IV (2011) CPJ 1 (NC)]. Paragraphs 23 and 24 of that order are reproduced below: "The "Consumer Status 23(i) Mr. Badhran has vehemently argued that the respondent/complainant could not be termed a "consumer under the provisions of section 2(1)(d) of the Act in the light of the Apex Court s ruling in respect of an auction purchaser of a plot of land/house in an open auction on "as is where is basis. (ii) In the case UT Chandigarh Administration v Amarjeet Singh (supra), the Apex Court has held as under: 18. The decision in LDA and GDA make in clear that where a public development authority having invited applications for allotment of sites in a layout to be formed or for houses to be constructed and delivered, fails to deliver possession by forming the layout of sites or by constructing the houses within the stipulated period, the delay may amount to a deficiency in service by treating the development authority as a service provider and the allottee as the consumer. But where existing sites are put up for sale or lease by public auction by the owner, and the sale/lease is confirmed in favour of the highest bidder, the resultant contract relates to sale or lease of immovable property. There is no hiring or availing of services by the person bidding at the auction. Nor is the seller or lessor, a trader who sells or distributes goods . The sale price or lease premium paid by the successful bidder of a site is the consideration for the sale or lease, and not consideration for any service or for provisions of any amenity or for sale of any goods. 20. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. ONce with open eyes a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on

the ground that amenities are not provided. 21. With reference to a public auction of existing sites (as contrasted from sites to be formed), the purchaser/lessee is not a consumer, the owner is not a trader or service provider and the grievance does not relate to any matter in regard to which a complaint can be filed. Therefore, any grievance by the purchaser/lessee will not give rise to a complaint or consumer dispute and the Fora under the Act will not have jurisdiction to entertain or decide any complaint by the auction-purchaser/lessee against the owner holding the auction of sites . 24(i) Mr. Badhran seeks to rely on paragraphs 18, 20 and 21 of the Apex Court judgment reproduced above in challenging the "identity of an auction purchaser like the complainant as a "consumer under the Act. In the first flush, Mr. Badhran s submission appears to be persuasive. However, quieter consideration of the facts of this case, on the one hand, and the Apex Court s judgment as a whole, on the other clearly establishes that Mr. Badhran s basic premise is flawed. (ii) This is so in view of the explicit provisions of clause 6 of the letter of allotment, already reproduced above, according to which the Development/Housing Authority like the petitioner/s unambiguously promised to offer possession of the auctioned plot of land "on completion of developmental works in the area . In a situation like this, the auction purchaser of an existing site/plot/house will certainly be a "consumer of, in accord with the provisions of section 2(1)(d)(ii) of the Act, the promised developmental "service of the Authority in question, from the date of the letter of allotment till such time the promised service/s is/are delivered to the satisfaction of the purchaser, in accordance with the service provider s, i.e., the Authority s commitment in this behalf. The ruling of the Apex Court in the UT Chandigarh case does not, in my respectful view, cater for a situation where an auction purchaser buys an existing plot of land, not on "as is where is basis but with an explicit commitment on the part of the original owner/auctioning entity to offer possession after completion of development works in the area. It is also true that in neither of the two cases quickly following the UT Chandigarh case (as cited by Mr. Pattjoshi, vide paragraph 22(ii) above) did the Apex Court find it fit to disentitle an auction purchaser to its simultaneous identity of a "consumer under the Act. Therefore, the principal legal ground on which this revision petition is based has to be firmly rejected .

The facts relating to this case and those in the case of M/s Suneja & Sons are identical to the extent that the same clause 6, spelling out HUDA s undertaking to complete the development works in the area before offering possession of the plot sold/applied in open auction applies to both the cases. HUDA had challenged this Commission s order in the case of M/s Suneja & Sons before the Apex Court by way of a Special Leave Petition, which was dismissed in limine by the Court by its order dated 24.02.2012. In view of the foregoing discussion, the impugned order of the State Commission is set aside and the matter is remitted back to it for fresh consideration of the appeal filed by HUDA after giving the parties due opportunity of hearing. Needless to add, all other contentions of the parties are left open for adjudication by the State Commission. The parties shall appear

before the State Commission on 30.07.2012 for further directions.

5. IN these circumstances, there will be no order as to costs.