(1999) 05 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

Renu Gupta APPELLANT

Vs

G.D.A. RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Citation : 1999 2 CPC 434 : 2000 2 CPJ 69

Hon'ble Judges : A.N.Divecha , R.K.Anand J.

Final Decision : Application disposed of

Judgement

1. MS. Renu Gupta has filed a complaint under Section 236B(a) of the MRTP Act, 1969 (the Act for brief) charging the respondent, Ghaziabad Development Authority (GDA) with adoption of and indulgence in unfair and restrictive trade practices. It has been alleged by the applicant/complainant that in response to an advertisement, she applied for a plot measur- ing 120 sq. mtrs. at an estimated cost of Rs. 1,08,000/- under the Karpuri Puram Self- Financing Scheme on the 2nd March, 1991 and paid a sum of Rs. 10,800/- as registration amount and Rs. 16,200/- as reservation amount on the 30th August, 1991 and subsequently six instalments of Rs. 13,500/- each with interest. The last instalment was paid by her on 27th August, 1994. The grievance of the applicant/ complainant is that although it was indicated by the respondent that the possession of the plot would be given within a period of three years, neither the possession has been handed over nor any documents executed and instead, on the 12th September, 1997, she was informed by the respondent through a letter that the Karpuri Puram Scheme had been abandoned due to unavoidable reasons and the applicant could collect the deposited amount alongwith interest @ 5% per annum and subsequently, in fact, a cheque was also sent to her on the 18th December, 1998 but it has not been encashed so far.

2. IT has been further complained that fresh applications have now been invited by the respondent for a new scheme known as the Swaran Jayanti Puram at three times the prices of plots under the original scheme of Karpuri Puram. IT has been alleged that the new scheme has been floated at the same place where

the Karpuri Puram Scheme was to come up and the price of the plot of land which was originally Rs. 1.08 lakhs for 120 sq. mtrs. has been raised to Rs. 2.88 lakhs while the area of the plot has been reduced to 112 sq. mtrs. in order to fetch much higher prices for the same plots as a result of which unjustified costs have been imposed upon the allottees and this action of the respondent falls within the ambit of the provisions of 36A(1) and 2(o)(i) and (ii) of the Act. An application for interim relief under Section 12A of the Act has also been made praying that the Swaran Jayanti Puram Scheme may be stayed and registration of applicants for allotment of plots should be frozen. The above application came up for consideration on the 17th March, 1999 when an order was passed by the Commission directing the respondent to refrain from registration and booking of plots in the new scheme by the name of "Swaran Jayanti Puram"

In reply, it has been denied that any unfair or restrictive trade practices have been adopted by or on behalf of the respondent. It has been clarified that the old Karpuri Puram Scheme was abandoned due to unavoidable reasons and, therefore, possession of the plot in question could not be given and instead, a cheque of Rs. 1,42,783/- including interest @ 5% by way of refund of her deposit, was sent to the applicant/ complainant on the 18th December, 1998.

3. WE have heard the learned Advocates for the applicant/complainant as well as the respondent. The application made by the applicant/complainant for allotment of a plot under the Karpuri Puram Scheme and also the amounts paid by her towards its cost are not denied or disputed. It is also not disputed that refund of the amount deposited by her with 5% interest has been made to the applicant/ complainant. It is also apparent that a new scheme by the name of Swaran Jayanti Puram has been floated and applications for allotment of plots have been invited. The fact that the prices of the plots in the new scheme are three times is also not controverted. What is being denied by the respondent is that the land on which the new scheme has been floated is the same for which the applicant/ complainant had applied originally and was advertised as the Karpuri Puram Scheme. With a view to ascertaining whether it is the same land or a different area and location where the Swaran Jayanti Scheme is to come up, the respondent was asked to give particulars of the land as the facts which are within the special knowledge of the respondent can be proved by the respondent only in view of the provisions of Section 106 of the Indian Evidence Act. In other words, it is for the respondent to show that the new scheme is not being proposed on the same land but at a different place and the respondent was accordingly given an opportunity to file an affidavit clarifying the position.

4. SINCE no affidavit has been filed on behalf of the respondent, the obvious inference is that the new scheme known as "Swaran Jayanti Puram" is at the very same location. It, therefore, appears that applicant / complainant''s contention is not without force and substance. In that view of the matter, it is only just, fair and equitable that the applicant/complainant should be registered under the new scheme for allotment of a plot on the same terms and conditions

on which she had registered herself as far back as 2nd March, 1991. She would perhaps, have no case if the old scheme had been altogether abandoned and the new scheme had not been floated on the very same land. In view of the reluctance of the respondent to file an affidavit, there is no escape from the conclusion that the new scheme has been floated on the same land and location at three times the price. Even if the applicant/ complainant is allotted a plot under the new scheme, as the respondent has offered to do, she will have to pay Rs. 2,88,000 / - for a plot measuring 112 sq. mtrs. only and as a result, she would be, unnecessarily, subjected to additional financial burden and that too, for no fault of hers. It prima facie, appears that the respondent has adopted and indulged in unfair and restrictive trade practices within the meaning of Section 36A and Sections 2(o)(i) and 2(o)(ii) of-the Act. From the facts of the case, a prima facie case of unfair and restrictive trade practices by and on behalf of the respondent has been made out for the purposes of interim relief application. The balance of convenience is also in favour of the applicant/complainant as she has deposited the value of the plot measuring 120 sq. mtrs. in six instalments, the last having been paid in August, 1994. In other words, she has paid the full value of the plot, in question, in accordance with the terms and conditions of the original Scheme. While she has been given refund of the entire amount deposited with 5% interest, she has not encashed the cheque so far. Whereas she had paid a sum of Rs. 1,08,000/- towards the cost of plot of 120 sq. mtrs., under the new scheme, she will have to pay Rs. 2,88,000/- for a smaller size plot of 112 sq''. mtrs. merely because the respondent has scrapped the original scheme and floated a new scheme at the same location. It is apparent on the face of the facts, highlighted by the applicant/complainant, that only the name and nomenclature of scheme has been changed and she will suffer great loss and injury if she is now required to register herself under the new scheme as she will have not only to shell out nearly three times the money for a smaller plot, she will also have to spend much greater amount on construction also, as in the meantime due to general rise in prices, there is heavy escalation in the cost of construction. On the other hand, the respondent will rake in more money without making any corresponding investment in development of the land or infrastructure which have already been provided and no additional costs have to be incurred. By merely scrapping the old scheme and floating another one at the same place under a new name should not and does not entitle the respondent to deprive the old allottees of the benefit of allotments at the prices prevailing at that point of time when they booked the plots. Thus looking to the balance of convenience as well as loss and injury likely to be caused to the allottees, it appears inescapable that the interest of the applicant/complainant should be protected and the interim relief prayed for by her is granted. In view of the above discussion, the ad interim relief already granted deserves to be and is hereby confirmed till the disposal of the present proceeding. Application disposed of.