

(1993) 12 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

SECRETARY, ORISSA STATE HOUSING BOARD,
BHUBANESWAR

APPELLANT

Vs

CHANDRA SEKHARPUR HOUSING BOARD COLONY UNNAYAN
SAMITI, BHUBANESWAR

RESPONDENT

Date of Decision : 17-12-1993

Acts Referred:

Citation : 1993 0 NCDRC 41 : 1994 1 CPC 376 : 1994 1 CPJ 109

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , Y.KRISHAN ,
B.S.YADAV J.

Advocate : R.K.MEHTA , Meena Chakrabarty , JAGANNATH RATH , R.MISRA ,
S.Marana

Judgement

1. THIS is an appeal against the order dated 28th September, 1991 passed by the State Consumer Disputes Redressal Commission, Cuttack in Complaint Case CD. No. 45 of 1989. That complaint was filed by the present Respondent No. 1, i.e., The Chandrasekharpur Housing Board Colony Unnayan Samiti (for short the "Samiti") which is a society registered under the Societies Registered Act, 1980 promoted by the residents of the Housing Board Colony at Chandrasekharpur, Bhubaneswar. One of the aims and objects of the society is to promote, protect and safeguard by all legitimate constitutional means the lawful interests, rights and privileges of its members. According to the allegations in the complaint opposite party No. 2, i.e., The State Housing Board (for short the Board) represented by its Secretary, now appellant, published through an advertisement in the local newspapers and through printed brochures sold to prospective customers during the year 1983-84 notified its intention to build a new colony at Chandrasekharpur, with 2040 multistoried flats of different categories, under their Chandrasekharpur Composite Scheme. It was specifically mentioned in the said brochure that the scheme in question had been sanctioned both by the Government of Orissa (Opposite Party No. 1 and now Respondent No, 2) and HUDCO, the Financing Agency. The said brochure, inter alia, also made clear that there is a ring road around the colony, and that the colony is self sufficient with

small shops, schools for children, Health Centre and Religious place. The lay out plan attached to the said brochure gives the exact location of the buildings, and all other facilities / services promised to be provided by the appellant to the intending customers. Thus the overwhelming character of the Scheme floated by the appellant with express approval of O.P. No. 1 was bound to provide services and facilities along with flats for residence to homeless aspirants desirous of owning a house in the capital, at a cost specified separately for each category of flats. Only persons whose family members had no house/land in Bhubaneswar were eligible. Since the scheme was by a statutory body, which was sanctioned by State Government as well as by HUDCO, several persons submitted their applications with requisite deposits and declaration, etc., and those considered suitable and eligible by O.P. No. 2, were allotted flats on payment of part consideration and execution of agreement, in accordance with the terms and conditions incorporated in the brochure. Needless to say, the allotment made by O.P. No. 2 also carried with it solemn assurance of O.P. No. 2 to provide all the services and facilities such as roads, parks, playgrounds, schools, health centre etc. as indicated in the brochure and the lay-out plan attached thereto. The allottees of these flats are members of the complainant Samiti. After taking delivery of the flats, members of the Samiti found to their utter dismay and disappointment that O.P. No. 2 did not fulfill its promises held out in the brochure published by them. Besides, the construction of the flats was of a very poor standard, because of use of substandard material, defective construction, poor supervision, thereby rendering the flats highly vulnerable and unsafe for the inmates. Most of the promises with regard to provision of ring road, internal roads with drains, park, schools and health centre etc. were not fulfilled. When the representative of the complainant society approached the concerned authorities of the Board they were informed that under orders of the O.P. No. 1 the job of providing roads, park and Recreation Centre, etc. had been entrusted to the Bhubaneswar Municipality (O.P. No. 3 and now respondent No. 3). According to the complainant samiti, this is an internal matter among the opposite parties, and the complainant is not aware what arrangement has been made to provide the above facilities and how responsibility has been divided between the Board and the Municipality. The more important acts of omission and commission of the Board and the Municipality which have affected the individual members of the Society are as follows: (i) The promised Ring Road around the Colony has not been provided till now. No roads have been provided for a number of Blocks, namely MIG. In case of other internal roads, most of the surfaces have not been block-topped, nor have drains been provided. Large ditches and pools of water formed during rains are a hazard to the inmates of the colony. (ii) The area earmarked in the lay-out plan as Park (Recreation Centre) is a veritable jungle with rank growth of bushes and weeds. It is an abode of snakes and other harmful creatures, posing a serious threat to life of inmates. (iii) The space earmarked in the lay-out plan as "Children's Park" has been usurped by the Board and used for building a temporary structure as store, and also a permanent building styled as "Demonstration Building" but in fact used as

Offices of the Board despite repeated protests of the complainant. (iv) Like-wise, the space earmarked in the lay-out plan as "Nursery School" has been illegally given by the Board to the Orissa State Electricity Board to set up their sub-station and other buildings in clear violation of the layout plan. (v) In clear violation of the solemn declaration made by the Board in the aforesaid brochure, it has not provided any school, health centre or any Recreational facilities for the inmates of the Colony.

2. IT was further the case of the complainant that there were various structural defects, as detailed in the complaint, in the construction of the flats/houses. In case of LIC, EWS and MIG I category of flats, no space has been provided for parking of cycles, even though there are 12 flats in each block (6 flats in case of MIG I category). No separate parking place has also been given by the Board to the owners of these flats, although such space has been provided by the Board in case of other category of flats. Many representations were made to the Board, Government of Orissa and the Bhubaneswar Municipality for redressal of the above grievances and rectifications but to no effect. The Complainant, therefore, prayed that the opposite parties be directed, to provide, within a reasonable time, all the Roads, Parks, Schools, Health Centre and all other services/facilities for the residents of the Colony, as promised in the brochure. The Board should also be directed to effect the repairs and rectification work required to remove the defects and deficiencies in the buildings. In the alternative the Board should be directed to deposit a sum of Rs. 9.50 lakhs with the State Commission immediately, so that requisite repair/rectification work can be entrusted to an appropriate Agency. The Board be also directed to remove/demolish the unauthorised structures/buildings put up by it as well as by the Orissa State Electricity Board on the sites earmarked in the approved lay-out plan for children's park and nursery respectively. The appellant Board filed a counter and an additional counter. The allegations made by the complainant were stoutly denied. The main defence of the Board is that it has not violated any of the promises or declarations made by it. It is not obliged to provide any school, health centre or recreation centre facilities. It has only to provide spaces for these purposes and that has been duly done. About the ring road, it is pleaded that it is a part of the development of the area and the same is left to the State Government and as soon as necessary funds are made available by the State Government the completion work for the area will be taken up. About the maintenance of roads and drains it was averred that it was the responsibility of the Bhubaneswar Municipality for which it charges holding tax. About the park (recreation centre) also the respondents submitted that it has to be developed as such by the Bhubaneswar Municipality or the inhabitants of the area and the Board is not obliged to develop parks or recreation centre.

3. THE State Commission had a sitting at Chandrasekharpur Colony to inspect the locality since the Board asserted that on inspection the misconduct of the owners of the flats could be found. The Commission also gave an opportunity to the Board for taking decision in respect of the promises and the defects. The

Government Advocate who appeared on behalf of the Board filed a memorandum of instructions of the Housing Board viz,, as follows: "(1) An area of 50 acres has been allotted by the Central Administration Department at Chandrasekharpur for the composite scheme by way of long term lease. Out of 50 acres of land, Chandrasekharpur Composite Housing Scheme has been constructed only upon 7 acres and 68 decimals. Completion of ring road would be taken up as soon as necessary funds are available from the Government. (2) This being an ongoing project, the open space, road, drains etc. shall be handed over to the Bhubaneswar Municipality for proper maintenance on completion of the scheme. (3) The surface" of the road has been partially black-topped out of the total length measuring 4.75 kms. as provided in the scheme."

4. THE Commission found defects in the flats and remarked as follows: "While we take serious note of these defects, we are inclined to come to conclusion that award of compensation would be drastic step before we give a further opportunity to the Board to rectify the defects. We, therefore, direct the Housing Board through opposite party No. 2, that on receipt of fresh complaint from individual house owners about the defects in the house, to be filed within one month from today, a team of construction experts consisting of Civil Engineers, Public Health Engineer, and Electrical Engineer shall inspect the defects in the house and find out the cause for the same. A joint report shall be submitted by the team to the Board in respect of each house within 15 days of the inspection. If defects are found, which are construction defects, the same shall be removed within two months of the submission of the report. If the defect found are not construction defects or there is no defect as complained or a copy of the report shall be furnished to the owner of the house intimating the reason why the defect pointed out is not possible to be eradicated. To avoid frivolous complaints, an amount of Rs. 50/- shall be deposited by the house owner with the complaint. Where defects in construction are found, the amount shall be refunded back to the house owner within seven days of the report. If no inspection is made as stipulated by us or there is delay in taking action, the owner can file a complaint under the Act after getting his house inspected by a qualified expert and it shall not be open to the Board to challenge the report. Entire exercise must be completed in war footing to be completed within six months. "

The State Commission also issued a direction to the Housing Board to provide a ring road. It was also remarked "though the brochure did not provide the internal road to be black-topped but as some roads were black-topped, the remaining should also be black-topped, the remaining should also be black-topped within two months after receipt of the order failing which each house owner shall be entitled to compensation @ Rs. 20/-per month till the road was brought to usable condition. The Commission also found that a pipeline has been drawn in the middle of the road making it unfit for use even for pedestrians and is a source of danger. The Commission ordered the Board to repair it and made fit for use in perfect condition within three months failing which the complainant was authorised to get it repaired and to recover the cost from the Board. The

complainant was also awarded Rs. 2,000/- for taking up the repair work of the road as it was the duty of the Board to repair it. The Commission also found that in the area demarcated for children's park in the scheme, a building has been constructed by the Housing Board. No resolution of the Board was produced before the Commission for change in the scheme. The Commission directed that vacant possession of the building be given to the complainant to be used as a community centre or recreation club or the like as the general body of the complainant would decide and in case if this possession was not given within two months after the receipt of the order, monthly rent @ Rs. 2,000/- had to be paid by the Housing Board to the complainant on behalf of all the owners of the houses. It was also directed by the Commission that in case the dispensary was shifted to that building within two months, the proportionate monthly rent shall be reduced for the remaining portion of the building which shall remain in occupation of the Housing Board. The Commission also directed the Board to take steps for planning not the park and children park as they are parts of the facilities. This work shall be taken up by the Board within three months to be completed within three years and if no step was taken by it, the Board pay Rs. 500/- monthly to the complainant towards damages from after three months of this order so that the complainant can form a committee and set up a park in the space provided for the same. The Commission also directed that the dispensary which was running in a small quarter was to be shifted to the house near the children's park and till then an ambulance van should be made available in the colony for transport of patients to the hospital and this shall be kept in charge of a Committee to be formed by the complainant. Towards maintenance of the ambulance the Commission ordered the Board to provide Rs. 2,000/- per month. This was considered as compensation for not providing the facility of a health centre and non-shifting of the dispensary. About the nursery school, the Commission remarked that it has been handed over to State Electricity Board and therefore, the appellant Board should give equivalent space to the complainant within one month failing which compensation @ Rs. 300/- per month shall be paid by the Board to the complainant till such space is provided.

5. FEELING aggrieved by the above directions issued by the State Commission, the Board has come before us in appeal. We have heard the parties and gone through the records.

6. WE are of the opinion that except the first direction issued by the State Commission regarding the removal of defects in the flats and which has been reproduced above, the remaining directions issued by it cannot be maintained. We do not agree with the observation of the State Commission that when a person pays for the house he also pays in all cases for the common facilities. In our opinion, in the case before us the flat owners have paid only the price for the flat/house purchased by them. In the present case, the Board has provided space for park, ring road etc. and according to it, the ring road will be constructed when the State Government provides funds while the park and the internal road will be maintained by the Municipality. The Board has also not

promised to provide a dispensary or nursing school or other facilities mentioned in the brochure. In the layout it only marks the sites for these purposes. In the additional counter, the Board has stated that the site earmarked as children's park has been used by way of construction of buildings in the area and after withdrawal from the scheme area, the building was modified and it was left for use as a primary school by the complainant and that takes almost 85% of the land area and in addition to it a stretch of land has been left for park which is much bigger than a foot ball ground and will be adequate for a park. About the nursery school, it has been pleaded that people of the locality are not deprived of it as it is still available inside the scheme area at a short distance from the space earmarked for it.

After careful consideration, we maintain the first direction of the State Commission which has been quoted in the extenso above about the removal of defects in the flats. The period of one month fixed by the Commission for the individual house owners to file a complete listing the defects in the house will be reckoned from the date of the receipt of this order. The other time periods fixed by the State Commission will be deemed to commence accordingly. The entire exercise about the removal of the defects in the flats about which complaint was made must be completed within six months after the receipt of this order. All the remaining directions issued by the State Commission concerning the park, ring road, provision of Ambulance etc. are set aside. The order of the State Commission is confirmed only to the extent it has directed the appellant herein to rectify the defects in the flats/houses allotted to the complainants and it is hereby set aside in other respects. The parties will bear their respective costs in this appeal.