
(2012) 07 NCDRC CK 0123

In the National Consumer Disputes Redressal Commission

Sourabh Arya S/O Shri Suresh Arya

APPELLANT

Vs

HARYANA URBAN DEVELOPMENT AUTHORITY , Estate Officer

RESPONDENT

Date of Decision : 12-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 355 : 2012 3 CPJ 352

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : Sagari Dhanda , Jagpal Singh

Judgement

1. THERE is a delay of 121 days in filing this revision petition. No specific reasons have been given by the petitioner in his application for condonation of delay which according to him is of 210 days except submitting that the delay is neither deliberate nor intentional. In the absence of sufficient cause, we are unable to condone the delay and the revision petition is liable for dismissal on this ground alone. However, we have looked into the merits as well.

2. BRIEFLY stated, the case of the petitioner who is the original complainant is that he was allotted a residential plot No.2250 in Sector 18 HUDA, Panipat vide allotment letter dated 10.8.1998. It is stated that the said plot was surrendered by him because he was not in a position to pay the enhanced price in respect of the aforesaid plot and while accepting the request of the complainant, he was refunded the deposited amount as per HUDA policy vide cheque dated 13.3.2003 by the respondent Authority. However, after surrendering the plot and accepting the refund allowed by HUDA in March 2003, the petitioner filed a complaint bearing No.176 of 2006 on 12.4.2006 before the District Consumer Disputes Forum, Panipat on the ground that there was no development or provision of basic amenities worth the name in the locality of the plot in question and yet the respondents enhanced the price of the plot in question heavily and started charging interest. Therefore, the petitioner being harassed mentally and financially had surrendered the plot in question. Still the respondents deducted 10% of the total price of the plot after adding the enhanced price also and refunded the balance amount to the petitioner. The petitioner in his complaint

submitted that action of the respondents to deduct the amount from the deposit made by the complainant was illegal and the respondents are liable to refund the amount of 10% and possession interest illegally deducted by them to the complainant with interest from the date of such deduction. However, it was prayed in the complaint that the respondents be directed to allot the plot in question to the complainant and to adjust the amount deducted by them along with interest @ 12% p.a. thereon towards the price of the plot and to receive the amount of balance sale consideration from the complainant as per their policy or at the updated rates. He further prayed for compensation and cost of litigation. The respondents contested the complaint and denied any deficiency of service on their part. They further took the plea of estoppel against the complainant for filing the complaint after having surrendered the plot in question voluntarily and the refund having been allowed as per the policy of the respondent Authority. They further submitted that the plea of non-completion of the development works mentioned in the complaint was wrong because the possession had been offered by the respondents after completion of development works as mentioned in the allotment letter. The petitioner himself did not come forward to take the physical possession and chose to surrender the plot by making a request to this effect and accordingly the refund had been allowed to him and accepted by him and as such the respondents prayed for dismissal of the complaint.

3. ON appraisal of the pleadings of the parties and the evidence adduced by them before it, the District Forum granted the following reliefs to the petitioner vide its order dated 30.6.2006:- "For the reasons recorded above, we accept the present complaint and direct the respondents to allot the original plot bearing 2250 in Sector 18, HUDA Panipat to the petitioner if the said plot is lying still vacant and is not allotted to some other person and in the alternative if the said plot has been allotted to some other person then the respondents shall allot an alternative plot to the petitioner on the original terms and conditions of the same size, in the same sector as earlier allotted to the petitioner, and the petitioner shall be liable to pay remaining cost of the plot with interest and penalty. The respondents shall make the compliance of this order within 30 days from the date of receipt of copy of this order."

4. AGGRIEVED by the aforesaid order of the District Forum, the respondent Authority challenged the same by filing an appeal before the Haryana State Consumer Disputes Redressal Commission, Panchkula ("State Commission" for short) which vide its order dated 14.1.2010 allowed the same and set aside the order of the District Forum with cost of Rs.10,000/- to be recovered from the complainant/petitioner. This order of the State Commission has been challenged through the present revision petition.

5. WE have heard Ms. Sagari Dhanda proxy counsel for Mr. Jagpal Singh, Advocate for the petitioner and perused the record. It is not in dispute that the petitioner had surrendered the plot in question vide his letter dated 29.11.2002. The contents of his letter are reproduced below:- "To The Estate Officer, HUDA,

Panipat Sub.: Surrender of Plot No.2250 Sector 18, HUDA, Panipat Sir, With reference to the above I advise that due to sickness in the family I am facing some financial difficulties and thus hereby surrender my above plot no.2250 of Sector 18 Panipat. You are hereby requested to kindly refund the amount as per the rules, at the earliest. Yours faithfully, Sd/- (Sourabh Arya) 11 No.733, Sector 11-12 (Part-1) Panipat"

6. IT is clear from the letter of the petitioner that he surrendered his plot voluntarily because of the sickness in the family which had caused some financial constraints to the petitioner. It is also seen that he had requested for grant of refund of the amount "as per rules" at the earliest (emphasis provided). In the circumstances, it is clear that the plea of non-completion of the development work in the area taken by the petitioner was by way of an afterthought and as rightly held by the State Commission in its impugned order, it was without any force and as such he was not entitled for the restoration of the plot in question. The State Commission has relied on the judgment of the Punjab and Haryana High Court in the case of Haryana Urban Development Authority Vs. M/s Zuari Industries, [2009(3) R.C.R. (Civil) 104 (DB)] wherein in a similar controversy, the High Court had held that the petitioner has no right to get return of the surrendered plot after surrendering it to the authority and taking refund from it. We agree with the view taken by the State Commission which is in line with the judgement of the Hon''ble High Court. The District Forum obviously committed grave error in ignoring the undisputed facts and circumstances of this case and granting substantial relief by way of restoration of the plot without any basis. It was also pointed out by the State Commission that the complaint itself was time-barred having been filed after two years of surrendering the plot. Keeping in view the provisions of section 24A of the Consumer Protection Act, 1986 and the judgement of the Apex Court in the case of State Bank of India Vs. B.S. Agricultural Industries [II (2009) CPJ 29 (SC)], we agree with the finding of the State Commission that since the plot had been surrendered in November 2002 and the refund given by the respondent Authority in March 2003 was accepted without any protest, the filing of the complaint in question in April 2006 was hopelessly barred by limitation and hence the District Forum should not have entertained it. Keeping in view these aspects, no fault could be found with the impugned order and we do not see any reason to interfere with the same. Revision petition, therefore, stands dismissed in limine both on the ground of limitation as well as on merits with no order as to costs.