(1998) 12 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

S.P.ANAND APPELLANT

Vs

HARYANA URBAN DEVELOPMENT AUTHORITY RESPONDENT

Date of Decision : 22-12-1998

Acts Referred:

Citation : 1999 1 CPJ 38

Hon'ble Judges : S.K.Parthasarathy , R.K.Anand J.

Final Decision : Enquiries disposed of

Judgement

1. THIS common order is being passed in respect of the above three cases as the issues involved and the respondent in all the three cases are the same. The main facts giving rise to the issues in this case can be very briefly summarized as below.

2. ALL the three complainants in these cases had applied for residential plots offered by the respondent in different sectors at Gurgaon in the year 1985-86. The respondent had represented that the land was fully developed and the plots were ready for allotment. The terms of allotment envisaged that possession of the plots would be given within a reasonable time and in any case before the full payment was made. The terms also stipulated that after the initial payment of 25 per cent of the cost the balance was payable in six equal yearly installments. Shri S.P. Anand, complainant in UTPE 1/ 97 was allotted a plot of land on 11.8.1986 in Sector 23. Shri V.K. Khanna in UTPE 18/97 was allotted a plot of land on 19.5.1986 in Sector 21 and Shri Goverdhan Lal Pahwa was allotted a plot of land on 16.5.1986 in Sector 21. All the three complainants waited to take possession of the plots of land. Even after they had made full payment or near full payment there was no prospect of allotment of land even though others who had applied for the plots of land in the scheme were given possession. This was because the plots allotted to the complainants were involved either in litigation or the respondent was unable to remove unauthorized encroachment. Ultimately in 1996 and 1997 the complainants were offered alternative plots of land. While ultimately Shri S.P. Anand was allotted the same plot of land which was allotted

to him originally in Sector 23, Shri V.K. Khanna and Shri Goverdhan Lal Pahwa have been offered alternative plots in Sector 5. It is the policy of the respondent when alternative plots are located in a sector different from the original allotment the complainants have to pay the price for the plot as prevalent on the date of offer of alternative plot. They are, however, paid interest for the amount deposited by them for the original allotment upto the date of payment for the new plot. Where the alternative plot is located in the same sector or when the original plot itself is restored, the price for the plot will be the same as per the original terms and conditions. In that case no interest is paid for the amount deposited originally by them. The main issue in these cases thus centres around the policy of the respondent regarding the price it charges for the alternative plots of land.

In all these cases, the complainants have also sought compensation because of the delay in handing over possession of the plots on the ground that they have been deprived of taking advantage of the increase in the price of the real estate and they have to suffer the increase in the cost of construction of building. However, the complainants have neither invoked Section 12B of the MRTPC 1969 (for brief the Act) for compensation for the complaints have been treated as composite enquiries. The order in this case is being passed only with reference to the allegations of indulgence in unfair trade practices by the respondent.

3. THE respondent filed its reply to the Notices of Enquiry issued in these cases in which the following stand has been taken : According to the respondent, the delay in handing over possession of the land was due to factors beyond its control and as such it was not guilty of the charges levelled against it. THE respondent has a clear policy in cases like those of the complainants wherein alternative plots of land were allotted to them. While the price of the land continues to be the same as originally fixed if the alternative plots of land is allotted in the same sector as the original allotment, in case of allotment in a different sector the price prevalent on the date of order is charged for the alternative plot. In the latter case the respondent also pays interest to the allottees on the originally deposited amount at 10 per cent upto 17.11.1991 and @ 15 per cent thereafter till the date of offer of the new plot. If the allottees are not interested in the alternative plot it is open for them to wait for the original plot of land till the litigation is over or to opt for withdrawing the amount which would be refunded with interest. After the pleadings were complete, the following issues were framed : 1. Whether the respondent has indulged in the unfair trade practices as alleged in the Notice of Enquiry? 2. Whether the unfair trade practices are prejudicial to consumer or consumers? 3. Relief, if any, as sought in the application?

4. DURING the course of the enquiry, the respondent and complainants were directed to hold meetings to negotiate the price for alternative plots of land as the complainants were willing to accept the alternative plots allotted. As a result of this, the complainants in two other cases UTPE 40/97 and UTPE 140/96 who

also filed their complaints alongwith these three cases withdrew their complaints. The complainant Shri S.P. Anand in UTPE 1/97 has been given possession of the same plot of land which was originally allotted to him and he has also been paid interest for the originally deposited amount because of delayed possession on the plot of land. He has, however, not withdrawn the complaint though he has no grievance relating to the price charged for the plot of land as he wants compensation. We have gone through the records of the case and given a hearing to Mr. S. Mukherjee, Advocate for the complainants in UTPE 18/97, UTPE 1/97 and Ms. Amrit Matharu, Advocate for the complainant in UTPE 23/97 as well as Mr. Ravinder Bana, Advocate for the respondents in all the cases. Our answers to the three issues referred to earlier are as follows ad seriatim: (i) In the affirmative (ii) In the affirmative (iii) As per order

The reasons for our findings as above have been discussed in this order.

5. IT has been stated by the respondent and confirmed during arguments that when plots of land in different sectors are offered for sale a price is fixed initially which is known as floating price. This price is increased every year by a certain percentage which is currently 15 per cent per annum. The floating price for plots in different sectors will be different depending on the compensation paid for acquiring land in the sector as well as the development charges. IT will also vary due to escalation value depending upon the date on which the sale commenced. In view of this, if a person is allotted an alternative plot at a later date in a sector different from the one where the original allotment was made, the alternative plot of land cannot be allotted on original price. The allottee is therefore charged the price which is prevalent on the date of offer of the alternative plot but the respondent pays interest on the originally deposited amount. IT was clarified by the Advocate for the respondent that no interest is allowed to the allottee if the alternative plot of land is in the same sector in which the original allotment was made. The rationale for this policy is obvious as interest is paid for the originally deposited amount at the same rate at which the price of the land is increased every year. If an alternative plot of the same size in the same sector is allotted 10 years after the original allotment and the originally deposited amount carries interest at the same percentage as the price of land is increased and if the allottee is asked to pay the revised price on the alternative plot the price payable will be the same as the original amount with interest. In such a case, since the allottee does not have to pay any extra amount it is the same as charging original price for the alternative plot without any interest on the originally deposited amount.

6. IT appears to us that the formula adopted by the respondent, however, acts unfairly in case the alternative plot of land is located in a different sector where the price of land was higher than the plots in the original sector. While the respondent fairly allows interest on the original deposited amount at the same percentage by which the price of the land is increased, the amount of original deposit with interest on the date of offer of alternative plot will be less than the

current price of the alternative plot because the total amount payable would be more than the original amount plus interest because of initial higher price of the alternative plot of land. If an allottee of a plot of land is deprived of possession of the land after waiting for it for six long years for no fault of his especially when others whose plots are not involved in litigation get their possession and he has to pay higher price for the alternative plot, he has a legitimate grievance. The respondent in such cases should endeavour to offer an alternative plot of land at the same price at which the original plot of land was allotted to him. It also stands to reason that where the respondent is unable to provide a plot of land at the same price and the alternative plot of land can be given only in a different sector where the price of land was much higher for various reasons, the persons like the complainants cannot also be extended an undue advantage. If such plots of land are offered at the original price to the allottees like the complainants they may be paying much lower price than all the others who were allotted plots in those sectors in the normal course at the time plots were originally allotted to the complainants of even at earlier points of time. Considering the interest of the complainants and having regard to principles of equity, we feel where an alternative plot of land in a different sector is to be allotted to a person placed in a situation like the complainants'' the price of the alternative plot should be the same as the price prevalent in that different sector on the date of allotment of the original plot to the allottee. If the sector in which the alternative plot is located was launched for sale only on a date subsequent to the date of allotment of the original plot of land, then the price for the alternative plot should be the floating price in that sector. Since interest on the originally deposited amount on allottees in cases like these is offered not as compensation for delayed possession but because the prevalent price of the alternative plot of land is hiked on yearly basis, it is open for the respondent to restrict the payment of interest up to the date with reference to which the price for alternative plot of land is charged.

In view of the reasonings above we hold that the action of the respondent in not allotting a plot of land in a sector in the agreed terms and conditions and after delaying handing over possession of the plot of land offering an alternative plot of land with different terms and conditions is an unfair trade practice falling within the definition of Section 36A of the Act affecting the interest of consumers and we direct that the respondent should cease and desist from indulging in it. In terms of Section 36D of the Act, we also direct that the respondent shall charge tine complainants the price for the alternative plots of land located in sectors different from the ones where the original plots were located at the respective rates prevalent in these sectors on the dates of the original allotment of plots to the complainants. If the sale of plots in the alternative sectors commenced only at a later date with reference to the sectors where original allotments were made, the price chargeable shall be the floating price of that sector at that time. It is open for the respondent to restrict the interest payable on the original deposit amount up to the date with reference to which the price for the alternative plot is fixed.

7. WHILE the above direction takes care of the price for the alternative plot payable by the complainants who were deprived of getting possession of the originally allotted plots of lands for years for reasons beyond their control, the question arises as to how are they to be compensated when others who were allotted land originally alongwith them and were given possession of their plots in time. As already noted by us in respect of two other complaints in UTPE1 /97and UTPE 40/97, the respondent has given to the complainants interest on the amount deposited by them by way of compensation. The Advocate for the complainants also brought to our notice a number of decisions of the Consumer FORA directing the respondent to pay interest on such deposits in such case. Our attention was particularly drawn to the order of the Haryana State Consumer Disputes Redressal Commission dated 12.4.1996 in HUDA v. Girdhari Lal Yadav, wherein the Commission had upheld the order of the District Forum that from the date of the other persons were delivered possession allottees like the complainants should be compensated with interest. The rate was fixed @ 15 per cent per annum for the period between by the dates of possession of plots to other persons and the dates of possession of the alternative plots to the aggrieved persons. We are in agreement with this principle and we direct the respondent to ensure that the complainants in these cases are also given similar treatment. We direct the respondent to give effect to the directions contained above both with regard to the price of the alternative plots as well as interest for delayed possession within a period of eight weeks from today. Enquiries disposed of.

