

(2012) 08 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

Tradex India Corporation Pvt Ltd

APPELLANT

Vs

HARYANA URBAN DEVELOPMENT AUTHORITY

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 474 : 2012 3 CPJ 647 : 2012 3 CPR 449

Hon'ble Judges : Anupam Dasgupta J.

Advocate : Akshat Goel , R.S.Badhran

Judgement

1. THIS revision petition challenges the orders dated 04.12.2008 of the Haryana State Consumer Disputes Redressal Commission, Panchkula ("the State Commission") in First Appeals no. 1071 of 2002 and 1014 of 2002, dismissing the appeal filed by the petitioner and partly allowing that filed by the respondent. The petitioner company was the complainant before the District Consumer Disputes Redressal Forum, Gurgaon ("the District Forum") and the respondent (Haryana Urban Development Authority - HUDA) the opposite party (OP). Both had challenged the order dated 29.01.2002 of the District Forum on the complaint filed by the petitioner. For the sake of convenience, I shall refer to them as "the complainant" and "HUDA" respectively.

2. IN summarising the facts of this case, it is of interest to detail the sequence of correspondence between the parties (the complainant, on the one hand and the Estate Officer, HUDA, Gurgaon and the Chief Administrator, HUDA, Chandigarh/ Panchkula, on the other) because it is a good example of the age-old adage of the right hand not knowing what the left is/was doing: (i) In response to HUDA's advertisements, the complainant applied on 30.07.1990 for allotment of a plot of land (539.5 sq. mtrs.) in an institutional estate being developed by HUDA in Sector 32, Gurgaon by depositing the application and the requisite earnest money of Rs. 81,000/- with the Punjab National Bank, Bhikaji Cama Place Branch, New Delhi.

(ii) (a) Not hearing anything from the HUDA in this context, the Managing Director of the complainant company wrote to the Chief Administrator, HUDA,

Chandigarh on 17.11.1990 requesting confirmation of receipt of its application and earnest money deposit as well as information on the status of allotment of a plot of land to it. (b) Copies of correspondence filed with this petition show that the complainant wrote the next reminder to the Administrator, HUDA, Gurgaon only on 21.05.1996 and another dated 25.05.1996 to the Chief Administrator, HUDA, Chandigarh enquiring about the status of allotment of the plot of land, though it claimed that it had been sending reminders in between too. (It may be noticed that had the complainant been following it up with HUDA in the intervening period of nearly 6 years, there was nothing to prevent it from producing copies of those of its letter/s to HUDA. Be that as it may.) (c) The complainant's reminder of 21.05.1996 led the Estate Officer, HUDA, Gurgaon to write on 05.07.1996 to the Chief Administrator, HUDA, Panchkula stating that his office had no details concerning the complainant's application of July 1990 nor of refund of the deposit and requesting the latter office to reconcile the records at its end and issue further directions. (d) This was followed by another reminder dated 09.10.1996 from the complainant to the Estate Officer, HUDA, Gurgaon and a corresponding reminder dated 29.10.1996 from the latter to the Chief Administrator, HUDA, Panchkula. (e) By letter dated 19.08.1998, the Accounts Officer in the office of the Chief Administrator, HUDA wrote, in reply to letter of 03.07.1998 of the complainant's Administrative Officer (copy of this letter of 03.07.1998 of the complainant also not produced by it among the papers with this petition) that cheque no. 0/0553 dated 29.07.1998 for Rs. 81,000/- was being enclosed towards "refund of amount deposited against allotment of Institutional plot in sector 32, Gurgaon." (f) By his letter dated 27.08.1998, the office of the Chief Administrator, HUDA informed the Estate Officer, HUDA, Gurgaon that the amount of Rs.81,000/- deposited by the complainant along with its application of 1990 for allotment of an institutional plot in Sector 32, Gurgaon had been refunded under memorandum no. 22753 dated 19.08.1998. (g) However, by his letter dated 15.11.1999, the Manager (Administration) of the complainant again wrote to the Administrator, HUDA, Gurgaon enquiring about the response to the complainant's letter dated 17.11.1990. (h) Interestingly, by his letter dated 18.11.1999 the Estate Officer, HUDA, Gurgaon once again sought clarification from the Chief Administrator, HUDA, Panchkula about the present status of the application dated 30.07.1990 of the complainant, with a copy of this letter being endorsed to the complainant. (i) The Estate Officer, HUDA, Gurgaon followed this up further with another reminder dated March 2000 to the Chief Administrator, HUDA, Panchkula on the same lines and endorsed a copy dated 08.03.2000 to the Administrative Officer of the complainant. (j) On the other hand, in between, by letter dated 11.02.2000 the Administrative Officer in the office of Chief Administrator, HUDA, Panchkula informed the Estate Officer, HUDA, Gurgaon that the sum of Rs.81,000/- had been refunded to the complainant by cheque no. 553 dated 29.07.1999 about which intimation had also been given to it by endorsement no. 24105 dated 27.08.1998. The Estate Officer, HUDA, Gurgaon, under his endorsement no. 3154 dated 09.03.2000, then forwarded a copy of this letter to the complainant. (k) In response to this letter, the

complainant wrote a detailed letter dated 25.03.2000 to the Chief Administrator, HUDA narrating the sequence of correspondence and stating as under: "In our latest visit to the office of Estate Officer, HUDA, Gurgaon to our shock and surprise we have been provided with copy of Accounts Officer for Chief Administrator, HUDA, Panchkula letter no. HUDA-Acctts-SO-I-98/ 22753 dated 19.08.1998 addressed to us stating enclosure of cheque no. 0/0553 dated 29.07.1998 for Rs.81,000/- on account of refund of amount deposited by us, copy of another letter no. A5-98/24105 dated 27.08.1998 and your letter no. A-5-2000/3125 dated 11.02.2000. In this regard please note that we have not received the above mentioned HUDA letter dated 19.08.1998 enclosing the above said cheque of Rs.81,000/- towards refund of our deposit. The Estate Officer, HUDA, Gurgaon has also not received your above-mentioned letter dated 27.08.1998 and had this letter been received in their record, they would not have written to your goodself on 18.11.1999 and 08.03.2000 enquiring status of our application. There seems to be a serious conspiracy in this case, for which an enquiry is required to be conducted and matter be investigated as no such letters or cheque has ever been received by us as well as by the Estate Officer, HUDA, Gurgaon. Since, the cheque is supposed to be in our company's name which is a private limited company for which opening of Bank Account requires proper identification etc., we are confident that the same would not have been presented to your Bank for payment. Further, please note that we have submitted our application in 1990 and mere refund of our amount after a period of ten years is not acceptable to us. We understand that Institutional Plots are still available for sector 32, Gurgaon and we request you to kindly allot the plot to us in respect to our application. In case the needful and justice is not being done at your end we shall now be constrained to take legal action against HUDA." [Emphasis supplied] (l) However, without referring to the above-mentioned letter dated 25.03.2000, the Accounts Officer in the Office of the Chief Administrator, HUDA, Panchkula wrote a bland letter dated 07.07.2000 to the complainant as under: "To The Administrative Officer M/s Tradex India Corporation Pvt. Ltd. Oriental House, 19, Community Centre Gulmohar Enclave, New Delhi - 110 049 Subject: Refund of E/Money deposited for the allotment of Institutional Plot in Sector 32, Gurgaon. Please refer to the subject cited above. Enclosed please find herewith fresh cheque no. 559545 dated 04.07.2000 for Rs.81,000/- (in lieu of old cheque no. 553 dated 21.07.1998) on account of refund of amount deposited against allotment of Institutional Plot in sector 32, Gurgaon. Kindly acknowledge its receipt. DA/as above. Accounts Officer Chief Administrator, HUDA, Panchkula c.c. Estate Officer, HUDA, Gurgaon, w.r.t his memo. No. 3109 dated 08.03.2000 for information and necessary action." (m) The complainant returned this cheque to the Estate Officer, HUDA, Gurgaon by its letter dated 10.08.2000 because it had filed its complaint before the District Forum on 19.06.2000.

(iii) The complaint was contested by HUDA before the District Forum, which, after considering the pleadings and evidence brought on record by the parties,

allowed the complaint in part and directed the OP/HUDA to refund the amount of Rs.81,000/- deposited by the complainant with interest @ 15% per annum from the date of deposit till the date of payment, in addition to cost of Rs.2000/-.

(iv) As stated above, this order was challenged by both the parties before the State Commission, which partly allowed the appeal filed by HUDA and reduced the rate of interest to 12% per annum. The appeal filed by the complainant was merely "disposed of" in terms of the impugned order dated 04.12.2008 on the appeal filed by HUDA.

3. I have heard Mr. Akshat Goel, learned counsel for the petitioner/complainant and Mr. R. S. Badhran, learned counsel for the respondent/HUDA.

4. LEARNED counsel for the petitioner has mainly argued that the State Commission erred by not considering any of the grounds in the appeal filed by the petitioner/complainant against the order dated 29.01.2002 of the District Forum. He has further stated that even the impugned order dated 04.12.2008 on the appeal filed by the HUDA is patently non-speaking and arbitrarily reduced the rate of interest awarded by the District Forum from 15% per annum to 12% per annum by merely observing that the former rate appeared to be on higher side. Citing decisions of the Apex Court, learned counsel for the petitioner has strongly urged that it was incumbent on the State Commission to consider and re-appraise the evidence on record before coming to any decision on either of the two appeals, particularly, that filed by the petitioner/complainant. On the other hand, Mr. Badhran has supported the order of the State Commission.

5. IT is clear from the complaint filed by the petitioner that the prayer therein was for allotment of an institutional plot in Sector 32, Gurgaon or an alternative plot because, according to the complainant, its application had not been considered at all by HUDA for a very long period of time. On the other hand, in its written version before the District Forum, HUDA had raised some preliminary objections concerning maintainability of the complaint. From the order of the District Forum, it is clear that the latter did not discuss any of the rival contentions and merely observed that in its opinion, the OP ought to have refunded the amount at the earliest if the complainant remained unsuccessful. Thus, the District Forum did not go into the merits of the complainant's case or into the objections of HUDA regarding maintainability of the complaint and other related issues. Likewise, merely tinkering with the rate of interest awarded by the District Forum on the amount to be refunded by HUDA, the State Commission did not consider the grounds of the appeal filed by the petitioner/complainant and the evidence brought up on record by the parties.

6. IN conclusion, the impugned orders of the State Commission are set aside and the both the appeals are remitted back. The State Commission is requested to consider and decide the appeals afresh in accordance with law. For this purpose, the parties are directed to appear before the State Commission on 26th September 2012. Considering that the matter has been pending for a very long

time, the State Commission is requested to dispose of the appeals as expeditiously as feasible.