
(1995) 05 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

YOGESH (LT.COL.)(RETD.)

APPELLANT

Vs

HYDERABAD URBAN DEVELOPMENT AUTHORITY

RESPONDENT

Date of Decision : 17-05-1995

Acts Referred:

Citation : 1995 0 NCDRC 127 : 1995 2 CLT 590 : 1995 2 CPC 216 : 1995 2 CPJ 202 : 1995 2 CPR 470 : 1996 4 CTJ 32

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.P.BAGLA , S.S.CHADHA J.

Final Decision : Petition allowed

Judgement

1. IS Revision Petition has arisen out of the Order dated 1.6.1994 of the Andhra Pradesh State Commission at Hyderabad disposing of two appeals of the parties and setting aside the order of the District Forum which had allowed the complaint party.

2. HYDERABAD Urban Development Authority (for short called H.U.D.A.) had developed a number of residential layouts around the city of Hyderabad and advertised regarding the allotment of residential plots in newspapers as well as by issue of application forms and prospectus. H.U.D.A offered, inter alia, about 320 plots under various categories for allotment in Mushk Mahal Residential Complex. The complainant who is the petitioner herein made the application in the prescribed form for allotment of H.I.G. plot in the said scheme and deposited the earnest money of Rs. 2,000/- on 3.1.1990. A draw of lots was held on 25.2.1990 and the complainant was allotted plot No. 18 in Mushk Mahal Complex, admeasuring 325 square meters at the rate of Rs. 235/- per sq. meter. The complainant was called upon in H.U.D.A's letter dated 5.3.1990 to pay (1) the initial deposit (25% of the total cost excluding E.M.D. within 7 days) of Rs. 17,093.75 and (2) balance of 75% of total cost within 30 days amounting to Rs. 57,281.25. The complainant made the full payment within time towards the cost of plot. The complainant later inspected the plot and found that it was full of rocks and boulders which were as big as 20 to 25 feet high. He in his letter dated

19th May, 1990 prayed to H.U.D.A. to get the plot cleared and levelled before handing over to him or in the alternative he may be allotted another developed plot in lieu. H.U.D.A. in their reply dated 26.6.1990 invited the attention of the complainant to clause 15 of the conditions of the sale contained in their brochure that the said plot is sold on "as is where is basis" and requested the complainant to make his own arrangements for clearance of rocks at site. There is further correspondence between the parties but H.U.D.A. remained firm in its stand. There is no dispute on these facts. The complainant filed a complaint against H.U.D.A. under Section 12 of the Consumer Protection Act, 1986 before the District Forum, Hyderabad. Besides evidence on record, the District Forum relied on the admission of H.U.D.A. that there are rocks at the site and directed a compensation of Rs. 60,000/- for the removal of the rocks based on the estimate prepared by experts. The District Forum granted a compensation of Rs. 10,000/- for anguish, mental agony and hardship suffered by the complainant besides costs of Rs. 500/-.

3. THE parties filed two separate appeals, the complainant for enhancement of compensation and H.U.D.A for dismissal of the complaint. The State Commission in the impugned order expressed the view that the complainant accepted the plot on "as is where is basis" and that there is no deficiency on the part of H.U.D.A and consequently the appeal of H.U.D.A. was allowed and the order of the District Forum was set aside. However, the quantum appeal of the complainant was also considered, but found devoid of any merits for enhancement.

4. IT is apposite to reproduce the offer contained in the prospectus of allotment of residential plots. It states : "The Hyderabad Urban Development Authority (HUDA) has developed a number of residential layouts around the city of Hyderabad and provided basic amenities like roads, drainage, water supply and street lighting etc. Provision is also made for neighbourhood shopping centres and other community facilities. Eventually these layouts have been developed into self-contained mini townships which will have all advantages of the modern city life." So far as Mushk Mahal Residential Complex is concerned it is stated "HUDA has developed Mushk Mahal Residential Complex very close to Attapur-Rajendranagar and connected to the Inner Ring Road. It is only 4 Kms. away from the High Court and 8 Kms. from Mehdipathnam Centre. HUDA has constructed houses and developed 654 plots of various categories and already allotted 124 houses and 236 developed plots with all the necessary infrastructure facilities. Serene atmosphere is the special character of this complex. HUDA now offers about 320 plots under various categories for allotment." The brochure also contains general conditions. Clause 15 states, "the allotment of plot is on "as is where is basis" and no representations will be entertained for exchange of plots or for extension of time for payment." The factual statement made by H.U.D.A. is that it had developed a number of residential layouts around the city of Hyderabad and provided basic amenities like roads, drainage, water supply and street lighting. The intending purchasers would take it that H.U.D.A. has complied with all the requirements of A.P. Municipalities Act, 1965 while making

a layout and developing into self contained mini township. H.U.D.A. is disposing of the lands as sites for construction of buildings. It has made out a layout and formed streets or roads giving access to sites connecting them to public streets. It has set apart in the layout adequate area to land for playgrounds, park, educational institution and for other public purposes. For making a layout and forming new streets or roads, H.U.D.A must have planned even the intended level, direction and width of street as also the street alignment and the building line. It has also made arrangement for sewerage, drainage, conservation, lighting the street and the provision for water supply. All this has been provided by H.U.D.A. with a view of enable the allottees/purchasers to utilise the sites for construction of residential buildings. H.U.D.A. in the prospectus stated that it had constructed houses and developed 654 plots of various categories and already allotted 124 houses and 236 plots with all the necessary infrastructural facilities. What was being offered was a developed site for construction of a residential building. Admittedly the site allotted to the complainant is uneven and has huge rocks, boulders rising upto 20 to 20 ft. It is not suitable for construction of the residential house unless the boulders are taken out. There is thus a clear deficiency in service on the part of the H.U.D.A.

5. THE clause 15 does say "as is where is basis". While construing clause 15 of the conditions contained in the prospectus, the dominant condition of the offer of allotment of a developed site for construction of a residential building must prevail. The condition of offer of developed plots with all necessary infrastructure facilities cannot be so construed that it can be allowed to be destroyed by the condition of "as is where is basis". The District Forum's approach is sound. The normal rule of interpretation is that where an instrument contains two seemingly, conflicting, contradictory and inconsistent provisions, an attempt should be made to reconcile them and to see that both the provisions co-exist amicably. H.U.D.A's offer of developed plots for residential purposes in one breath could not be taken away in another breath on the basis of "as is where is basis". The stand of H.U.D.A "as is where is basis" has to be tested to its logical end say in regard to the basic amenities like roads, drainage, water supply and street lighting etc. If there are deficiencies in the basic amenities of roads, drainage and street lighting, then the plot holders by virtue of clause 15 have to accept those services as it is. It would be absurd to contend so because H.U.D.A. had assured that the plots are developed with all the necessary infrastructure facilities.

6. "AS is where is" in the context in which it has been used in the brochure refers to the length and breadth of the sizes of the plots which may vary according to the site situation or the frontage of the plots may be more in one case and less in the other case or one plot may be having an opening on the main road or the other on a main street. "AS is where is" cannot be construed as wiping out the assurance given in the prospectus of a developed residential site with basis amenities like roads, drainage, water supply and street lighting etc. The State Commission acted with material irregularity in the exercise of its

jurisdiction in setting aside a well considered order passed by the District Forum. This Revision Petition is accepted. The order of the State Commission is set aside and that of the District Forum is restored. The petitioner shall have costs of the proceedings before this Commission assessed at Rs. 1,000/-. Petition allowed.