

(2024) 11 NCDRC CK 0090

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 1559, 1560 Of 2023

Haryana Urban Development
Authority Now, Haryana Shehri
Vikas Pradhikaran & Others

APPELLANT

Vs

Radha Thakur W/O Vinod Kumar
Thakur

RESPONDENT

Date of Decision: Nov. 26, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 24A

Hon'ble Judges: Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

Bench: Single Bench

Advocate: Nikunj Gupta, Naveen Sharma, S K Sharma

Final Decision: Disposed Of

Judgement

Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

1. The two Petitions viz. RP 1559 of 2023 and RP 1560 of 2023 were filed by Haryana Urban Development Authority and Ors. ("Petitioners"/ "Opposite Parties" - OPs) against Ms. Radha Thakur and Mr. Raj Kumar ("Respondent"/"Complainant"). These appeals challenge the Order dated 24.02.2023 in First Appeal No. 42 of 2022 and First Appeal No. 43 of 2022 respectively, passed by the State Consumer Dispute Redressal Commission, Haryana ("State Commission"), which upheld the District Consumer Dispute Redressal Forum, Gurgaon ("District Forum") order dated 16.12.2021, in CC/642/2021 and CC/641/ 2021.

2. Both RP 1559 of 2023 and RP 1560 of 2023 were filed with 2 days delay. In the interest of justice, the delay is condoned.

3. Since the facts and questions of law involved in both Petitions are substantially similar, except for minor variations in dates, events and plot numbers, these Petitions are being disposed of by this common Order. For ease of reference, RP 1559 of 2023 shall be considered as the lead case, and the facts outlined below are derived from Consumer Complaint No. 642 of 2021.

4. The brief facts of the case are that Ms. Radha Thakur, the complainant was allotted plot No.2392 Sector 57 Gurugram vide allotment letter dated 20.04.2009 bearing memo No.765 on freehold basis at a tentative price of Rs.19,40,000/-. However, the OPs failed to develop the said allotted plot for over 5 years owing to some dispute and litigation pending against the said plot not attributable to her. On 04.07.2014, the OP allotted an alternate plot No.1375 Sector 51 Gurugram. However, despite the complainant having cleared the payments towards the said allotted alternate plot, as per the allotment agreement OPs failed to give possession of either of the said originally allotted plot or that of the alternative plot. In fact, the alternative plot was also allegedly undeveloped and under dispute. Since the HUDA authorities did not issue the possession of the said alternate plot to her, she alleged deficiency in service on the part of the OPs and filed a consumer complaint seeking direction to OPs to allot plot No.3117-P, Sector 46, Gurugram as alternative to the complainant at the originally allotted price, in lieu of the earlier allotted alternate plot No. 1375 Sector 51 Gurugram along with compensation.

5. In their written statement, the OPs contended that Plot No. 1375, Sector 51, Gurugram, was allotted to the complainant on 04.07.2014 in exchange for Plot No. 2392, Sector 57, Gurugram, as the original plot was involved in a dispute. The possession of Plot No. 1375 was offered vide letter No. 7639 dated 04.07.2014. OPs asserted that they were always ready and willing to deliver possession of the alternate plot, which was clear of encumbrances and fully developed with all civil amenities, including water supply, sewerage, roads, and electricity. However, motivated by greed, she refused to accept the possession, demanding another plot in Sector 46 through improper means. Reference was made to CWP No. 12008 of 2017, in Radha v. State of Haryana, decided by the Hon'ble Punjab and Haryana High Court on 26.05.2017, and compliance thereof through the Estate Officer's speaking order No. 329 dated 03.08.2018 that Plot No. 1375, Sector 51, Gurugram, was fit for possession and did not qualify for further alternate allotment. The OP denied allegations of failure to issue possession letter, maintaining that the complainant avoided taking possession despite the plot being ready for occupancy. It was further submitted that as per the HSVP Act and Rules, the complainant was liable to pay the enhanced amount for the plot. The OPs denied any intentional delay in issuing possession and emphasized that there was no deficiency in service on its part and sought dismissal of the complaint.

6. The learned District Forum vide Order dated 16.12.2021, allowed the complaint with the following finding:

"12. However, keeping in view the principle of equity and keeping in view the fact that the plot No. 1376 which was allotted to Ms. Suprabha Dahiya of Sector 51 was not found suitable to the allottee, then how the adjacent plot No. 1375 Sector 51 can be found suitable to the allottee i.e. present complainant.

13. Therefore, keeping in view the above circumstances, the present complaint is allowed and the OPs are directed to allot plot bearing No.3117-P, Sector 46 Gurugram to the complainant which is still lying vacant. The complainant is also held entitled to interest as per rates of the HUDA policy on each deposit from the date of respective deposits till offer of alternate plot. The complainant is also held entitled to compensation for harassment and mental agony as well as litigation expenses to the tune of Rs.25,000/-. The OPs shall make the compliance of the order within 30 days from the date of receipt of the copy of this order. The parties be communicated of the order accordingly and the file be consigned to the records after due compliance."

7. Being aggrieved by the aforesaid order, OPs filed FA No. 42/2022. The State Commission vide Order dated 24.02.2023 dismissed the Appeal and upheld the District Forum order as follows:

"15. Resultantly, the contentions raised on behalf of the present appellant stands rejected as rendered no assistance and found to be untenable and the order passed by the learned District Commission does not suffer from any illegality or perversity and is well reasoned accordingly stands maintained for all intents and purposes.

Hence, appeal stands dismissed on merits.

16. The statutory amount of Rs.12,500/- deposited at the time of filing the appeal be refunded to the complainant-respondent against proper receipt and identification in accordance with rules, after the expiry of period of appeal/revision, if any.

17. Application(s) pending, if any, stand disposed of in terms of the aforesaid order."

8. Dissatisfied by the Order of the State Commission, OPs filed the present Revision Petition before this Commission with the following prayer:

"I. The present Revision Petition may kindly be allowed and the impugned order dated 24.02.2023 passed by The State Consumer Dispute Redressal Commission

Haryana, Panchkula in First Appeal no.42 of 2022 and order dated 16.12.2021 passed by The District Consumer Disputes Redressal Commission, Gurugram, Haryana in Consumer complaint no. 642 of 2021 may kindly be Set Aside.

II. Pass any other order or direction in the facts and circumstances of the present case."

9. The learned counsel for the Petitioners/OPs reiterated the grounds and the averments made in the written statement and referred to the report dated 21.06.2013 having Memo No. DS/2013/7019 from Executive Engineer, HSVP Division No. V, and argued that services such as water supply, sewerage, and roads had been completed and, as per the report of the Executive Engineer, electrical and electrification work had also been completed. The alternative plot allotted to the complainant, along with certain other plots, was ready for possession. The development work report of 2013 confirmed that possession of the alternative plot had been offered in 2014, refuting her claim that the plot was undeveloped and highlighting their ulterior motive to secure a preferential plot. Reference was made to the observations made in writ petition bearing CWP No. 12008 of 2017 before the Hon'ble High Court of Punjab and Haryana and the Estate Officer order dated 13.08.2018, regarding the alternatively allotted plot. He referred to a second Writ Petition filed by her regarding the same plot, CWP 14598 of 2021, which had been withdrawn with no liberty granted by the Hon'ble High Court to the complainant to institute any fresh proceedings in respect of the same cause of action. He cited **S.P. Chengalvarya Naidu (dead) by L.R's vs Jagannath (dead) by LR's and others** (1994) 1 SCC 1, **K.D Sharma vs Steel Authority of India Ltd. and others**, (2008) 12 SCC 481, and **G. Jayshree and others vs Bhagwandas S. Patel and others**, (2009) 3 SCC 141, and argued that since material information about the previous cases filed had been withheld by the complainant, the complaint was liable to be dismissed. He further cited **State Bank of India vs M/s. B.S Agriculture Industries** (2009) 5 SCC 121 and argued that the complaint was barred by limitation as the consumer complaint had been filed in 2021, whereas the cause of action had arisen in 2014 when Plot No. 1375 Sector-51 Gurugram had been alternatively allotted to the complainant. He further argued that the Hon'ble Supreme Court in **Estate Officer Haryana Development Authority v. Sunita Yadav** (Civil Appeal No. 2940 of 2022) had held that public authorities could not arbitrarily allot specific plots and must follow a fair procedure. The HSVP policy dated 18.02.2013 required allotment of alternative plots through a draw of lots, and the State Commission's direction to allot a specific plot had contravened this policy and law. He relied on **UT Chandigarh Administration v. Amarjeet Singh**, (2009) 4 SCC 660 and contended that the complainant was not a "consumer" under the law, as the site had been purchased through a public auction, constituting a sale of immovable property, not a service. Moreover, the complainant had breached the allotment letter's terms by filing multiple writ petitions instead of

seeking arbitration. Their actions reflected an attempt to secure preferential treatment through prolonged litigation, contrary to justice and fairness. It was submitted that the revision petition be allowed, the orders of the lower commissions be set aside, and the complainant's complaint be dismissed with costs.

10. The learned Counsel for the Complainant submitted that the scope of Revision under the Consumer Protection Act was limited, as both the District and State Commissions had already adjudicated the facts and evidence on record. Therefore, the OPs could not repeatedly raise the same factual issues or introduce new grounds at the Revision stage. They Hon'ble Supreme Court in **Sunil Kumar Maity Vs. State Bank of India** (SCC Online SC 77) had affirmed this principle and allowing the petition would result in grave injustice to the Complainant, who had been seeking redress for 14 years despite having paid for the plot. It was further submitted that the Complainant had been aggrieved by the petitioner's selective allotment policy, which had favoured individuals like Suprabha Dahiya and Hemant Kumar with alternative plots, but had denied the Complainant the same relief, thereby, demonstrating unfairness. The OPs misrepresented that the order dated 17.11.2021 constituted res judicata as the said doctrine did not apply since the writ petition had been withdrawn without a judgment on merits. They maintained that the Complainant had been willing to pay any applicable preferential location charges for Plot No. 3117-P, Sector 46, Gurugram, and had undertaken to settle any difference in circle rates between Sector 51 and Sector 46. They argued that the Complainant's plot was not purchased through an "open auction," as claimed by the OPs, and this misrepresentation was contrary to the facts and pleadings on record. The OPs, he claimed had never raised the arbitration clause in the allotment letter before the District or State Commissions and by contesting the complaint on merits before these forums, the OPs had waived the objection to the jurisdiction of the Consumer Protection Act. They cited **Emaar MGF Land Ltd. v. Aftab Singh** (2018 SCC Online SC 2378), and submitted that consumer disputes were not arbitrable. Also, under Section 24A of the Consumer Protection Act, while the limitation period began from the date the cause of action arises. Since the cause of action remained ongoing due to the OP's failure to hand over physical possession of the fully developed plot, the complaint was not barred by limitation. Moreover, the OPs never raised the limitation objection before the District Commission or the State Commission. In light of the above arguments, it was prayed that the Revision Petition be dismissed with costs.

11. It is undisputed that the complainant was initially allotted Plot No. 2392 in Sector 57, Gurugram, under memo No. 765 on a freehold basis at a tentative price of Rs. 19,40,000/- vide allotment letter dated 20.04.2009. As per which the plot was to be allotted within three years. However, the OPs failed to develop the same for over 5 years. Admittedly, the said plot was involved in some legal disputes due to which an

alternate plot No.1375 Sector 51 Gurugram was exchanged in her favour on 04.07.2014. In response to this, the Complainant filed writ petition CWP No. 12008 of 2017 before High Court of Punjab and Haryana, which was decided on 26.05.2017, wherein, after considering the matter in detail, the High Court directed the Chief Administrator, HUDA, Panchkula, and the concerned Estate Officer in Gurugram to address her grievances and further directed that if the authorities were unable to deliver possession of Plot No. 1375 in Sector 51, Gurugram, they should consider the allotment of another undisputed alternative plot. In compliance with this order, the Estate Officer issued an order on 13.08.2018, wherein it was specifically noted as follows:

"As explained above, Plot No. 1375, Sector-51, Gurugram is available for "offering possession at site. Therefore, I am of the considered view that this case is not fit for allotment for an alternative plot. All Civil development works like water supply, sewerage, roads, electricity etc. have already been completed. Hence, the petitioner is at liberty only to take possession of Plot No. 1375, Sector-51, Gurugram on one working day. The order may be communicated to the petitioner through registered post."

12. Evidently, there is no justifiable reason as to why the complainant delayed taking possession of the Plot for seven years despite the offer being made in 2014. Even if we accept her contention that it was underdeveloped at that time, the order dated 13.08.2018 by the Estate Officer clearly affirmed that the plot was complete in all respects as of that date. Furthermore, the Hon'ble High Court of Punjab and Haryana, in its order dated 26.05.2017, directed that an alternative plot be provided to her subject to the unavailability of Plot No. 1375, which was not the situation here. Additionally, the Complainant cannot demand a different plot after being offered an alternative by the authorities. In this regard the Hon'ble Supreme Court order dated 13.04.2022 in **Estate Officer Haryana Development Authority (now known as Haryana Shehri Vikas Pradhikaran), Rewari & Anr. Vs. Sunita Yadav**, Civil Appeal No. 2940 of 2022, wherein it held as under is relevant:

"We have heard learned counsel for the parties at length. We find that the NCDRC has erred in law in allowing the revision petition filed by the respondent based on a consent recorded by the District Forum. In fact, there could not be any consent of allotment of a particular plot to a candidate as a public authority cannot act arbitrarily. In fact, the District Forum records the consent of the respondent to the allotment of alternate plot and not that of the appellant. The plots had to be allotted in fair manner and not in arbitrary manner at the whims of either the representative of the appellant or of the District Forum.

Since there were number of applicants who could not be delivered possession, a method was devised to consider all such applicants and to conduct draw of lots amongst those applicants. The mini draw was held to allot plots to similarly situated applicants. In the draw of lots, it is matter of chance as to which plot comes to an applicant. That was the fair and reasonable method of allotment of a plot. Keeping in view the allotment of plot in a fair and reasonable manner, we find that the order of NCDRC suffers from patent illegality and cannot be sustained.

Consequently, the order passed by the NCDRC is set aside. Resultantly, the respondent shall be 4 entitled to Plot No. 1614, Sector-4, Rewari. The appellant shall hand over possession of the plot within one month. The time for construction will commence thereafter. The appellant shall not charge any extension fee or non-construction fee for the past period.

In view of above, the appeal is allowed."

13. Based on the above discussions, I am of the considered view that the impugned orders suffer from illegality and cannot be sustained. Consequently, the orders passed by the State Commission and District Commission are set aside. The complainant shall be entitled to Plot No. 1375 Sector-51, Gurugram, subject to making the pending payments towards the OP, if any. Liability of the OPs remain to the extent of paying compensation @ 6% as agreed by them in the allotment letter for delayed possession of the alternate plot from 20.04.2012 to 13.08.2018 (the date the OP Estate Officer issued Speaking Order. With these directions both RP No. 1559 of 2023 and RP No. 1560 of 2023 are disposed of.

14. Considering the circumstances of the case, there shall be no order as to costs. Pending applications, if any, are disposed of accordingly.