

(2012) 10 NCDRC CK 0017

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Manoj Saraf

APPELLANT

Vs

HARYANA URBAN
DEVELOPMENT
AUTHORITY , Estate
Officer

RESPONDENT

Date of Decision: Oct. 30, 2012

Citation: 2012 0 NCDRC 635 : 2012 4 CPJ 672 : 2012 4 CPR 346

Hon'ble Judges: S.K.Naik J.

Advocate: Madhurendra Kumar

Judgement

1. IN this case, the attempt by an unscrupulous person in the guise of a "consumer complainant " to garner a plot has been correctly set at naught

by the order passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (State Commission for short) overruling the

favour managed by the complainant from the District Consumer Disputes Redressal Forum, Faridabad (District Forum for short).

2. THE facts of the case in brief are that the petitioner/complainant had deposited/paid 25% of the cost being the earnest money for the allotment

of a plot and had failed to pay any instalment whatsoever thereafter on the spacious plea that there was no development of the area. The allotment

was made during the year 2002 and the respondent/OP/Huda stated that the development of the area was complete and the possession too was

offered in the year 2004. Despite repeated notices, the petitioner failed to deposit the due instalments and in fact surrendered the plot and sought

the refund of the deposited amount vide his two communications in November, 2002 and on 14th of May, 2003. In these communications, he had

requested that the refund of the deposited amount be paid to his GPA Swadesh Kumar. It appears that the said GPA Swadesh Kumar instead of

withdrawing the amount as expressed by the original allottee for his own selfish interest sought possession of the plot and that is how a complaint

was filed before the District Forum, where the front man was the GPA Swadesh Kumar. The District Forum despite a plethora of objections

raised by the respondent/OP/HUDA with regard to the maintainability of the complaint and without discussing the averments and pleas enumerated

in their WS passed an order directing the respondent/OP/HUDA as under :-

1. The respondents are ordered to deliver the physical possession of an alternative plot in any developed sector at the basic floating price of the

sector to the complainant in lieu of plot No. 464 Sector-2 Faridabad. If the area of the alternative plot is found more or less, the price of the same

be charged similar to that of the originally allotted plot. 2. The respondents are further ordered not to charge any kind of interest, penal interest

penalty and extension fee uptill the period of delivery of the physical possession of the plot as ordered above. 3. The respondents are also ordered

to pay interest @ 12% p.a. on the total deposited amount of the complainant w.e.f. its deposit till the delivery of the physical possession of the plot

now to be allotted as per the aforesaid order. 4. The respondents are also ordered to pay Rs.20,000/- on account of mental agony and Rs.5000/-

as litigation expenses to the complainant.

It is strange that the District Forum ignored the factual position with regard to the non-payment of the premium by the complainant despite

repeated notice and merely on his deposit of earnest money given reliefs stated above, which cannot but be said to be a bonanza.

When the order of the District Forum was challenged before the Haryana State Consumer Disputes Redressal Commission, Panchkula (for short

the State Commission). Vide the order impugned the State Commission has set aside the order passed by the District Forum observing as under :-

Before parting with the judgment it would be appropriate to record an observation that this judgment has been rendered by Sh. J.P. Chaudhary

the then President of the District Forum, Faridabad, who was known for deciding such cases for consideration. This Commission has already passed stricture against said J.P. Chaudhary in several surrender cases but could not take up action against him as he is no more the President of the District Forum, Faridabad. The stricture passed by this Commission against said J.P. Chaudhary in several surrender cases has been upheld by the Hon "ble National Commission by maintaining the order.

3. THIS observation of the State Commission flows from the analysis of the facts and circumstances of the case, which cannot perhaps be put in better manner than in what the State Commission has stated. The essence of the State Commission 's findings with which this Commission entirely agrees are as follows :-

At the very outset the sole question for consideration before us is whether the complainant had surrendered the plot voluntarily with his free will and consent by moving an application in November, 2002 and on 14.5.2003 for surrender of plot seeking refund of the deposited amount to be paid to the GPA Swadesh Kumar. The original owner Sh. Manoj Saraf never instructed his GPA Swadesh Kumar to seek a plot and not to take the refund. The District Consumer Forum has failed to appreciate the thin line controversy involved in this case that the original complainant has directed the GPA only to accept the refund of the deposited amount, who instead of withdrawing the amount, has acted of his own and sought for the plot for which he was never authorised by the original allottee. The GPA holder cannot travel beyond the instructions issued to him by the original allottee. It was under these misconception, the District Forum observed that since the refund has not been taken by the GPA, therefore, GPA is entitled to the plot. We do not subscribe to this observation made by the District Forum. It is a case in which there is a voluntarily surrender of plot and seeking the refund of the deposited amount through GPA. The GPA has no power to build up a case by twisting the facts. We are therefore, convince that once the plot has been surrendered and refund has been sought whether taken by the GPA or not does not bring the complainant within the definition of ""Consumer "" . The GPA is the property dealer who enter into negotiations with the original allottee after

visiting the office of HUDA to find out the disputed plot and later on with the convincing of the officials of HUDA files this type of litigation.

Admittedly the complainant has surrendered the plot with his free consent, therefore, he is not a "Consumer" of the opposite parties. If the

complainant had any grievance with respect to the non-development of the area, non-delivery of possession etc., he could have approached the

competent authorities prior to surrender of the plot. It is further contended by the learned counsel for the respondent-complainant that during the

pendency of this appeal the opposite parties have complied with the directions issued by the District Forum and thus the instant appeal is liable to

be dismissed having become infructuous. We do not subscribe to the contention raised by the learned counsel for the respondent-complainant that

opposite parties have re-allotted plot to the complainant because it is the complainant who failed to deposit the instalments of remaining 75% of the

price of the plot and also surrendered the plot in question voluntarily and thus the complainant is no more "consumer" of the opposite parties. The

plea of the complainant that the order passed by the District Forum has been complied with and the complainant has taken the possession of the

plot in question is not acceptable for the reason that firstly the complainant has to establish that he falls within the definition of "Consumer". Once

this fact has been decided above that the complainant does not come within the definition of "Consumer" the complaint itself is not maintainable in

the eyes of law and the plea of the complainant that now he has taken the possession of the plot under the order passed by the District Forum in

execution is itself not a ground to maintain the order of the District Forum. Any possession taken by the complainant in the execution proceedings

was subject to the decision of the appeal up to the Hon "ble Apex Court and this fact is very much clear from the letter dated 22.11.2007 wherein

it is clearly mentioned that "the order passed by the District Forum may kindly be complied with subject to the decision of the appeal up to Apex

Court. " The foundation of the impugned order is the outcome of misrepresentation of facts, which on the face of record is absolutely illegal and

void and thus, no question arises to keep such an order alive, simply on the ground that the possession of the plot has already been delivered to the

complainant. Once the order has been held to be illegal and void by us on the ground of GPA having no authority from the original allottee with the observation that the complainant does not come within the definition of ""Consumer "" the question of handing over the possession of plot secured under an illegal order is not sustainable in the eyes of law and is liable to be set aside. Accordingly while accepting this appeal we set aside the impugned order and dismissed the complaint with the direction that the plot in question which has been taken under an illegal order passed by the District Forum in the Execution Petition is hereby ordered to be restored to the appellant-HUDA in view of Section 144 of C.P.C. (restitution) because on the date of filing the present complaint, the complainant did not fall within the ambit of ""Consumer "" of the opposite parties and as such the complaint was not maintainable under the "Consumer Protection Act, 1986 ". The opposite parties (HUDA) are further directed to refund the deposited amount to the complainant as per the surrender policy without any interest for the reason that the order has been secured by misrepresentation and concealment of the facts from the District Consumer Forum. Learned counsel for the petitioner, Shri Madhurendra Kumar has tried in vain to submit that since the possession of the plot has already been handed over, the State Commission was not justified for setting the clock back and further that the respondent/OP/HUDA had not refunded the deposited amount, and, therefore, the revision petition needs consideration. His arguments have been noted simply to be rejected for the reason that the State Commission in its order has dealt with at length as to why such abuse of the provisions of the Act should not be set right and has clearly stated that since the allotment was made subject to outcome of the respondent 's appeal upto the Apex Court and the law (Section 144 of CPC) provides for restitution, the petitioner/complainant deserves no sympathy whatsoever. We further notice that the State Commission has been considerate enough in directing the respondent/OP/HUDA to refund the deposited amount to the petitioner/complainant as per the surrender value without allowing any forfeiture of the earnest money.

4. THIS is a clear case of securing an order from the District Forum by misrepresentation and concealment of the facts and the State Commission

has done well in passing a just, proper and correct order, which needs absolutely no interference.

The revision petition is, accordingly, dismissed in limine.