

(2001) 03 NCDRC CK 0008

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

AUTHORITY THROUGH ITS
ESTATE OFFICER PUNJAB URBAN
PLANNING AND DEVELOPMENT

APPELLANT

Vs

Prem Lal

RESPONDENT

Date of Decision: March 21, 2001

Citation: 2001 2 CLT 514 : 2002 1 CPJ 362

Hon'ble Judges: K.K.Srivastava , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision: Appeal dismissed

Judgement

1. THIS appeal has been filed by the appellant No. 1, Punjab Urban Planning and Development Authority (PUDA) through its Estate Officer, Ludhiana and appellant No. 2 Punjab Urban Planning and Development Authority through its Chief Administrator against the order dated 11.9.2001 in Complaint Case No. 376/95/Apl.98 passed by the District Consumer Disputes Redressal Forum-I, U.T., Chandigarh (for short hereinafter to be referred as the District Forum-I). The factual matrix narrated briefly is as under :

2. THE respondent/complainant, Mr. Prem Lal, resident of SCF 56, Sector 29-D, Chandigarh applied in the year 1983 for 8 Marla residential plot in Sector 32-A, Samrala Road, Ludhiana, Punjab and deposited an amount of Rs. 1,700/- by a demand draft. THE same stands acknowledged by appellants/O.Ps. and a copy of the receipt issued has been brought on record vide Annexure C-1. Further an amount of Rs. 2,300/- towards the enhanced amount of the plot was sent by the respondent/complainant on 9.9.1983 (Annexure C-2). As per averments made by the

respondent/complainant, inter alia, the appellants/O.Ps. on 6.1.1992 issued a Circular (Annexure C-3) vide which the appellants/O.P. informed the respondent/complainant that the price of @ 1200/- per sq. yd. was fixed for all the plots and draw of lots will be taken. Besides giving the details of proposed development of the area, it was mentioned that with effect from February 1, 1992 all the applicants will be paid interest on their earnest money @ 10% till the allotment is made or applicant seeks the refund of earnest money himself. THE respondent/complainant exercised his option for the allotment of the plot and same was communicated to appellants/O.Ps. vide letter dated 22.1.1992 (Annexure C-4). THE grievance of the respondent/complainant is that till date neither his earnest money amounting to Rs. 4,000/- has been refunded nor any plot has been allotted till date. Copies of reminders dated 29.3.1994 (Annexure C-5) and 29.4.1994 (Annexure C-6) and copy of complaint in Tribune's column (Annexure C-7) has been placed on record. THE respondent/complainant has further averred that he was not aware of the status of his plot as appellants/O.Ps. have not responded even once to his numerous reminders. THE respondent/complainant has alleged that he suffered mental tension due to above and has prayed to be compensated for Rs. 10,000/- towards the same. THE respondent/complainant has also prayed that appellants/O.Ps. be directed to allot the plot immediately and the O.Ps. be burdened with costs.

The appellants/O.Ps. in their reply dated nil (filed on 18.9.1995 as per the record of District Forum-I) took the preliminary objection of the complaint being time-barred as the earnest money was deposited in 1983. Further the O.Ps. have averred that on mere application or registration for the plot, no right as a consumer as envisaged under the C.P. Act has accrued to the complainant before the actual allotment, hence the complaint is liable to be dismissed on this ground itself. Further the O.Ps. have taken the plea of lack of territorial jurisdiction as the plot in dispute pertains to Ludhiana and consequently only the Forum at Ludhiana have the jurisdiction to entertain the complaint and Forum at Chandigarh cannot proceed with the complaint.

On merits, the factum of deposit of Rs. 4,000/- towards the earnest money of the plot stands admitted but the appellants/O.Ps. have averred that the plot could not be allotted due to respondent/complainant remaining un-successful in the draw of lots. The appellants/O.Ps. have further averred that respondent/complainant was not eligible for subsequent draws of lots as he did not convey his option for the plot by depositing enhanced amount as was informed vide their letter dated 22.1.1992. The appellants/O.Ps. have denied having received any request from the respondent/complainant to refund his amount. The appellants/O.Ps. have clarified that plot was not allotted consequent to respondent/complainant's failure to comply with the necessary conditions as conveyed to him vide their letter dated 22.1.1992. During the pendency of the complaint on 20.2.1996 an application seeking permission to amend the complaint was moved. Since it was not opposed

by the Counsel opposite the same was allowed. In the amended complaint, Chief Administrator, Punjab Urban Planning and Development Authority, SCO 63-64, Sector 17-C, Chandigarh was arrayed as O.P. No. 2.

3. THE District Forum-I in its order held that since the money was retained by the O.Ps. and the complainant stood deprived of the amount of Rs. 4,000/-, he is entitled to the refund of the same with interest @ 12% from 1.1.1984 till realization. Further the costs of litigation quantified at Rs. 1,100/- were also awarded to the complainant.

Aggrieved against the above order of the District Forum-I, PUDA filed the appeal before this Commission pleading, inter alia, that the impugned order of the District Forum-I is bad in law due to lack of jurisdiction and not based on correct appraisal of facts and the law applicable to the points in dispute. The appellants have further contended that compensation can be granted only in the event of proven deficiency. Since the appellants have not been held deficient by the District Forum-I, the grant of compensation by it cannot be justified in law. The appellant has further contended that since the plots by PUDA are given on a very concessional rates the applicants try their luck by depositing a token amount but with a hope of getting a plot at a rate much lower than the market price. The appellants have also stated that they have not given a promise of any kind to the applicants and the amount deposited by the purpose of registration can be withdrawn at any point of time. The appellants have in support of their contention cited the case of PUDA v. Mukhtiar Singh, wherein the National Commission had in a revision petition ordered to stay the recovery of interest on the registration amount as granted by the State Commission and District Forum. Accordingly the appellants have prayed to stay the impugned order of the District Forum-I. The attention of this Commission has also been invited to the case of Bir Bajrang Kumar v. State of Bihar, AIR 1987 Supreme Court 344.

4. WE have perused carefully the record of the case along with the evidence adduced by both the parties before the District Forum-I. WE have also gone through the impugned order of the District Forum-I and grounds of assailing the same in appeal. The learned Counsel for the appellants, Mr. Gurpreet Singh, Advocate and

the learned Counsel for the respondent, Mr. Ashok Sehgal, Advocate has also been heard by us. The contention of the appellants is that since no deficiency has been proved against the appellants, the District Forum-I was not justified in law, in holding the appellants liable to refund the application amount along with interest. This contention of the appellant is not based on correct appraisal of the impugned order. The operative part of the order runs as under :

"..... It was obligatory on the part of O.P. to have refunded the earnest money if the complainant was unsuccessful in draw of lots which were held in 1983. As the earnest money was retained by O.Ps. and they have made use of the same whereas the complainant stood deprived of the use of his money. So he is certainly entitled to the refund of earnest money of Rs. 4,000/- along with interest @ 12% p.a. with effect from 1.1984 till the payment is made. Complainant is also held entitled to costs which are quantified at Rs. 1,100/-. The complaint stands disposed of as such."

In fact, it is evidently clear that the appellants/O.Ps. were held deficient in services consequent to which the liability to refund the amount with interest and costs of litigation were imposed which otherwise would not have been justified in law.

The second ground taken in appeal that since no house or plot was allotted to the respondent/complainant, he cannot invoke the provisions of Consumer Protection Act by paying a mere token amount of Rs. 4,000/-. In reply to this there is a settled proposition of law that after the registration money is confirmed to have been received in respect of a house and plot, the service as defined under Section 2(1)(d) of the C.P. Act is deemed to start and the provisions of C.P. Act are applicable. So the respondent in present case is a consumer and protection of C.P. Act is available to him.

5. REGARDING the case-law cited by the learned Counsel in support of his arguments as in the case of PUDA v. Mukhtiar Singh (supra), wherein the Hon"ble National Commission stayed the payment of interest on the application money, this Commission is of the opinion that the stay order granted by the Hon"ble National Commission in the above said case is not a settled proposition of law. It shows that the matter is under consideration of Hon"ble National Commission which is in the facts and circumstances of that case in which the revision petition has been filed. So the grant of stay of as cited above does not operate as estoppel in the other cases. A perusal of the case of Bir Bajrang Kumar's case (supra), cited by the appellants make it amply clear that this case pertained to two similar matters pending in the same High Court so the Hon"ble Apex Court directed both the matters to be taken together to avoid conflicting judgments being delivered in two similar cases by the

same High Court. The ratio of this case cited by the appellants does not apply at all to the case in hand and his case does not get any strength from this citation.

6. ON the ground cited above, this Commission is of the considered opinion that withholding the application money of respondent since 1983, there has been an undue and inordinate delay on the part of appellants and they have rightly been held deficient in services by the District Forum-I consequent to which they were ordered to refund the amount with interest and costs of litigation. We find no infirmity with the order of the District Forum-I on the basis of record and evidence as adduced by both the parties. Consequent to the grounds mentioned above the order of the District Forum-I is upheld and the appeal is dismissed with no order as to costs. Copies of the order be supplied to the parties free of charges. Appeal dismissed.