

(1997) 05 NCDRC CK 0058

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

MUNSHI RAM CHHABRA

APPELLANT

Vs

HARYANA URBAN
DEVELOPMENT AUTHORITY

RESPONDENT

Date of Decision: May 13, 1997

Citation: 1997 2 CPC 147 : 1997 2 CPJ 351

Hon'ble Judges: M.R.Agnihotri , Sushil Paul J.

Final Decision: Complaint partly allowed

Judgement

1. COMPLAINANTS Munshi Ram Chhabra, his wife Phoola Rani and three sons Arun Chhabra, Satish Chhabra and Sanjiv Chhabra have invoked the original jurisdiction of this Commission by filing the present complaint against Haryana Urban Development Authority, claiming compensation to the tune of Rs. 10 lakhs, as also refund of an amount of Rs. 5 lakhs alleged to have been recovered in excess by HUDA by way of penalty and interest etc. and for setting aside the notice dated 13th October, 1995 demanding a sum of Rs 9,18,179.71 paise alongwith extension fee amounting to Rs. 66,499.10 paise, alleging deficiency in service on the part of HUDA.

2. ACCORDING to the complainants, HUDA auctioned a commercial site in Sector 11, Panchkula in August, 1986 and the complainants being the highest bidders allotted show-room site No. 6 for Rs. 9,55,500/-. The complainants deposited 10% of the total amount immediately at the time of auction and after the receipt of the letter of allotment dated 19th August, 1986 they further deposited 15% of the total amount. Similarly the complainants continued to deposit the instalments regularly and by 18th November, 1991 they had deposited a sum of Rs. 12,13,587.35 paise as against

Rs. 9,55,500/-price of the plot as per letter of allotment. Though according to the letter of allotment the complainants were entitled to take possession of the plot immediately after allotment, yet the site being not fully developed, the possession was not delivered immediately thereafter. It took full five years to HUDA to develop the plot, during which period the complainants approached the HUDA authorities number of times for the delivery of possession, but the same was not delivered. Ultimately, it was on 26th November, 1991 that the possession of the plot was handed over to the complainants by the Estate Officer, Panchkula vide possession certificate, reproduced below :

"POSSESSION CERTIFICATE Certified that I Vinod Kumar, Junior Engineer of the office of the Estate Officer, Panchkula have carefully checked the relevant paper and the dimension of plot of Show Room No. 6, Sector 11 of Urban Estate, Panchkula and the size of the plot allotted to Shri Munshi Ram and others s/o Ganga Ram Chhabra is given as under : 1. Length of the plot 52.25 M. 2. Breadth of the plot 11.00 M. 3. Area . 574.75 Sq. M. 4. Rear set back as per 5. Front set Back -do- ACCORDINGLY, on the basis of above details, the possession of the plot has been given to the said allottee/authorised person. Sd/- For Estate Officer, Panchkula. I, Munshi Ram and others s/o Ganga Ram Chhabra the above name allottee of the Urban Estate, Show Room No. 6, Sector 11, Panchkula have taken the possession of the plot as per above dimensions as allotted to me vide Estate Officer, allotment letter No. 12674 dated 19.8.1986. As per Provisional Regulation 10 of the HUDA, (Execution of Building) Regulations, 1979,1 hereby note that I will to give at least works notice to the Estate Officer, before actually command the erection of the building on the Memo No. 6914. Dated : 26.1.1991 Sd/ Name & Signature of allottee"

According to the complainants, though they have already paid a sum of Rs. 12,13,57.35 paise to HUDA upto 18th November, 1991 against the original price of the plot of Rs. 9,55,500/-yet on 13th October, 1995 HUDA demanded an additional amount of Rs. 9,18,179.71 paise as "over dues of the site and extension fee upto 31st December, 1995 amounting to Rs. 66,499.10 paise". The complainants on the receipt of the recovery notice immediately deposited another sum of Rs. one lakh in November, 1995. Consequently the complainants have paid Rs. five lakhs in excess to HUDA in addition to the price originally fixed in the letter of allotment. According to the complainants, from the inquiries made by them it transpired, that even though the deficiency was on the part of HUDA in not delivering the possession immediately after the allotment was made in 1986 and was delayed by more than five years, yet additional demand was created by HUDA by imposing penalty and styling the amount as "over dues". Since, according to the complainants they had already deposited about five lakhs rupees in excess, of the original price as mentioned in the letter of allotment, nothing was due from them and in fact HUDA was liable to refund the aforesaid amount alongwith damages, for compensating the complainants due to their deficiency in service in not delivering the possession of the plot for more than five years after the allotment. Aggrieved against this, the

complainants filed the present complaint.

In their reply, HUDA pleaded by way of preliminary objection, that since the plot was purchased by the complainants in open auction, complaint was not maintainable under the Consumer Protection Act. In the alternative it has also been pleaded, that if it is found that the complaint did fall within the purview of the Consumer Protection Act, the complainants were estopped by their own conduct as they did not raise any objection regarding the non-development of the site at the time of depositing 15% amount while accepting the letter of allotment. On merits, HUDA admitted the deposit of the amount as alleged by the complainants. Regarding non-delivery of possession it has been pleaded, that it was the duty of complainants to take the possession themselves and if they did not take it, HUDA should not be held liable for that. Finally, it has been pleaded that HUDA was not liable to refund any amount alleged to have been charged in excess from the complainants, rather they are entitled to recover the amount mentioned in the notice dated 13th October, 1995. Alongwith the written statement HUDA also annexed number of notice issued by them requiring the complainant to pay extension fee, penalty and interest etc. on account of non-completion of the building during the aforesaid period. They have also annexed communication dated 1st June, 1992, filed by the complainant to one of the notices, in which it was inter alia stated as under :

"I may further state, that so far the area has not been fully developed by the HUDA, nor the stipulated amenities have been provided by the HUDA. All this has led to the non-utilisation of the site in a proper manner according to its full potential. This has adversely affected the appellants financially and has thus led to the non-payment of the arrears of instalment in time."

3. TO refute the averments made in the written statement the complainants filed replication and reiterated their allegations already made in the complaint.

Since by now it has been authoritatively settled by the Hon"ble Supreme Court in the case of Lucknow Development Authority : III (1993) CPJ 7 (SC)., followed by this Commission in II (1994) CPJ 295, H.U.D.A. v. Narender Singh Doon, that all kinds of allottees whether by direct allotment, draw of lots or by auction are entitled to seek redress under the Consumer Protection Act, against the deficiency in service by the Urban Development Authorities like HUDA, the learned Counsel for HUDA rightly did not press the preliminary objection regarding the non-maintainability of the complaint. Therefore, the parties proceeded to file their affidavits by way of their evidence and in the affidavit filed by the complainants dated 19th November, 1996, the allegations made in the complaint have been reiterated; that is they were not

liable to pay any penalty or extension fee for the non-construction of the building from 1986 to 1991; and an amount of Rs. 5 lakhs recovered from the complainants was in excess of the price fixed for the plot and should be refunded to them. In his cross-examination, the complainant stated that he had made number of representations for the delivery of possession and it should be in the records of the HUDA. In rebuttal, the HUDA filed the affidavit of Mr. Surjeet Singh, Estate Officer, Panchkula, in which though the payment of the amount deposited by the complainants was admitted, yet it was also added that a sum of Rs. 8,45,749/-was still outstanding against them till 31st May, 1996 as overdues, for not constructing the building in time. Therefore, the evidence was closed and the Counsel for the parties addressed their arguments, at length.

4. HAVING heard the learned Counsel for the parties and after going through the record, we are of the considered view, that complainants have succeeded in establishing that they have paid the entire price of the plot as originally fixed as per letter of allotment i.e. Rs. 9,55,500/-and the possession of the plot was delivered by HUDA on 26th November, 1991 and at no point earlier thereto. From the perusal of letter of allotment it is evident, that HUDA was obliged and the complainants were entitled to the delivery of the physical possession of the plot immediately after the allotment was made in their favour. HUDA has completely failed in bringing on record any letter or notice offering the possession of the plot to the complainants or requesting them to take the possession on a certain fixed date and time. On the other hand, the issuance of the possession certificate dated 26th November, 1991 by and on behalf of the Estate Officer, HUDA and the endorsement signed by the complainant thereunder of the even date, leaves no manner of doubt to conclude, that it was on that day alone i.e. 26th November, 1991, that the Estate Officer, HUDA delivered possession of the plot to the complainants. Further, had there been any such offer of delivery of possession by HUDA to the complainants earlier thereto, it would have certainly got mention in the certificate of possession. Nothing having been so mentioned, it stands conclusively proved that possession of the plot was delivered on 26th November, 1991 i.e. more than five years after the letter of allotment of the plot dated 19th August, 1986. Factual position having emerged like this i.e. payment of Rs. 13,13,633.35 paise is admitted by HUDA as against the original price of Rs. 9,55,500/-and delivery of possession being five years after the letter of allotment, the only point remains to be settled is, whether it is the HUDA Which is remiss and deficient in the discharge of their services and liable for the refund of the amount already recovered or the complainants are liable to pay any further demand, still being made by HUDA, on account of the non-completion of the

building from 19th August, 1986 to 26th November, 1991 - the date of actual delivery of possession. It becomes plain and simple to conclude from the above facts, that when possession of the plot was not delivered by HUDA for a period of more than five years it is obviously not entitled to claim any extension-fee or to impose any penalty on that basis. Consequently, we have no hesitation in holding that there being clear deficiency in service on the part of HUDA in delaying delivery of possession for more than 5 years, HUDA was not entitled to recover anything in excess of the price originally fixed.

But despite all this, it cannot be ignored that at no point of time earlier to November, 1995, complainants ever object to the recovery of any amount demanded by HUDA even though payment made by them had exceeded the price of the plot mentioned in the letter of allotment issued in 1986. Therefore, in November, 1995 for the first time by filing this complaint, they are not entitled to claim the refund of any amount paid by them purported to be in excess of the price originally fixed. Hence, their claim for the refund is rejected.

The only relief which can be granted to them is, that HUDA having themselves delayed the delivery of the possession of the plot to the complainants for more than five years, on account of which the complainants have suffered a considerable financial loss, their notice dated 13th October, 1995 requiring the complainants to pay additional amount by way of interest etc. is illegal and is hereby quashed. Resultantly, the complaint is partly allowed without any order as to costs. Complaint partly allowed. _____