

(2002) 07 NCDRC CK 0011

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

DIRECTOR GENERAL
(INVESTIGATION AND
REGISTRATION)

APPELLANT

Vs

SCHEDULED CASTES AND
SCHEDULED TRIBES/BACKWARD
AND MINORITIES COOPERATIVE
HOUSING SOCIETY LTD.

RESPONDENT

Date of Decision: July 28, 2002

Citation: 2003 2 CPJ 34

Hon'ble Judges: Moksh Mahajan J.

Final Decision: Complaint disposed of

Judgement

1. IN a complaint filed before the Commission, the complainant alleged that the respondents sold a plot of 300 sq. yards to the complainant by making a false representation in regard to the title of the land and the approval of the U.P. Housing Development Authority for raising construction on the land. As per the facts detailed in the complaint, the respondent is a registered Society under U.P. Housing & Development Board, Lucknow (U.P.). The complainant became a member of the respondent Society on 24.11.1994 by paying a sum of Rs. 100/-. By way of extensive advertisement in the Hindustan Times dated 2.12.1994, the respondent offered plots of various sizes falling in Khasra Nos. 513 and 516 in Village Hazipur, Tehsil Dadri, District Ghaziabad for sale to the public. The complainant was offered plot No. 29 measuring 150 sq. yards in Khasra No. 513 in Village Hazipur. IN lieu thereof he paid a sum of Rs. 10,000/- towards initial amount and Rs. 20,000/- to cover 20% of the total cost through demand drafts. IN addition, 24 post-dated cheques of Rs. 5,000/- each were also issued to the respondent. Subsequently, on an option given to the complainant, he agreed to replace the said plot with another plot of 300 sq. yards in Khasra No. 516 for a total consideration of Rs. 3,03,000/-. A revised agreement dated 27.2.1995 was entered into between the complainant and the

respondent and pursuant to that additional amount was paid through mode of cheques. Somewhere in November-December, 1995, the complainant came across a Public Notice published in the daily newspaper on 16.12.1994 by NOIDA Authority stating therein that the plots were not approved by the Appropriate Authority and the purchasers were not entitled to make any construction on the same. Public was warned not to deal with the respondent authority which was stated to have no legal right to sell the land in NOIDA. The complainant thereafter applied for cancellation of the plot and refund of the amount deposited with the respondent. The respondent instead of refunding the amount demanded the remaining amount towards the cost of plot. The allegation of the complainant is that it is not he alone who has been misled in buying the unapproved plot but there are others who have been similarly duped by the misrepresentation of the respondent. The prayer of the complainant is that not only inquiry be held against the unfair trade practices indulged in by the respondent but it should also be directed to cease and desist from carrying on such trade practices.

2. AFTER hearing the complainant through its Advocate and coming to the view that the aforesaid matter involves public interest, the Director General (Investigation and Registration) [hereinafter referred to as the DG] was directed to prosecute the proceedings. A Notice of Enquiry under Sections 36A, 36B(a) and 36D of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act) read with Regulation 51 of the MRTPC Regulations, 1991 was issued to the respondents. In their joint reply filed on behalf of R1 and R3 it is stated that respondent is a registered Society under U.P. Co-operative Societies Act, 1965 and operates and functions in the areas of limits of Ghaziabad Development Authority and city limits of NOIDA. The plots offered by the respondent were free from encumbrances as per certificate issued by the Sub-Registrar, NOIDA (Annexure C). Vide letter dated 27.3.1995, the respondent was informed by the Assistant Housing Commissioner, U.P. Housing & Development Board, 104, MGR, Lucknow, that the land in Khasra No. 516, Village Hazipur, Pargana and Tehsil Dadri, District Ghaziabad was not proposed to be included in any planning of the Board. Proceeding on the said basis, the respondent advertised in the newspapers for sale of the plots. There was no cheating involved as alleged, rather the cheques paid by the complainant bounced.

During the course of the proceedings, both the DG and the complainant filed their respective interim relief applications under Section 12-A of the Act. While the DG, in its application, sought to restrain the respondent forthwith from issuing any such further advertisement calling for enrolment of new members and

demanding/accepting any further amount in connection with the construction of flats/houses, the complainant prayed for refund of the amount of Rs. 1,64,000/- with interest @ 18% per annum. The complainant also sought to restrain the respondents from demanding any amount and taking any coercive action on the basis of their letters dated 16.6.1996 and 18.7.1996.

In view of the Commissioner's order dated 20.9.1996 and the undertaking given by the respondent for not taking any hostile action against the complainant, the interim relief applications were subsequently disposed of vide Commission's order dated 8.4.1999. After completion of pleadings, the following issues were framed :

(i) Whether the respondents have indulged in or indulging in the unfair trade practices listed in the NOE ? (ii) Whether the alleged unfair practices are prejudicial to any consumer or consumers generally and the public ? (iii) Relief.

3. BOTH the parties filed their lists of witnesses and the documents to be relied upon. While the DG filed an affidavit of Shri Om Prakash Kamal, the respondents did not file the evidence by way of affidavit. The admission/denial of the documents of the DG was also not carried out despite several opportunities allowed on various occasions i.e. 21.9.1999, 19.11.1999, 5.1.2000, 10.1.2000, 17.2.2000, 10.3.2000, 27.3.2000, 31.3.2000, 22.5.2000, 18.10.2000, 22.2.2001 and 22.5.2001. No witness was cross-examined on either sides. In absence of non-representation and non-prosecution of the proceedings by and on behalf of the respondents, the same were set ex parte by Commission's order dated 29.10.2001.

Learned Counsel for the DG relied mainly on the documents produced in support of his contentions. Admittedly, the respondents offered free-hold plots for sale as is evident from the advertisement issued on 2.12.1994 (Annexure-I), which runs as under :

"Offers LMC Freehold Residential Plots in various sizes at very Prime Location and Close to 100 mtrs. Express Six Lane Highway under construction between NOIDA Film City to Greater NOIDA. Within 5 kms. from Delhi. Pollution Free Zone. Very close to Golf Field and Stadium. With all facilities including Nursing Home, Easy Transports, Telephone, Electricity, Sweet Drinking water & Tennis Yard etc. etc. Available for immediate possession and constructions. Easy payment basis."

4. A chart showing sizes of various plots earmarked in an area adjoining link road (page 19) enclosed with the agreement executed with the informant in respect of plot of 300 sq. yards was sufficient to give an impression that the plots offered were not only freehold but were in possession of the respondents. Documents relied upon, however, show that both on the date of advertisement as well on the date of the execution of the agreement, they had not yet acquired the title of the land in Khasra Nos. 513 and 516. The certificate of search dated 30.11.1994 issued by the Sub Registrar, NOIDA on the other hand only mentions that certain Khasra numbers including 513 and 516 owned by Shri Swamy Bhagat Singh and Rajinder Sons of Shri Amar Singh, residents of Village Hazipur, Tehsil Dadri, District Ghaziabad, are free from encumbrances. Copy of the agreement to sell the land measuring approximately one acre i.e. 5000 sq. yards in Khasra No. 516 for consideration of 40 lacs enclosed only showed the intention of the respondents to buy the land. The sale deed was to be executed within 7 months from the date of the agreement, which was dated 15.5.1994. While the same has since expired, no copy of the sale deed has been filed by the respondents. In fact on the dates of issuance of advertisement for sale of plots as well the execution of agreement with the complainant, the respondents had neither acquired the land nor had any knowledge about its status as is clear from the clarification sought from the Deputy Chief Executive Officer, NOIDA vide its letter dated 18.3.1996 sent to the Authority through its Advocate. The relevant para of the same is as under :

"That my client is a registered entity and is intending to purchase land bearing Khasra No. 516 situated in Village Hazipur, Pargana and Tehsil Dadri, District Ghaziabad from its owners Shri Bhagat Singh and Rajinder Singh sons of Shri Amar Singh of Village Hazipur, Pargana and Tehsil Dadri, Ghaziabad."

Not only this, it persisted in misleading its members as is evident from the letter dated 15.5.1995 circulated amongst them, relevant para of which reads as under :

"In the meantime the Society has also got No Objection Certificate from the Govt. of U.P. from the land of site location plan for residential plots, as well as non-encumbrance and NOC from the Competent Authority of Registrar Office, NOIDA (Ghaziabad)."

The above clearly establishes that without acquiring the land in Khasra No. 516, the respondents sold plot to the complainant. It even refused to refund the amount deposited by the complainant when demanded. Thus the charge of misrepresentation/false statement stands established. Being clearly covered under the provision of Section 36A of the Act, the respondents are directed to cease such unfair trade practices, if still continued, and desist from repeating them in future. There is no order as to costs. Complaint disposed of.