

**(2001) 03 NCDRC CK 0024**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

ESTATE OFFICER, HUDA

APPELLANT

Vs

SHASHI JAIN

RESPONDENT

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**Date of Decision:** March 21, 2001

**Citation:** 2001 2 CLT 517 : 2002 2 CPJ 179

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

**Final Decision:** Appeal dismissed

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**Judgement**

1. THIS appeal has been filed under Section 15 of the Consumer Protection Act, 1986 against the order dated 21.7.2000 passed by the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (for short hereinafter to be referred as the District Forum-II) in the Complaint Case No. 1235 of 1998. The District Forum-II has allowed the complaint with consolidate costs of Rs. 25,000/- and the following directions had been issued to the appellant/opposite party.

(i) To pay interest @ 15% p.a. on the amount deposited by the complainant from the date of deposit till the offer of possession of alternate plot is made to the complainant. (ii) Pay Rs. 2.25 lacs on account of increase in the cost of construction.

2. THE respondent/complainant, Smt. Shashi Jain, w/o late Shri A.K. Jain, r/o H. No. 336, Sector 38-A, Chandigarh was allotted a residential plot No. 1048-P, Sector - 22, Gurgaon as per allotment letter dated 15.6.1987. THE respondent/complainant had made full payment towards the cost of the plot. Inspite of making full payment the respondent/complainant did not get the physical possession of the plot. However, she received a memo dated 6.7.1998 from the Estate Officer, HUDA, Gurgaon,

appellant No. 1 asking the consent of the respondent/complainant for the allotment of an alternative plot by draw of lots. THE respondent/complainant rejected the offer and then she received another letter dated 4.9.1998 from the Estate Officer, Gurgaon (appellant No. 1) that the possession could not be delivered due to "plot not available at site after demarcation". THE respondent/complainant, Smt. Shashi Jain wrote number of letters for giving her the physical possession of the plot but all was in vain. She was finally given possession of alternative plot No. 1053-P, Sector 22 vide memo No. 10967 dated 29.7.1999 after a lapse of 11 years. She suffered financial loss on account of escalation in the cost of construction and mental and physical torture. Accordingly, she filed complaint before the District Forum-II and prayed for issuance of a direction to the respondents to allot alternative plot in Sector-22, Gurgaon on the same terms and conditions as contained in the letter of allotment (Annexure P-1), in the event of the alternative plot not being available in Sector-22, Gurgaon, some other plot in the alternative be allotted in the adjoining developed sector subject to the same terms and conditions and rates as mentioned in Annexure P-1. THE complainant also claimed interest @ 24% p.a. on the amount deposited by her from the date of deposit till date of delivery of alternative plot. She claimed damages to the tune of Rs. 2.5 lacs on account of escalation in the cost of construction and a sum of Rs. 1 lac as compensation on account of mental agony and harassment caused to her due to deficient and negligence services on the part of the respondents.

The notice of the appeal was issued to the respondent, who put in appearance through Mr. C.B. Goel, Advocate. The record of the complaint case was summoned from the District Forum-II. We have perused the impugned order and heard learned Counsel for the appellants as well as the learned Counsel for the respondent. We have also gone through the record of the complaint case.

The learned Counsel for the appellants contended that the District Forum-II committed an error in overlooking the fact that the delay in delivering the possession to the complainant was due to non-development of the area which is also the Condition. No. 7 incorporated in the terms and conditions of allotment letter. He submitted that in view of this Condition No. 7, there was no deficiency on the part of the appellant due to the delay in handing over of possession. The appellants had written to the complainant/respondent in a number of letters asking her consent for alternative plot as the plot allotted to her was not available at site after demarcation and as such was under litigation but she did not give her consent. The rate of interest of 15% p.a. awarded by the District Forum-II has also been challenged as being on the higher side. The amount of compensation of Rs. 25,000/- has also been challenged as unreasonable, arbitrary and unjustified and the same would set up a bad precedent. Apart from this, a sum of Rs. 2.25 lacs awarded as escalation in the cost of construction, building material has also been challenged on being arbitrary and highly excessive.

3. AS per the averments made in the complaint case the respondent/complainant, Smt. Shashi Jain was allotted a residential plot bearing No. 1048-PO, Sector 22, Gurgaon measuring 14 marlas, vide letter of Allotment No. 1786 dated 15.6.1987. (Photo copy of the letter of allotment is annexed as Annexure P/1). The respondent/complainant made all the payments through instalments. She received a Memo No. 2671 dated 6.7.1998 wherein the Estate Officer, Gurgaon, appellant No. 1 intimated that in lieu of the plot allotted, the authority, has decided to allot alternative plot by draw of lots from the various plots available in different sectors at Gurgaon and asked the complainant/respondent to give her consent. Photo copy of the Memo No. 2761 dated 6.7.1998 is annexed as Annexure P/2. The respondent/complainant on receipt of the memo approached the Estate Officer and objected to the method of denying her the possession of the plot as a result of which he sent another letter dated 4.9.1998 conveying that the possession of the allotted plot could not be offered/delivered due to "plot not available at site after demarcation".

The respondent/complainant has averred in Para 8 of the complaint that as per the information of the complainant, plot Nos. 1467 - SP, 3276 and 3144, Sector 23-A, Gurgaon, are vacant plots and are available for allotment. These plots are also of the same area i.e. 14 marlas each, as was the area of the allotted plot to the respondent/complainant i.e. plot No. 1048-P, Sector 22, Gurgaon. Despite all efforts, letters and personal visits to the Estate Officer, Gurgaon the respondent/complainant failed to get the possession of the plot. She filed a complaint in the District Forum-II and prayed for the physical possession of the plot with a sum of Rs. 2,50,000/- as damages on account of increase in costs of construction Rs. 1,00,000/- as damages on account of mental agony and harassment caused to the complainant due to deficient services on the part of the appellants/opposite parties. The delay in the possession of plot for 11 years to the complainant/respondent by itself amounts to grave deficiency in service on the part of the appellants.

4. IN reply, the appellants/opposite parties has denied the respondent/complainant made full payment of the plot and claimed that more than Rs. 54,000/- are due from the respondent/complainant towards the cost of plot. It is contended that the possession of the plot could not be delivered to the respondent/complainant

because the plot was not available at site after demarcation. The respondent/complainant was asked to send her consent for alternative plot by draw of lots as per the policy of HUDA. However, as no consent was sent by the respondent/complainant, her name was not included in the draw of lots held on 1.11.1998.

The District Forum-II has considered the question of delay in offering alternative plot to the complainant and has relied on the judgment reported in the case of Smt. Shakuntla Devi v. Chief Administrator, Haryana Urban Development Authority & Anr., I (1999) CPJ 495, decided by the Haryana State Commission, wherein HUDA has been held guilty of deficiency in service for not delivering the possession for more than five years. The District Forum-II has in its judgment in para 7 held as under :

"7. During the pendency of the case, the complainant has now been given alternate plot No. 1053-D in Sector-22, itself. This is vide Memo No. 10967 dated 29.7.1999 sent by the Estate Officer, HUDA, Gurgaon to the complainant. This, therefore, satisfies the main grievance of the complainant regarding the allotment of alternative plot. Further, this plot also being in the same sector is subject to the same terms and conditions as found in the original allotment letter in favour of the complainant issued to her on 15.6.1987. Obviously, no further amount is being demanded by the opposite party from the complainant towards the cost of alternative plot. It appears that HUDA adjusted the amount paid by the complainant towards the price of plot No. 1048-P against the price of alternative plot No. 1053-D, Sector-22, Gurgaon."

The grievance of the respondent/complainant that she had been denied plot for more than 11 years after having made the full payment is quite justified and she deserves compensation for the escalation costs of constructions during these years. Following the decision of Hon"ble National Commission in II (1995) CPJ 70 (NC), Rajnish Chander Sharda v. Haryana Urban Development Authority, the U.T. State Commission in its decision rendered in Appeal Case No. 59 of 1998, Ajay Sharma v. The Commissioner and Secretary of Govt. of Haryana, awarded Rs. 2 lacs as compensation for rise in the cost of construction and Rs. 25,000/- towards mental and physical harassment, apart from the interest on the amount deposited by the complainant. Adverting to the facts of the present case, it needs to be added that Rajnish Chander"s case (supra), was decided on 16.1.1995 and the instant case is being decided more than five years later.

5. IN view of the foregoing, we are of the considered opinion that the District Forum-II has rightly allowed the complaint and we find no infirmity in the same.

Consequently, the appeal lacks merit and is dismissed. The copies of the order be supplied to the parties free of charges. Appeal dismissed.