

(2011) 01 NCDRC CK 0072

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Ghaziabad Development
Authority through its Secretary

APPELLANT

Vs

YOGENDRA PAL TYAGI

RESPONDENT

Date of Decision: Jan. 5, 2011

Citation: 2011 0 CTJ 148 : 2011 0 NCDRC 35 : 2011 1 CPJ 146 : 2011 1 CPR 196

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Final Decision: Revision Petition is disposed of

Judgement

1. THESE two Revision Petitions have been received on remand from the Supreme Court of India with a direction to decide them afresh after considering all the issues raised by the parties.

2. IN response to the advertisement issued by the Petitioner - Ghaziabad Development Authority (for short, GDA), which was the Opposite Party before the District Forum, Respondent-Complainant applied for allotment of a plot in Govindpuram Housing Scheme in the year 1988. Petitioner informed the Respondent by letter dated 5th July, 1989 that it had reserved a plot measuring 112 sq. meter for him valued at Rs.69,440/-. Respondent deposited the price of the plot between 1988-92, but possession thereof was not delivered to him apparently because in the writ petition filed by the land owners challenging acquisition of the land, the High Court of Allahabad had granted stay. As per brochure of the GDA, possession of the plot was to be delivered by the year 1990. As the plot was not delivered to the Respondent in spite of paying the entire price for the plot in accordance with the schedule of payment within the stipulated time, Respondent

filed the complaint before the District Forum seeking a direction to Petitioner to deliver possession of the reserved plot. During the pendency of the complaint, the Petitioner refunded the entire amount deposited by the Respondent with interest @ 6% per annum, but the Respondent did not accept the refund and returned the cheque.

District Forum by Order dated 26.5.2000 allowed the complaint and directed the Petitioner to pay interest @ 18% on each instalment from the date of deposit till the payment. The District Forum also awarded Rs.2000/- for mental agony and Rs.400 towards costs. Relief of possession of the plot was not given by observing: The relief of possession cannot be given to the complainant because the Forum does not want to pass any order/decreed which cannot be executed later on and as the respondent has failed to give possession of the reserved plot to the complainant and now it is not possible to give possession of the plot to the complainant by opposite party, therefore, this is a specific conclusion of the Forum that the opposite party shall pay penal interest to the complainant on the deposited principal amount and in view of the above discussion to some extent the complaint of the complainant is liable to be decreed.

Aggrieved by the Order passed by the District Forum, Petitioner as well as Respondent filed two separate appeals . Appeal filed by the Petitioner was numbered as 1558/2000 and the Appeal filed by the Respondent was numbered as 1480/2000.

3. APPEAL No.1558/2000 filed by the Petitioner was dismissed by the State Commission by Order dated 25.4.2001 thereby affirming the Order of the District Forum. Petitioner being aggrieved filed Revision Petition No.1544/2001 before this Commission which was dismissed by this Commission by Order dated 24.9.2001 following the decision of this Commission in Haryana Urban Development Authority vs. Darsh Kumar(Revision Petition No.1197/1998) in which the award of interest @ 18% on the deposited amount was upheld.

Appeal No.1480/2000 filed by the Respondent was allowed by State Commission and a direction was given to the Petitioner to give possession of the plot measuring 112 sq.mt. at the same price which was prevalent at the time of reservation of the plot. The Petitioner was also directed to pay interest @ 18% per annum on the deposited amount from the date of deposit till the date of possession. Rest of the order of the District Forum was confirmed. The final direction issued by the State Commission reads as under: The appeal is allowed in part to the extent the Ghaziabad Development Authority is directed to allot and give possession of the plot

measuring 112 sq.mt. valued at Rs.69,440/- at the same price which were prevalent at the time of reservation of the plot. It is also directed that the Ghaziabad Development Authority shall pay interest at the rate of 18% per annum on the deposited amount from the date of deposit till the date of possession. The rest portion of the judgment and order of the learned District Forum is confirmed, subject to above modification. The complainant shall also get Rs.2000/- as cost.

4. AGGRIEVED by the order passed by the State Commission in Appeal No.1480/2000 filed by the Respondent, Petitioner filed Revision Petition being No.2516/2002. Noticing the contradictory orders dated 25.4.2001 and 16.7.2002 passed by the State Commission in the two sets of Appeal i.e Appeal No.1558/00 and Appeal No.1480/2000 respectively, this Commission set aside the order dated 16th July, 2002 in Revision Petition No.2516/2002 by observing: We are of the view that in view of order dated 25.4.2001 which was passed much prior in time compared to the order dated 16.7.02, the later order deserves to be set aside in revision jurisdiction u/s 21(b) of the C.P. Act, 1986.

Aggrieved by the order dated 24.9.2001 passed by this Commission in Revision Petition No.1544/2001, Petitioner filed Special Leave Petition in the Supreme Court of India which after grant of leave was numbered as 8406/2002. The Respondent being aggrieved by the Order dated 16th March, 2004 passed by this Commission in Revision Petition No.2516/2002 whereby the directions issued by the State Commission to allot the plot was set aside, filed Special Leave Petition before the Supreme Court which after grant of leave was numbered as Civil Appeal No.4419/2007. Both the Appeals were clubbed together and came up for hearing before a Bench of the Supreme Court on 18th August, 2009. The Honble Judges being of the opinion that this Commission passed inconsistent orders in the Revision Petitions, set aside both the orders and remitted the matters to this Commission for deciding both the Revision Petitions afresh after considering all the issues raised by the parties.[With respect it is stated that the inconsistency was in the Orders passed by the State Commission and not that of this Commission]. The Honble Judges have also pointed out that the order passed by this Commission in the case of Darsh Kumar had been reversed by the Supreme Court in Haryana Urban Development Authority vs. Darsh Kumar [2005 (9) SCC 499] wherein the rate of interest was reduced from 18% to 12%. Counsel for the parties have been heard at length.

It is not disputed before us that the Respondent had applied for allotment of a plot in Govindpuram Housing Scheme in the year 1988. It is also not disputed before us that the Petitioner had reserved a plot measuring 112 sq.mts. for the Respondent. It

is also not in dispute that the Respondent had paid the entire amount in accordance with the schedule of payment against the reserved plot within the stipulated period. It is also not in dispute that the Petitioner did not/could not allot a plot to the Respondent because of some writ petition filed by the land owners challenging the acquisition of land in the Allahabad High Court, in which the High Court had granted stay.

5. DISTRICT Forum while disposing of the complaint by its Order dated 25th May, 2000, did not record any reasons for declining the relief of possession of the plot to the Respondent. DISTRICT Forum directed the Petitioner to pay interest @ 18% interest per annum from the respective date of deposit of each instalment till the date of payment. The State Commission dismissed the appeal filed by the GDA, thus upholding the interest @ 18% awarded by DISTRICT Forum.

6. APPEAL No.1480/00 filed by the Respondent against the Order dated 26.5.2000 of the District Forum, was allowed by the State Commission by its order dated 16.7.2002 and a direction was issued to the Petitioner to allot a plot, observing thus:

The learned counsel for the appellant has argued that only a plot was reserved and allotment was not done. Hence the possession was not given to the complainant. Once a plot has been reserved, it was the duty of the Ghaziabad Development Authority to allot a plot to the person concerned. As a matter of fact the evidence on record goes to show that the payment schedule was sent to the complainant and the last instalment was to be paid by 31.3.1992, failing which penal interest was to be levied. The last instalment was paid on 22.4.92. Thus it goes to show that the complainant has paid the entire cost of the plot. Hence it was bounden duty of the Ghaziabad Development Authority to have allotted a specific plot to the complainant. By not doing so the Ghaziabad Development Authority has committed deficiency in service. It was the duty of the opposite party, development authority, to have allotted a plot to the complainant once a plot was reserved for him. The learned District Forum has not considered this aspect of the case and has wrongly directed for refund of the amount along with interest. The learned District Forum should have directed the Ghaziabad Development Authority to allot a plot to the complainant. Therefore the appeal is liable to be allowed in part and the Ghaziabad

Development Authority is to be directed for giving a plot to the complainant along with 18% per annum interest from the date of deposit till the date of handing over possession along with other reliefs granted by the District Forum. [emphasis supplied]

Gda filed Revision Petition No.2516/2002 against the order dated 16.7.2002 passed by the State Commission in Appeal No.1480/00. Noticing the inconsistency in the orders dated 25.4.2001 and 16.7.2002 passed by the State Commission in Appeal Nos. 1558/00 and 1480/00 respectively, this Commission had set the directions issued by the State Commission in its order dated 16.7.2002 in Appeal No.1480/00, for allotment of a plot to the Respondent and the direction regarding payment of interest @ 18% was upheld.

7. SINCE the Honble Supreme Court has remanded the case to this Commission to decide it afresh after considering all the issues raised by the parties, the question which arises for consideration before us is whether the Respondent is entitled to the allotment of the plot or refund of the amount deposited by him along with suitable rate of interest? Revision Petition No.2516/2002: Judicial notice can be taken of the fact that prices of real estate have gone up exponentially in the last 20 years and it may not be possible for the Respondent to purchase another plot of the same size for the amount paid by him. Counsel for the Petitioner could not point out any illegality or irregularity in the order passed by the State Commission in Appeal No.1480/00 filed by the Respondent, directing the Petitioner to allot a plot to the Respondent. Further, even in the Memo of Revision Petition No.2516/2002 no reasons have been spelt out as to why it is not possible to allot the plot to the Respondent.

In our opinion, since the plot measuring 112 sq. mtr. had been reserved for the Respondent by the Petitioner, for which the Respondent had paid the entire amount due 20 years back, it would be fair and in the fitness of things that a direction is issued to the Petitioner to allot the plot measuring 112 sq. mtrs. reserved for the Respondent at the then prevailing price. If the said plot is not available for one reason or the other, the Petitioner should allot alternative plot of the same measurement and in some other Scheme at the same price within a period of six months from today. However, directions given by the State Commission to give interest @ 18% on the deposited amount till the possession is given, is set aside as Petitioner has been directed to allot the plot to the Respondent at the price prevalent at the time when the plot was reservedoHowever, for him.

8. ACCORDINGLY, for the reasons stated above, Revision Petition No.2516/2002 is disposed of in the above terms. Petitioner is directed to allot the plot to the Respondent within a period of six month from today failing which Petitioner would be liable to pay interest @ 9% to Respondent on the amount deposited from the date of filing of the complaint till possession of the plot is delivered.

Revision Petition No.1544/2002: Revision Petition No.1544/2001 is directed against order dated 25.4.2001 passed by the State Commission in Appeal No.1558/2000 filed by the Petitioner whereby the State Commission upheld the order of the District Forum directing the Petitioner to pay interest @ 18% on each instalment from the date of deposit till the payment to the Respondent. Since the Petitioner has been directed in the Revision Petition No.2516/002 to allot a plot to the Respondent, the direction to pay interest @ 18% on each instalment from the date of deposit till the payment to the Respondent, is set aside.

In the final analysis, the original complaint filed by the Respondent-Complainant stands allowed and the Petitioner GDA is directed to allot the plot measuring 112 sq. mtrs. to the Respondent which was reserved for him at the then prevailing price. If that plot is not available for one reason or the other, the Petitioner should allot alternate plot of the same measurement and at the same price in some other Scheme, to the Respondent, within a period of three months from today.